City of Winnipeg

Real Estate Management Review

Findings and Recommendations Report
19 June 2014

Building a better working world

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Key definitions

The following terms shall have the meaning ascribed to them. All other terms in this report shall be interpreted based on their ordinary meaning.

ACG	Administrative Coordinating Group
CAO	Chief Administrative Officer
CFO	Chief Financial Officer
City	City of Winnipeg
COO	Chief Operating Officer
CUSPAP	Canadian Uniform Standards of Professional Appraisal Practice
DASSF	Development Application for Short-Form Subdivision
EOI	Expression of Interest
EOIQ	Expression of Interest and Qualifications
EPC	Executive Policy Committee
ESA	Environmental Site Assessment
EY	Ernst & Young LLP
LOI	Letter of Intent
LVAC	Land Value Appraisal Commission
PPD	The City of Winnipeg Planning, Property and Development Department
RFP	Request for Proposal
RFQ	Request for Qualification
RIS	Report Information System
SPCDD	Standing Policy Committee on Downtown Development, Heritage, and Riverbank Management
SPCPD	Standing Policy Committee on Property and Development
Transit	Winnipeg Transit
VFM	Value for Money
WPA	Winnipeg Parking Authority
WPS	Winnipeg Police Service

1. Executive summary

1.1 Introduction

EY was engaged by the City, based on a resolution passed by City Council, to conduct an objective and independent review of the City's real estate processes and policies. The review focused on significant property acquisitions, expropriations, sales, transfers, and external leasing transactions over a minimum period of five years. A sample of over 30 real estate transactions were reviewed based on significance, potential risks, and concerns raised by City Councillors, internal City stakeholders, and other stakeholders. The objective of the review was to:

- Assess that the policies, administrative standards and procedures for these transactions were complied with and are adequate
- Evaluate the City's processes and procedures undertaken to verify value for money was achieved on the significant transactions tested
- Comment on the reasonability of commissions or management fees associated with the significant transactions
- Assess whether roles and responsibilities were appropriate and performed satisfactorily

An initial review was conducted by which specific procedures were developed to assess compliance with City policies and industry practices. While specific procedures for each type of transaction varied, overall, the procedures covered the following areas:

- Specific procedures undertaken to acquire, sell, lease and transfer property
- Property valuation process, including evidence that a property valuation / appraisal was conducted
- Decision making and communication processes
- Transaction finalization procedures, including obtaining appropriate approval based on delegated authority

An expanded detailed review was undertaken on certain transactions based on the results of the initial review. The transactions identified for the expanded detailed review were due to the size of the transactions; potential areas of non-compliance with City policies, processes, and procedures; potentially contradictory information; limited documentation in the transaction file; or information obtained during interviews with City Councillors, internal City stakeholders, and other stakeholders. The expanded detailed review included an examination of emails and City documents that were obtained through "keyword" searches of the City email system.

Refer to Section 2.2 for further details on scope of work and methodology.

The significant transactions reviewed included 3 acquisitions, 4 expropriations, 14 sales, 4 land transfers, and 8 leases, as summarized in the following table:

	Transaction	Transaction Type	Reviewed by EY	Reviewed by City Auditor	Value[1]
1	222 Pembina Hwy.	Acquisition	✔		$5,750,000
2	266 Graham Ave.	Acquisition	✔		$29,250,000
3	CPR Marconi	Acquisition	✔		$1,500,000
4	470 & 471 Warsaw Ave.	Expropriation	✔		$2,580,000
5	344 Gertrude Ave.	Expropriation	✔		$3,360,000
6	109 Pioneer Rd.	Expropriation	✔		$1,194,780[2]
7	Vista Enterprises and Van Hull Gardens	Expropriation	✔		$2,300,000[3]
8	344 Gertrude Ave.	Sale	✔		$1,500,000
9	100 Murray Park Rd.	Sale	✔		$1,192,500
10	780 Marion St.	Sale	✔		$1,000,000
11	Parcel 4	Sale	✔		Not completed[4]
12	Portion of the North/South Transportation Corridor South of Dugald Rd.	Sale	✔		$2,100,000
13	South side of Wilkes Ave (Stovel St. & Paget St.)	Sale	✔		$1,024,000
14	Sterling Lyon Parkway & Paget St.	Sale	✔		$2,000,000
15	St Mary's Rd. & Avalon Rd.	Sale	✔		$1,760,000
16	Transcona Joint Venture	Sale	✔		In progress[5]
17	Winnipeg Square Parkade	Sale	✔		$24,000,000

[1] Lease values represent annual lease rates.
[2] Amount excludes advances approved relating to the expropriation settlement prior to the period under review.
[3] Amount excludes advances approved relating to the expropriation settlement prior to the period under review.
[4] The sale of Parcel 4 was not completed and as such there is no sales value.
[5] The Transcona Joint Venture is ongoing. Per schedule provided by PPD, sales revenue recognized between 2007 and 2011 by the City related to the joint venture was $19,536,235.

	Transaction	Transaction Type	Reviewed by EY	Reviewed by City Auditor	Value[1]
18	Polo Park stadium site	Sale	✔		$30,250,000
19	St. Boniface Industrial Park (2008)	Sale		✔	$1,895,000
20	St. Boniface Industrial Park (2010)	Sale		✔	$1,221,000
21	Pine Ridge Gravel	Sale		✔	$11,000,000
22	21 Iroquois Bay	Land transfer	✔		In progress
23	North side of Wilkes Ave. for the Property located North of Lemay Ave. -Villa Maria	Land transfer	✔		$359,000[6]
24	Parker Lands	Land transfer	✔		$1,000,000[6]
25	Estella St. for Mission St.	Land transfer		✔	$433,620[6]
26	395 Main St.	City as Lessee	✔		$1,038,400
27	1750 Dugald Rd.	City as Lessee	✔		$891,000
28	457 Main St.	City as Lessee	✔		$1,088,400
29	95 Arrowwood Dr.	City as Lessor	✔		$1[7]
30	266 Graham Ave.	City as Lessor	✔		$31,752
31	Bishop Grandin – South East corner of St Vital Center	City as Lessor	✔		$138,000
32	Charleswood Place Baseball Facility	City as Lessor	✔		$1[8]
33	100 Sinclair St.	City as Lessor	✔		$0[9]

