Minute No. 333
Report – Executive Policy Committee – March 25, 2014

Item No. 2 **Settlement of Claim – Aquatics Hall of Fame and Museum Canada Inc.**

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the Acting Director of Legal Services and City Solicitor be authorized to enter into a settlement of the claim by:

   A. Entering into a lease with the Aquatics Hall of Fame and Museum of Canada Inc. (AHFM) on the terms and conditions set forth in Schedule "A" hereto and such other terms and conditions deemed necessary by the Director of Planning, Property and Development and the Acting Director of Legal Services and City Solicitor to protect the interests of the City;

   B. Paying the sum of $250,000 to the AHFM;

   C. Installing cabinets in the Pan-Am Pool for the display of its collection at a cost of $600,000, to be funded from the existing Indoor Aquatics Facilities capital programs;

   D. Permitting the AHFM to establish a link to its website through the City's home page;

   E. Requiring a Notice of Discontinuance of the Claim;

   F. Requiring a Release in a form satisfactory to the Acting City Solicitor.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – March 25, 2014

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,
That the recommendation of the Executive Policy Committee be adopted.

Carried

Councillor Swandel asked to be recorded as having voted in opposition to the item, in accordance with Rule 47.7 of the Procedure By-law.

(See Minute No. 331 for disclosure of conflict by Councillor Mayes)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 25, 2014, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Settlement of claim between The Aquatic Hall of Fame and Museum of Canada Inc. (the "AHFM") and The City of Winnipeg (the "City") (the "claim")**

Critical Path: **EPC - Council**

This report contains confidential information which is subject to solicitor-client privilege.

AUTHORIZATION

Author	Acting Department Head	CFO	CAO
Denise A. M. Pambrun	Krista L. Boryskavich	M. Ruta	D. Joshi A/CAO

RECOMMENDATIONS

3. That Council authorize the Acting City Solicitor to enter into a settlement of the claim by:
    - Entering into a lease with the AHFM on the terms and conditions set forth in Schedule "A" hereto and such other terms and conditions deemed necessary by the Director of Planning, Property & Development and the Acting Director of Legal Services & City Solicitor to protect the interests of the City;
    - Paying the sum of $250,000 to the AHFM;
    - Installing cabinets in the Pan-Am Pool for the display of its collection at a cost of $600,000, to be funded from the existing Indoor Aquatics Facilities capital programs;
    - Permitting the AHFM to establish a link to its website through the City's home page;
    - Requiring a Notice of Discontinuance of the Claim;
    - Requiring a Release in a form satisfactory to the Acting City Solicitor.
4. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

- Settlement of claims against the City in the amount over $250,000 must be approved by Council in accordance with the City's Organization By-law.

IMPLICATIONS OF THE RECOMMENDATIONS

- Legal Services, with the concurrence of Planning, Property and Development, recommends that this settlement be approved.
- The issues in this matter will be highly contentious, requiring four weeks of litigation and significant out-of-pocket costs for experts and witnesses.
- Settlement of the claim will remove the risks of litigation.

HISTORY

- The AHFM became an occupier of the Pan-Am Pool (the "pool") in 1967, pursuant to a verbal agreement between it and the City.
- In 1973, the AHFM and the City entered into a written agreement in respect of the AHFM's occupation of the pool. The agreement provided that the AHFM would transfer its collection to the City, on the understanding that it would be maintained at the pool, unless the pool were demolished, in which case the collection would be transferred back to the AHFM. The City agreed to self-insure the collection against fire and theft. There was no term to the agreement.
- In 1998, the pool was expanded and the parties entered into negotiations to permit the AHFM to expand its occupation into the new area of the pool. The negotiations broke down and in 2006, the AHFM vacated the pool.
- In 2007, the AHFM sued the City on the basis of the 1973 agreement and on the basis of the fiduciary duty it claimed the City owed to it. The fiduciary duty was alleged to be based on the interest the AHFM had acquired in the new area of the pool (the "gallery") as a result of its fundraising activities for the expansion, as well as the length and nature of its relationship with the City. The amount of the claim is in excess of $21,000,000, based on an expert report obtained by the AHFM. The City has also obtained an expert report which shows that the damage is more properly quantified at $5,600,000, assuming the AHFM can prove the City is liable at law.
- In the fall of 2011, a preservation of the evidence of the AHFM's main witness, Mr. Vaughan Baird, took place over 8 days. The trial itself will commence on April 14, 2014 and is scheduled to last four weeks.