[6] Value of City land conveyed as part of land transfer transaction, based on documentation included in related transaction file
[7] Annual rent of $1.00 plus GST as well as maintaining land, landscaping
[8] Annual rent of $1.00 plus GST for NPO along with Tenant to pay for insurance and operating costs to maintain leased lands
[9] To be a City credit under the in kind recreational programming under the Winnipeg Partnership Agreement

The expanded detailed review was conducted on the following transactions:

- Sale of Winnipeg Square Parkade
- Sale of Polo Park stadium site
- Proposed sale of Parcel 4 lands
- Acquisition of 266 Graham Ave
- Parker Lands transfer

1.2 Summary of findings

Evidence supporting compliance with City policies, procedures, and industry practices was lacking in many instances, particularly in the significant transactions reviewed. These areas are discussed in more detail in the following sections (Sections 1.2.1 – 1.2.12).

EY observed support and evidence in the transaction files that certain City policies and procedures were complied with. The areas where support and evidence in the transaction files was found for most transactions included:

- Required approvals were obtained from Council, committees of Council, or proper delegated authority
- Transaction agreements were reviewed by Legal Services prior to being finalized
- Notification that land was being identified as surplus
- Transaction finalization procedures

The procedures and testing results for each type of transaction are summarized in Section 3.2 to 3.7. Detailed notes are further provided in Appendices A through F.

1.2.1 Engagement of external real estate advisors and services

Real estate commissions and management fees were incurred for a number of transactions which were within the scope of this review. Real estate advisors were engaged by the City to assist with an acquisition of 266 Graham (Exclusive Buyer Agency Agreement), provide real estate management services for 266 Graham (Real Estate Management Contract), and to list the 344 Gertrude property for sale. Services were also received from a real estate advisor on the sale of the Winnipeg Square Parkade. Broker commissions were paid by the City for certain transactions where the purchaser had engaged a broker (4 sales transactions).

The City issued RFQ 472-2008 in July 2008 to qualify applicants to assist the City with commercial real estate transactions. Five proponents were prequalified to provide real estate services for the City. In July 2010 this RFQ expired and RFQ 357-2010 was issued to cover the period from August 2010 to July 2012.

Observations relating to the contracts awarded under RFQ 472-2008 and 357-2010 ("the RFQs") include[10]:

- The proponent submissions received for RFQ 472-2008 set out commission rates for certain transaction values. Under RFQ 472-2008, an Exclusive Buyer Agency agreement was awarded to one of the prequalified proponents to assist with the acquisition 266 Graham. The highest transaction values varied, however the highest was $5 million. The transaction value of 266 Graham was $29.25 million, which far exceeded the highest transaction value provided by the proponents. As such, the commission rate should have been negotiated rather than apply the commission rate set out for a much lower transaction value to a transaction six times this size. This may have resulted in a lower rate.

- The commission rate in the Exclusive Buyer Agency agreement differed from the rate outlined in the proponent's submission to RFQ 472-2008. The commission fee paid was $804,375. According to the proponent's submission to RFQ 472-2008, the calculated commission would have been $478,750. As such, the City paid a commission 68% higher than would have been calculated according to the proponent's submitted rate structure. Refer to management response #1 in section 1.5.

- In the transactions where an external advisor was retained, there was no documentation explaining the rationale why an external advisor was required for that particular transaction. There was no documentation evidencing the selection process undertaken to determine which of the prequalified proponents to engage in all cases where an external advisor was retained.

  A total of $1.2 million[11] in commissions and management fees were paid under the RFQs, 95% of which was paid to one proponent for fees earned on 4 contracts (2 of which are included in the scope of this review).

- EY observed internal City email correspondence discussing invoices which were received from the real estate broker engaged to assist with the 266 Graham acquisition. The former CAO stated in the email that even if the transaction did not close, this was a reasonable amount for all of the work done to that point by the real estate broker (suggesting the real estate broker would be paid even if the transaction did not close). The Exclusive Buyer Agency agreement with the real estate broker did not contemplate these types of services or payment of items if the transaction did not close. The agreement did not provide provisions for such payments or agreement to negotiate reasonable fees in good faith for work completed. EY obtained a copy of the

[10] EY reviewed contracts awarded to real estate advisors for the transactions which were included in the scope of review. Two of the five contracts awarded under the RFQs did not relate to transactions within EY's scope and as such were not reviewed by EY. Payments made under these contracts amounted to $92,000 (based on the payment schedule covering the period of 2008 through 2011 provided by PPD).
[11] Based on the payment schedule covering the period of 2008 through 2011 provided by PPD.

related purchase order noting that the description stated "this $100,000 represents an advance on the agent's commission per Exclusive Buyer Agency Agreement". EY notes that additional invoices were subsequently received and a total amount of $173,910 was paid to the real estate broker. When the transaction closed later in the year, the real estate broker earned the full commission in addition to the $173,910 amount. PPD stated that the payments related to third party due diligence costs which were paid by the broker on behalf of the City. The advisor's invoice was supported by invoices from firms performing due diligence work. The Exclusive Buyer Agency agreement did not include terms regarding reimbursement for due diligence costs.

- Real estate management services were retained for 266 Graham. The real estate management contract was awarded under RFQ 472-2008 even though RFQ 472-2008 did not request proponents to provide fees for the provision of real estate management services, and none of the proponents included estimated fees for this type of service in their submissions.

- Contracts with external real estate advisors were not provided to Legal Services for review prior to the City entering into the contracts. The contracts did not include a requirement for the proponents to agree to the City's standard terms and conditions for the provision of services as outlined in RFQ 472-2008.