DISCUSSION

- A settlement has now been negotiated, subject to Council approval, the main points of which are as follows:
    - The AHFM would occupy the gallery on an exclusive basis and would be able to display the collection there and in cabinets on the interior walls of the track.
    - The AHFM would sign a lease for a term of 50 years at a rent of $1 per year with no options to renew.
    - The City would pay the operating costs for the gallery.
    - The AHFM would be able to apply for a tax exemption pursuant to By-law 89/2005.
    - The City would own and self-insure the collection.
    - The City would install cabinets for the display of the collection at a cost of $600,000, to be funded from the existing Indoor Aquatics Facilities capital programs.
    - The AHFM would be responsible for any build-outs to the interior of the gallery, subject to the City's design approval.
    - The AHFM would be entitled to hold special events in the gallery subject to the City's approval.
    - The City would make a one-time payment to the AHFM in the amount of $250,000, to be funded by a settlement payment already received from the City's insurer.
    - The AHFM would provide the City with a Notice of Discontinuance of the claim and a release.
- It is the view of Legal Services and Planning, Property & Development that this settlement is in the best interests of the City.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 21, 2014

Project Name: **First Year of Program** **2014**

Settlement of claim between The Aquatic Hall of Fame and Museum of Canada Inc. (AHFM) and The City of Winnipeg

	2014	2015	2016	2017	2018
Capital					
Capital Expenditures Required	$ 600,000	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	600,000	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 250,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 250,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts (see Note 2)	250,000	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

1. The cost of the cabinets ($600,000) is to be funded through existing Indoor Aquatics Facilities capital programs (Proj. ID: 6392000113 & 6392000114) within Planning, Property & Development Department.

2. The $250,000 one-time payment to the AHFM is to be funded through the Insurance Reserve Fund where a settlement payment in the same amount from the City's insurer was deposited.

(Original signed by R. Abeysekera)
Radhika Abeysekera
Manager of Finance - Campus Departments
Corporate Finance Department

CAUTIONARY NOTES

- As this matter is set for trial to begin on April 14, 2014, if this matter is to be settled, it must be approved by Council on March 26, 2014.

CONSULTATION

In preparing this report there was consultation with:

Barry Thorgrimson, Director, Planning, Property and Development

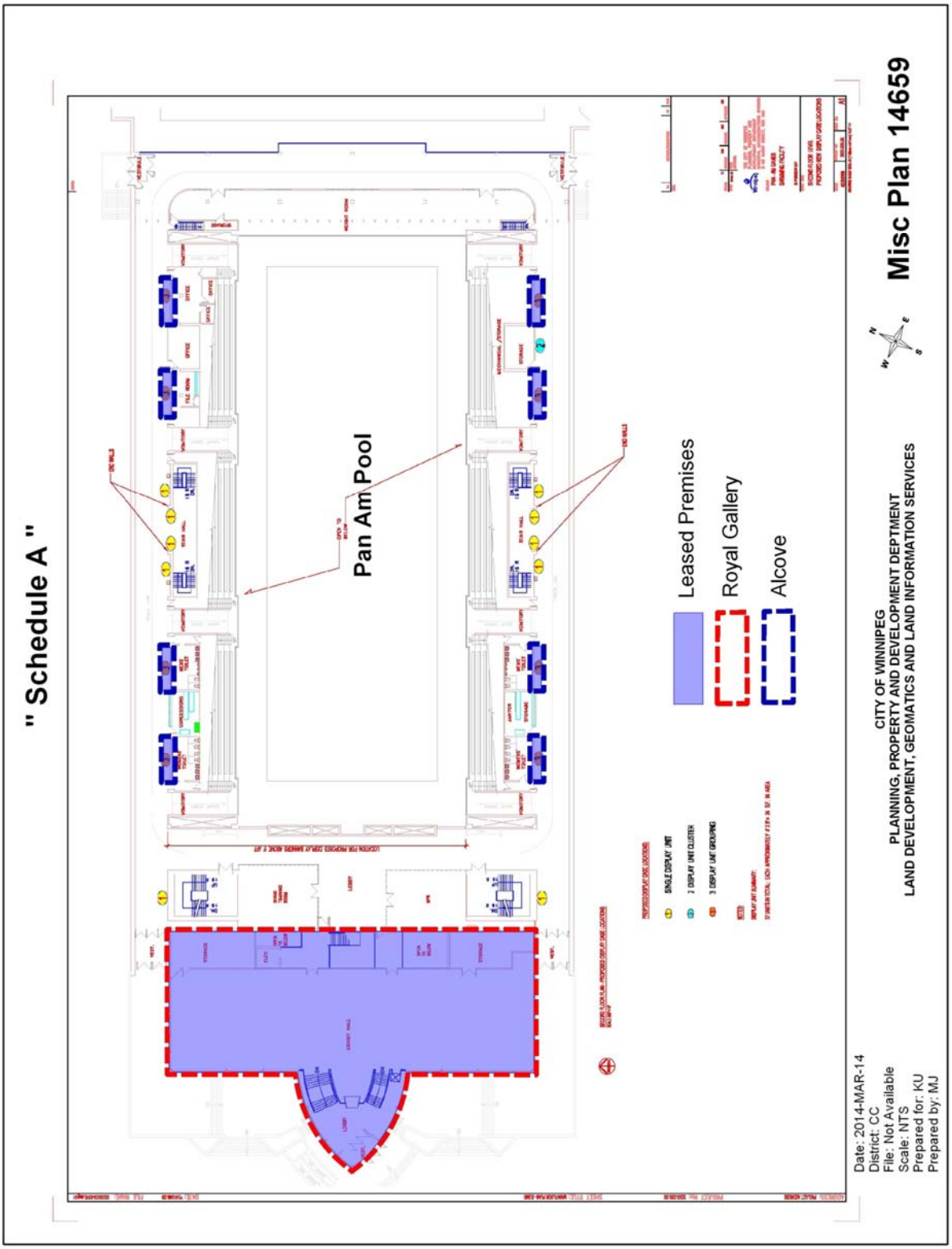
SUBMITTED BY

Department: Legal Services Department
Prepared by: Denise A. M. Pambrun
Date: March 24, 2014
File No. CL.5/2007(3)

SCHEDULE A

PROPOSED TERMS AND CONDITIONS OF LEASE AGREEMENT TO LEASE A PORTION OF THE PAN-AM POOL LOCATED AT 25 POSEIDON BAY IN THE CITY OF WINNIPEG IN THE PROVINCE OF MANITOBA

Landlord:	City of Winnipeg
Tenant:	The Aquatic Hall of Fame and Museum of Canada Inc.
Use:	Aquatics museum and special events
Leased Premises:	The gallery at the west end of the Pan-Am Pool and the use of display cabinets to be installed on the inner perimeter of the track and as indicated on attached Miscellaneous Plan 14659
Term:	50 years
Commencement:	Upon completion of cabinet construction – approximately October 1, 2014
Hours of operation:	Same as Pan-Am Pool, plus after regular operating hours special events, with approval of the City
Gross rent:	$1 plus G.S.T. per annum
Exclusivity:	Tenant will have exclusive right to occupy the gallery only
Tenant Responsibilities:	Insurance as required by Insurance Branch, furnishings, interior alterations with design approval by City, property taxes (although tenant entitled to apply pursuant to By-law 89/2005)
Renewal options:	None
Cancellation:	
Landlord:	Only if Pan-Am Pool unsafe or uninhabitable, in case of demolition, destruction or structural repairs
Tenant:	90 days
Landlord Responsibilities:	Installation of cabinets in the gallery and the inner perimeter of the track; payment of all utilities, maintenance, repairs/replacements of roof, roof membrane, HVAC, plumbing, general maintenance, elevator maintenance, snow removal, including parking lot, exterior window washing, signage, ownership and self-insurance of collection


" Schedule A "
Pan Am Pool
Leased Premises
Royal Gallery
Alcove
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPTMENT
LAND DEVELOPMENT, GEOMATICS AND LAND INFORMATION SERVICES
Misc Plan 14659
Date: 2014-MAR-14
District: CC
File: Not Available
Scale: NTS
Prepared for: KU
Prepared by: MJ