- Roles and responsibilities relating to the awarding of contracts under RFQ 472-2008 were not consistent with those outlined in the RFQ. The manager of Real Estate was identified in the RFQ as the contract administrator. The real estate manager was not always involved in making the decision on whom to award the contracts to. Based on EY's review of email correspondence it appears these decisions were primarily made by the former CAO. Refer to management response #2 in section 1.5.

- The role of a real estate broker engaged in an advisory capacity to assist the City with the sale of the Winnipeg Square Parkade was not clear:
  - The role was not documented and there was no written agreement in place.
  - There was confusion about the real estate broker's role internally within the City.
  - A confidentiality agreement[12] was not signed by the real estate broker.
  - After acting in an advisory role to the City, the real estate broker represented the buyer's interests in this transaction. There were no disclosures in reports to Council and committees of Council regarding the advisory role of the broker.
  - There could be increased risk of a conflict of interest when the same external advisor has roles representing the City's interests as the seller and then acting as the broker for the purchaser.
  - The buyer indicated to the City in a letter to Materials Management, dated May 15, 2009, that the real estate broker "is advising us as broker in the valuation and

[12] When parties are made aware of confidential or sensitive information it is common for parties to agree to obligations with respect to the use of confidential information. Confidentiality or non-disclosure agreements protect sensitive information from disclosure to others.

submission of the EOI. We also understand that the City of Winnipeg will pay the broker fees for the successful purchaser of the Property".

- The buyer's submission was accepted and the real estate broker received commission for acting on behalf of the buyer in the amount of $400,000 plus GST. The real estate broker was one of the prequalified proponents responding to RFQ 472-2008 and the commission paid was calculated based on their submission to the RFQ.
- EOI 145-2009 issued for the purchase of the Winnipeg Square Parkade did not reference broker fees or commissions. The transaction value of the sale of the Winnipeg Square Parkade was $24 million which far exceeded the highest transaction value provided by the proponents responding to RFQ 472-2008. As such, the commission rate should have been negotiated rather than apply the commission rate set out for a much lower transaction value. This may have resulted in a lower rate.

1.2.2 Reporting to Council and committees of Council

EY observed instances where information regarding a specific transaction was in the file or subsequently found but that did not appear to have been shared in the Administrative Reports presented to Council and committees of Council. This included:

- A valuation report was prepared by the City's real estate broker acting in an advisory role for the City in the sale of the Winnipeg Square Parkade. This valuation report, which valued the property at an amount approximately $20 million higher than the final transaction value, was not retained in the transaction file nor was it referenced in reports when assessing the responses to the EOI or in reports to Council and committees of Council. The reports disclosed the three EOI submissions received, that the City engaged the services of a consultant to support staff in the preparation of the City's financial analysis by providing research and information regarding discount rates and methodology, and the external appraisal dated May 5, 2008. Management indicated that once it became known, during due diligence, that there was significant deferred maintenance costs the valuation became inaccurate and would not have provided useful information. However, given the large difference in value, the results of the valuation report should have been disclosed and information on deferred maintenance costs explained rather than not shared. Refer to management response #3 in Section 1.5.

- As noted in Section 1.2.1, there were no disclosures in reports to Council and committees of Council regarding the advisory role of the broker acting in an advisory role to the City on the sale of the Winnipeg Square Parkade and subsequently representing the buyer's interest in this transaction.

- Various discussions occurred between PPD and Legal Services regarding the appropriate process for approving amendments to conditions included in the Servicing Agreement, as part of the sale of the Polo Park stadium site. Legal Services advised

PPD that if the agreement was being imposed as a condition of the subdivision approval, as the Agreement states, under the Development Procedures By-Law, the approving authority for the terms of the agreement would be at a minimum SPCPD. PPD replied to this response stating that the Agreements would be amended to delete all references to the Short Form Subdivision application, eliminating the requirement of SPCPD approval. PPD informed Legal Services that the approval of the sale of the Polo Park stadium site on July 3, 2012 served as the authority for the agreement and as such, further consultation or approval from SPCPD was not obtained. Based on the file documentation, it was not clear on whether the City or the Developer would be responsible for the 10% cash dedication and lot fees, valued at $842,000. PPD has stated that as part of the negotiation process with the Developer, the City agreed to treat the cash dedication fee as a cost of sale. The Administrative Report presented to SPCPD stated that the City would be responsible for conducting all Survey Plans; however, there was no specific mention of the cash dedication fee. Subsequent internal correspondence by key individuals involved in the transaction within the City as well as correspondence between the City and the Developer indicated that the Developer would be responsible for the cash dedication fee. Given the value of the cash dedication fee, lack of clarity of in the file documentation, and confusion by key internal individuals involved in the transaction, the Administrative Report should have clearly addressed the cash dedication fee. Refer to management response #4 in Section 1.5.

- There were two external appraisals conducted on the Parcel 4 lands. One appraisal which valued the property at $10 million, based on its highest and best use was not included in the Administrative Report presented to Council. The second appraisal, valuing the property at $5.9 million was referenced in the Administrative Report; however, this appraisal was based on the limited use of the lands being a hotel, waterpark, and Parkade. The limitations of the second appraisal were not disclosed in the Administrative Report.

- No appraisal was performed by the City on the 266 Graham property and this was not specifically disclosed in the Administrative Reports recommending the acquisition to Council. The Administrative Report presented to Council recommending the acquisition of 266 Graham for the purposes of housing the new police headquarters did not mention that a comprehensive procurement process had not been undertaken. EY did not observe file documentation evidencing that a process was undertaken to identify other potential properties, and a procurement process, such as an EOI, was not undertaken to determine the options available.

- The entire 344 Gertrude property, which included the land, building, equipment, and operating business was expropriated, even though less than 20% of the property was required for Phase 1 of the Bus Rapid Transit Corridor. PPD concurred with the property owner that a partial taking would render the business inoperable even though a City engineer expressed concern over the full taking as he observed the business

operating through construction, which was previously determined to not be feasible. The City did not engage an external advisor to validate that the business would indeed be inoperable. The concerns expressed by the City engineer were not included in the Administrative Report presented to Council. The property, less the portion required for City purposes, was sold for less than half the amount paid by the City for the full taking. A business at 344 Gertrude currently operates as a going concern without the portion retained by the City for the Bus Rapid Transit Corridor. Refer to management response #5 in Section 1.5.

- On December 14, 2011, renegotiations of the 395 Main Street ("395") and 457 Main Street ("457") leases were recommended in the same Administrative Report to Council. The leases were with different landlords and not all aspects of the leases were prominently highlighted in the Administrative Report to Council (refer to management response #6 in Section 1.5). Neither of the proposed leases was drafted prior to the recommendation to Council. The financial analysis supporting the recommendation was based on assumed lease terms. Certain final terms do not appear to have been considered in the financial analysis (i.e. management fees under 457 lease are based on a gross rent figure and also include 15% on additional services, which is not noted in the Administrative Report). Refer to management response #7 and #8 in Section 1.5.

- Given the magnitude of the renegotiated leases and the expiry date of the existing leases, time would have permitted for the draft terms to be agreed to and used as the basis for the financial analysis included in the Administrative Report recommending the transactions. Refer to management response #9 in Section 1.5.
  - Both leases were renegotiated well in advance of the expiry of the existing lease. This resulted in estimated cost savings on base rent for 395 of approximately $1.5 million over the five years to the original expiry date. However, base rent on the existing lease for 457 was lower for the remaining lease period, and by renegotiating early, the City incurred approximately $1.2 million of additional base rent costs. The savings on 395 were highlighted in the "implications of recommendation" section of Administrative Report however the additional cost on 457 was not noted in that section (although this information was included as "additional comments" in the Financial Impact Statement in the Report). It was not specifically noted in the Administrative Report, nor was it noted in the transaction file, why it was in the City's best interest to enter into a higher lease rate on 457 so far in advance of the lease expiration date. Refer to management response #7 in Section 1.5.
  - Both leases contained a 5% management fee for property management services. However, for the 395 lease this was based on a base rent amount (at $14.95 /sq. foot), and in the 457 lease this was based on a gross rent figure resulting in a higher property management fee. This was not disclosed in the Administrative Report, and it appears as though the financial analysis assumes a management fee based on base rent for both leases.

- The 457 lease contains a clause that there is an additional 15% management fee for any additional services provided, but there is no description of what type of work would be subject to that charge. Based on EY's experience, a typical rate for tenant work would be 5% to 10% for those types of services. There is no comparable clause for the 395 lease.
- It is unclear from the information provided in the Administrative Report or retained in the real estate transaction files why both leases were presented and analyzed on a combined basis in the Administrative Report to Council at the same time as they were separate negotiations with separate landlords on leases that had different expiry dates well into the future. Base rent was the same, but operating costs and other aspects of the leases were different from one another.
- The Administrative Report contains information which appears conflicting, as the classification as an operating lease implies that there is residual value at the end of the 25 year lease, however the lease vs. buy option implies that there is no residual value in the building at the end of the lease.

Given the expiry date of the existing leases, time would have permitted reporting of the proposed final lease terms (or a copy of draft lease agreements) to Council. Due to the differences noted above between the financial analysis presented and the final lease terms, bundling of the analysis of the two separate leases and differences in the lease terms between the two properties, clear, separate, complete reporting to Council was warranted.

The seller of the CPR Marconi lands had acquired the 70.4 acre property for $1.35 million in the months leading up to the City's acquisition of a portion of these lands. The City acquired 50.4 acres of the CPR Marconi Lands for $1.5 million[13]. The difference in acreage and price was not disclosed in the Administrative Report. Management indicated the price paid by the seller was known by decision makers, and due to privacy concerns regarding the seller's acquisition price, it was not included in the Administrative Report. Refer to management response #10 in Section 1.5.

As explained further in Section 1.2.3 below, the Administrative Report presented to EPC and Council on the Parker Lands exchange noted that each property had a market value of approximately $1 million; however, the Administrative Report did not disclose the significant limitations of the brief analyses conducted to determine the estimated market value of both properties. Refer to management response #11 in Section 1.5.

1.2.3 Appraisals

EY observed evidence that an estimate of value was determined for the majority of properties reviewed through a full narrative appraisal, a short narrative appraisal, or a brief value analysis. The appraisals were conducted by either internal City accredited

[13] As part of the settlement agreement the owner agreed to donate $150,000 toward the costs of providing a bicycle path.

appraisers or external appraisers. EY's findings relating to appraisals include:

- Reliance on brief internal analyses or memos completed by City appraisers to support decision making on significant transactions. Short, sometimes rushed brief appraisals or analyses may not give full consideration to the value of a given piece of real estate if not marketed through a public competitive sales process. The Parker Lands transaction was comprised of an exchange of City owned Parker Lands for property at 421 Osborne Street. In the Parker Lands exchange transaction file, a brief analysis of available sales to estimate a value range was conducted on the City property (58 acres) by a City appraiser. The estimated value range was $986,000 - $1.16 million. The analysis included the following comments:
  - "The subject site was not inspected
  - A highest and best use analysis was not completed
  - Planning and servicing issues have not been investigated
  - A full appraisal of the subject parcel was not completed due to time constraints"

- A City appraiser also conducted an estimated value range for the 421 Osborne Street lands (8.95 acres) and subsequently updated the analysis. The initial estimated value range was $806,000 – $1.07 million, and the updated estimate was $1.1 – $1.6 million. The analyses included the following comments:
  - "There has not been a full appraisal in accordance with CUSPAP completed on the subject property as time restraints were not reasonable to permit a proper investigation and analysis
  - The employer has requested that the appraiser (the employee) complete a 'rush' value range; therefore the value provided may or may not be the same under a complete, time permitted appraisal assignment in accordance with CUSPAP
  - The value was completed for internal Departmental purposes
  - The subject site was not inspected
  - The value provided assumes that the Planning and Land Use Division would support the future use of the subject site
  - The estimate of value is based on lands being clean of contamination
  - A highest and best use analysis was not completed
  - Servicing related costs such as land drainage requirements for the future expansion are not known. The assumption is that there are no land drainage implications to the site"

  Given there was no public tendering process for this land exchange, as well as the significant value of the properties being exchanged, a full narrative appraisal on both properties was warranted.

- The City has no guidelines on when appraisals are required, on the requirement for full narrative appraisals and circumstances that require additional external independent appraisals. This is inconsistent with practices in public sector environments.

- An appraisal was not observed in the file documentation for the sale of the property on the South Side of Wilkes Ave; however, a City appraiser prepared a value range for Wilkes and Paget lands in a spreadsheet and noted in the email communication that the value range was assembled in just a few hours on a "rush" basis. The analysis included several parcels of land. Without having completed full narrative appraisal, specifically for the parcels sold, it is uncertain what the appraisal value of the land may have been. This property was sold by the City for $1.02 million.
- There was no file documentation to support that appraisals were conducted prior to entering the Transcona Joint Venture, to assess whether the lands contributed by each party were of comparable value. Part of the land contributed by the City was "serviceable" land which generally is regarded as having a higher value than land that is not serviceable. According to the Joint Venture agreement, both parties contributed 129 acres of adjacent lands. Refer to management response #12 in Section 1.5.
- There was no file documentation evidencing that a narrative appraisal or specific building condition assessment was performed to support the financial analysis in the Administrative Report prior to approval of the 395 and 457 leases. Based on discussions with Municipal Accommodations, a non-invasive building condition assessment was performed for 457 (no building assessment report prepared for 395). Given the magnitude of the leases, the significant estimates relating to future capital costs, the age of the buildings and the City's requirement to share in capital and maintenance costs, a more comprehensive external building condition assessment report and / or a narrative appraisal should have been considered. Refer to management response #13 in Section 1.5.

- Industry practice suggests that an appraisal update be conducted approximately 6 months after the effective date of an appraisal or as market conditions change. Appraisal updates were not observed, and there was no documentation in the file to indicate why an update may not be required (i.e.: due to static market conditions or other factors that remain unchanged).
  - An appraisal was conducted on May 24, 2007 for the North/South Transportation Corridor South of Dugald Road valuing the property in the range of $1.47 million - $1.678 million, almost one year prior to SPCPD approval. No file documentation was found to support that an updated appraisal was conducted or documentation of static market conditions. The property was sold for $2.1 million. The sale was approved by SPCPD on April 29, 2008.
  - An appraisal was conducted in September 2006 for the Sterling Lyon Parkway property, valuing it at $1.3 million. SPCPD approval occurred in May 2007 approving the sale for $2 million. No file documentation was found to support that an updated appraisal was conducted or documentation of static market conditions.

- EY observed appraisals for the same property that were based on different assumptions or for different elements of a given property. This can make comparisons difficult and may not provide complete information upon which to make decisions.
  - Winnipeg Square Parkade parking structure was appraised at $16 million in January 2008 by an external appraiser. The scope of the appraisal was expanded and the appraiser valued the air rights at $8.8 million in May 2008. The Winnipeg Square Parkade property and air rights sold for $24 million in 2009.
  - There was no file documentation to support that an all-inclusive appraisal of all elements of the Winnipeg Square Parkade property and air rights was conducted within six months of the sale of the property. Based on EY's expanded detailed review of the Winnipeg Square Parkade transaction file, an opinion of value report on the Winnipeg Square Parkade, including the lease of air rights was prepared by the City's real estate broker acting in an advisory role in September 2008 (over one year prior to the property being declared as surplus). This report valued the property at $43.6 million, an amount approximately $20 million higher than the final transaction value. This valuation was not in the transaction file during EY's review and was subsequently provided by PPD. As noted in Section 1.2.2, it was not referenced in reports to Council and committees of Council. Refer to management response #3 in Section 1.5.
  - A limited investigation and analysis was completed internally by PPD dated March 14, 2006 regarding the potential land value of approximately 170 acres of "brown field" land located at 780 Marion. After the property was declared surplus by Council on March 22, 2006, on April 4, 2006, 20.4 acres were conditionally sold. An EOI was issued on May 24, 2006 for the remaining acres. An internal appraisal was conducted by City appraiser dated June 1, 2006 for two parcels, 2.4 acres and 18 acres. No file documentation was found to support that an all-inclusive appraisal of the entire property (170 acres) was conducted for 780 Marion Street. Refer to management response #14 in Section 1.5.

- Explanations were not documented in the files where there were significant differences between appraised value and selling price. While EY agrees with management that it may not always be known precisely the reasons for all differences, monitoring differences and documenting known factors can help the City understand how its appraisals compare to selling prices which may prompt adjustments to how appraisals are conducted.
  - An appraisal was conducted by a City appraiser on September 28, 2006, valuing the Sterling Lyon Parkway & Paget Street property at $1.3 million. The property was advertised for sale in March and April 2007 for $1.3 million. On June 20, 2007, Council approved the sale of the property for $2 million (based on the offers received). On December 3, 2008, almost two years after offers were received and presented to SPCPD and Council, an appraisal was conducted for land transfer purposes at Land Titles by a City appraiser valuing the total property at $2 million. There was no file documentation explaining the reason for the difference in the

September 28, 2006 appraised value and final selling price and updated appraisal value for land transfer purposes.

- An appraisal was completed by a City appraiser in January 2007, valuing the St. Mary's and Avalon property at $1.13 million. The property was advertised for sale in February and March 2007. The selected offer (highest bid) was $1.76 million, 40% higher than the appraiser value. There was no file documentation explaining the reason for the difference in appraised value and selling price.

1.2.4 Consultations and communication with internal City stakeholders

The Ward Councillor can be a valuable resource to the Real Estate division given their familiarity with the region and potential insights of the property and future development needs. However, Ward Councillor consultation was only noted in two transactions. Management agrees that consultation with the Ward Councillor is important and that in 2010 it became practice of the Real Estate division to provide written correspondence with Ward Councillor on all transactions. Management has indicated that it is in the process of developing a formal checklist for transactions, including verification of the Ward Councillor consultation.

While management may rely on other means to consult with relevant stakeholders, consistent use of circular letters[14] was not always observed. One third of applicable transactions were lacking evidence of use of circular letters. Concerns raised by stakeholders should be addressed and these concerns documented and communicated to support decision making.

1.2.5 Openness, fairness and transparency of the procurement process

In two transactions reviewed, sale of Polo Park stadium site and the proposed sale of Parcel 4, information was provided to a proponent in advance of being publicly released:

- Approximately four months prior to the public release of EOI 257-2011 (Polo Park stadium site), the City provided one proponent with a site plan and dimensions of the Polo Park stadium site. The same proponent was also provided a copy of EOI 257-2011 in advance of the EOI being publicly released.

- The availability of the Parcel 4 site was not made publicly available prior to or as part of EOIQ 379-2009 however the cover letter included with the submission prepared by the Proponent indicated:

[14]A circular letter is issued to the Ward Councillor and internal City stakeholders (such as department heads and representatives). The letter typically requests that the following be indicated: whether there is any civic need for all or part of the property; are there specific easement requirements; if any terms and conditions should be included in the potential transaction; if any objections to the transaction, any additional comments that can be offered.

- The availability of the Parcel 4 site had been confirmed with the City prior to the issue of the EOIQ
- The Proponent has been advised by City representatives that the site is available for development
- An addendum to EOIQ 379-2009 was issued advising proponents that City owned property may be considered in the submissions

In both circumstances, the information was provided to the same proponent. There was no file evidence to support that any other interested parties were provided the same information in advance of the public release. Refer to management response #15 in Section 1.5.

1.2.6 Lack of flexibility in lease transactions (City as lessee)

The leases at 395 Main Street and 457 Main Street are for a period of 25 years each and do not have cancellation clauses. Priorities of the City could change over time. Longer term leases do occur in practice in the public sector; however they would typically contain shorter than 25 year terms, with renewal options, or an option to purchase after a certain number of years. For example, a lease might contain a10 year base term with renewal options of 5 years each. This achieves the flexibility required if priorities of the City do change. Terms providing the City with flexibility should be incorporated into leases by including options to renew or cancellation clauses, where possible.

1.2.7 Lack of procedures manual or documented guidelines for transactions

There is no overall policy manual or set of guidelines that formally documents the procedures for real estate transactions and there is no checklist or index outlining organization and document retention standards for transaction files.

The state of the files reviewed was inconsistent with some better organized and more complete than others. The transaction files did not consistently contain key documents or document that procedures were undertaken. A standardized index and checklist should be considered to facilitate more consistent document retention and file organization. A checklist will help ensure procedures are not inadvertently missed.

1.2.8 Comprehensive procurement process for large dollar value transactions

Lease arrangements
Current City policies do not require Materials Management involvement in procuring leases. Prior to entering into two significant lease agreements (457 Main and 395 Main), a comprehensive procurement process (such as an EOI or RFP) was not undertaken to identify other potential suitable properties. The total committed lease payment on these two properties was for a combined amount in excess of $50 million over the term of the leases with no price escalation on the base lease rate. The 457 Main Street lease agreement had a requirement for the City to share equally in capital expenditures for the building which was primarily comprised of building envelope and lighting upgrade costs

for a total estimated capital expenditure of $4.3 million over 10 years.

Given the large amount of square footage (over 120,000 square feet), a committed revenue stream ($50 million over the 25 years), and a low risk tenant (the City), requesting expression of interest from other possible landlords to assess fair value rent options (including options which may not have required a capital expenditure amount) should have been considered. The leasing of 395 and 457 Main Street helped achieve the City's objectives for Heritage buildings conservation strategies; however, in the absence of a competitive procurement process the conditions which ensure the City receives the most competitive offer from the owners of these buildings may not have been present.

Acquisitions
Advisors were engaged to assist with the analysis of alternatives for the new police headquarters facility. The options analyzed included but were not limited to renovating the existing police headquarters, building a new facility, and acquiring and converting the building at 266 Graham. Advisors were engaged to assist with a due diligence and feasibility study, to assess whether the 266 Graham building could accommodate the requirements of the new police headquarters (this included a building evaluation, identification of requirements for the new police headquarters and assessment of whether the building could accommodate these requirements, and a "class D" budget for converting the facility as only block schematic drawings were prepared). The WPS was involved throughout this process. While an analysis was performed to analyze alternatives, assess whether 266 Graham could accommodate the police headquarters, and to estimate the cost of conversion, EY did not observe file documentation evidencing that other properties other than 266 Graham were considered as potential locations for the new police headquarters, and the City did not advertise the need for such property (i.e. EOI process) in order to identify the options available to the City. Given the magnitude and complexity of this capital project, a comprehensive procurement process should have been considered.

1.2.9 Support for transaction initiation

Overall, EY observed that the transaction files contained evidence documenting the reasons for pursuing the contemplated transactions. However there were transactions where support was lacking:

- As noted in Section 1.2.2, the rationale for a full taking of 344 Gertrude was not documented. If a decision was made to expropriate only the portion of the land required for City purposes, the sale of the excess land may not have been required. Refer to management response #16 in Section 1.5.
- The land exchange transaction of the Parker Lands for the 421 Osborne property involved two different and unrelated properties. The other land exchanges reviewed involved adjacent properties or the rationale for the land transfer was clearly documented.
- The lease renegotiation of 457 Main Street was started in early 2011, recommended for approval in December 2011 in an Administrative Report to Council, and the

renegotiated lease commenced January 1, 2012. This lease did not expire until January, 2015 and it is unclear from documentation in the transaction file why the renegotiation was undertaken so early; given that the renegotiated lease rate was higher than the lease rate that would have been paid under the remaining lease terms to January, 2015. Refer to management response #17 in Section 1.5.

1.2.10 Industrial park land sales

In reporting to SPCPD regarding the valuation of industrial park land, the Real Estate division referenced a Council Order that does not exist. The Council Order, that is applicable, is from 1976 and may no longer be relevant. The Real Estate division should prepare a report for SPCPD's consideration to update the policy for the valuation and sale of industrial park land.

1.2.11 Environmental site assessments

There are no procedures in place for ESAs. Currently, land may be purchased without an ESA or a lower level, ESA may only be performed. This exposes the City to potential environmental liabilities when land is acquired. A procedure should be in place that determines when an ESA is required for an acquisition, the rules for the engagement of the assessor, the qualifications necessary to review an ESA and how to determine if a higher level ESA is required.

1.2.12 Roles and responsibilities for real estate transactions

For most transactions tested, EY noted that the key individuals involved in completing the transaction appeared appropriate. File documentation supported that transaction execution was driven by PPD, without undue pressure or direction from other departments or other City stakeholders. However, EY did note specific instances where there appears to have been confusion about roles and responsibilities, and who should be involved in transactions. It does not appear that the contract administrator for RFQ 472-2008 was included in the decision making process to award certain contracts under this RFQ, as was outlined in the RFQ. Based on EY's review of email correspondence it appears these decisions were primarily made by the former CAO (refer management response #2 in Section 1.5). Also, decisions were made on including an advisor in the sale of the Winnipeg Square Parkade, without involvement from other key PPD managers. Without the involvement of appropriate individuals there is increased risk of confusion and the benefit of input from knowledgeable individuals could be missed.

EY notes there is no governance framework outlining the roles and responsibilities of individuals within the Real Estate division, as well as roles and responsibilities of other individuals regarding their involvement in real estate transactions (i.e. Legal Services, Materials Management). A governance framework that outlines roles and responsibilities will help avoid confusion and ensure appropriate individuals are involved as required.

EY noted instances where internal resources (Materials Management, Legal Services) were not consulted at key points in certain transactions. Legal Services was not requested to perform a review of the 266 Graham Exclusive Buyer Agency Agreement and 266 Graham Real Estate Management Agreement. Also, review of the draft offer, regarding the sale of the North South transportation Corridor South of Dugald Road, was obtained from Legal Services after the offer had been accepted by the purchaser. For the North side of Wilkes land exchange, review by Legal Services was obtained after the Transfer Agreement was signed and approved. On the land exchange involving 21 Iroquois Bay, draft terms and conditions were provided to Legal Services; however no response from Legal Services was noted in the file. No evidence of Legal Services review was noted in the transaction file for the 457 lease.

While EY observed Materials Management involvement in the preparation of formal EOIs and RFQs, and receipt of responses, broader and more consistent use of Materials Management experience would have been beneficial. The Real Estate division did not obtain certificates of insurance (as outlined in RFQ 472-2008) from external advisors prior to awarding the Exclusive Buyer Agency Agreement services for the 266 Graham acquisition. RFQ 472-2008 stated that proponents shall provide certificates of insurance, including but not limited to $2 million commercial general liability insurance. Involvement of Materials Management may have prevented the oversight.

1.3 Observations on value for money achieved

For certain transactions, there was not sufficient information included in transaction files, or provided through subsequent follow up, to determine whether value for money was achieved. EY observed transactions where value for money was impacted:

- The City followed common practice in undertaking a competitive tendering process (RFQ 472-2008 and 357-2010) to identify and qualify proponents to provide real estate services to the City. A prequalified vendor list is generally used to assist with routine transactions. EY noted that a buyer agent was engaged to assist with the acquisition of 266 Graham based on the results of the RFQ. An acquisition of this magnitude ($29.25 million) is uncommon for the City and a separate competitive procurement process and negotiations were not undertaken in order to ensure the City attained the lowest rate.

- Under RFQ 472-2008, the Exclusive Buyer Agency Agreement was awarded to one of the prequalified proponents for the acquisition 266 Graham. The commission rate in the agreement differed from the rate outlined in the proponent's submission to RFQ 472-2008, resulting in 68% higher commission fees paid by the City to the proponent. The proponent was paid $804,375 and the commission rate calculated according to the proponent's submission would have been $478,750. Refer to management response #1 in Section 1.5.

- EOI 145-2009 issued for the purchase of the Winnipeg Square Parkade did not reference broker fees or commissions. The transaction value of the sale of the Winnipeg Square Parkade was $24 million which far exceeded the highest transaction value provided by the proponents responding to RFQ 472-2008. As such, the commission rate should be negotiated rather than apply the commission rate set out for a much lower transaction value. This may have resulted in a lower rate.

- There were several valuation reports prepared for the Winnipeg Square Parkade. One report determined value at a significantly higher amount than previously prepared reports. This information was not retained in the transaction file and was not disclosed in Administrative Reports.

  There were three submissions in response to EOI 145-2009 for the purchase of the Winnipeg Square Parkade. The highest offer was $21 million and the second highest was $20 million with the third offer being considerably lower. There was indication that the proponent with the second highest offer may have been prepared to increase their proposed purchase price given the proponent indicated to PPD that their offer did not account for increases in air rights lease amounts in future years. The evaluation summary of the offers received for the Winnipeg Square Parkade was provided to the evaluation team on May 28, 2009 from Corporate Finance. The evaluation summary adjusted the second highest proponent's offer based on assumptions made by the City. The footnote on the evaluation summary stated that the party has since indicated its proposal did not account for future adjustments to the air rights lease. With this anticipated adjustment, the offer was revised in the evaluation summary to $23.8 million, 10% higher than the highest offer of $21 million submitted. The evaluation summary identified advantages of the $21 million offer and that the proponent's offer which was adjusted to $23.8 million was conditional on reaching acceptable agreement with the holder of leased air rights permitting their contemplated development as outlined in their submission. The recommendation of the evaluation committee was to enter into negotiations with the proponent submitting the $21 million offer and to obtain a sale price of $23.8 million at minimum. Refer to management response #3 in Section 1.5.

  There was no documentation in the real estate transaction file to provide further insights into the adjustment of the bid to $23.8 million. A calculation in support of the adjustment was subsequently provided to EY by Corporate Finance.

  EOI 145-2009 provided the City the opportunity to contact short listed proponents and enter into negotiations with proponents having EOI submissions that are considered to have the most merit and benefits for the City. PPD was unable to confirm for EY whether the City entered into discussions with the proponent submitting the $20 million offer regarding their offer and/or amount of potential adjustment. Corporate Finance indicated they were not aware of further discussions with the proponent to determine a potential updated offer to account for the increase

in air rights leases. The Administrative Reports to Council and committees of Council did not reference the adjustment to the offer to an assumed $23.8 million, but did note the condition of the proponent's offer. Without confirming the adjustment directly with the proponent which may have resulted in a value higher or lower than $23.8 million and without disclosure in the Administrative Report of an anticipated adjustment amount, it is unclear whether this may have impacted how the other submissions were reviewed and if this may have led to different negotiating strategies. It appears the value of $23.8 million was used as a benchmark to negotiate with the purchaser who initially offered $21 million and which, following negotiations, was revised to $24 million and accepted.

- The lack of appraisals or reliance on short, brief appraisals or analyses where the valuation has been completed within short time constraints and estimates based on limited investigation, may not give full consideration to the value of a property.
  - While the sale of South side of Wilkes to a government entity did not require a public tender process to be followed, without an appraisal and reliance on a rushed analysis, it is uncertain whether value for money was achieved.
  - The Parker Lands exchange was based on brief analyses of the estimated value of the properties involved and such analyses were completed in a rushed manner. The highest and best use of either property was not determined nor was either property inspected. As such, it could be questioned whether value for money was achieved. Full consideration may not have been given to the value of the lands as a competitive tendering process was not undertaken. Refer to management response #11 in Section 1.5.
  - Several parcels of land at 780 Marion were appraised, but an all-inclusive appraisal of all the lands was not observed. By not having complete information on the value of all of the lands, value for money may not have been achieved. Refer to management response #14 in Section 1.5.
  - No file documentation to support appraisals were conducted prior to entering the Transcona Joint Venture, to assess whether the lands contributed by each party were of comparable value. Part of the land contributed by the City was "serviceable" land which generally is regarded as having a higher value than land that is not serviceable. By not conducting a comprehensive appraisal to assess the value of lands contributed by each party, it is uncertain whether value for money was achieved. Refer to management response #12 in Section 1.5.
  - The 266 Graham property was acquired for $29.25 million. The City did not obtain their own independent appraisal to verify the acquisition price set by the vendor, did not advertise the need for property, and did not solicit bids for potential alternate locations for the new police headquarters. A comprehensive procurement process was not undertaken and for a facility of this size and magnitude should have been considered. As such, it is uncertain if value for money was achieved.
  - For the 222 Pembina acquisition, the City relied on an appraisal provided by the owner which PPD indicated was performed by an accredited appraiser, however the appraisal was not retained by the City. The property was acquired for $5.75 million,

which included the land and building value, as well as the business value (as a business was operating on this property). As the file did not contain the appraisal, it is uncertain if value for money was achieved.
  - No appraisal of Pine Ridge Gravel was performed prior to the sale. A business valuator was engaged to provide several services including assistance with the offer evaluation process but did not conduct an appraisal to determine the expected value of the asset. Without an appraisal performed by an accredited individual, it is uncertain whether value for money was achieved. Refer to management response #18 in Section 1.5.
  - There was no file documentation evidencing that a narrative appraisal or specific building condition assessment was performed to support the financial analysis in the Administrative Report prior to approval of the 395 and 457 leases. Based on discussions with Municipal Accommodations, a non-invasive building condition assessment was performed for 457 (no building assessment report prepared for 395) to determine the estimated capital maintenance costs. The Administrative Report stated that "this estimate does not replace the need of a building envelope analysis". Given the magnitude of the leases, the age of the buildings, the significant estimates relating to future capital costs, and the requirement of the City to share in capital and maintenance costs based on the lease terms, a more comprehensive external building condition assessment report and / or a narrative appraisal should have been considered. As such, it is uncertain whether value for money was achieved. Refer to management response #13 and #19 in Section 1.5.

- EY observed where information regarding a specific transaction, noted in the file or subsequently found, was not shared in Administrative Reports. Historical offers for property, appraisal information, market knowledge, stakeholder concerns should be documented and shared in the decision making process.
  - The CPR Marconi transaction file contained information discussing the seller's acquisition of the 70.4 acres. The difference in acreage and price acquired by the City was not included in the Administrative Report presented to Council. Refer to management response #10 in Section 1.5.
  - In the 344 Gertrude transaction file, a City engineer familiar with the project raised concerns that the City should not be acquiring the entire property, however these concerns were not included in the Administrative Report. The final negotiated selling price yielded the City approximately $1.8 million less than what the City acquired the property for. If a full taking of the whole property and business did not occur, and the City only acquired the piece of property ultimately required, the City may have avoided acquiring surplus land and a business that they sold at a value significantly lower than acquisition price. Refer to management response #5 and #16 in Section 1.5.
- The North side of Wilkes Ave / North of Lemay Ave, which was transferred outside of a competitive sales process, was listed for sale by the purchaser shortly after the land transfer transaction closed with the City. A full narrative appraisal conducted by City appraiser valued the Wilkes Ave property at $0.3 million in March 2010, however

within 3 years of the City transferring the land, the Wilkes Avenue property sold for $1.7 million.

- On December 14, 2011, renegotiations of the 395 and 457 leases were recommended in the same Administrative Report and analyzed together.
  - Prior to entering into the two lease agreements a comprehensive procurement process was not undertaken to identify other potential suitable properties. The total committed lease payment on these two properties was for a combined amount in excess of $50 million over the term of the leases with no price escalation on the base lease rate. The 457 lease agreement had a requirement for the City to share equally in capital expenditures for the building which was primarily comprised of building envelope costs for a total estimated capital expenditure of $4.3 million over 10 years. There were also other deferred maintenance costs estimated in the financial analysis. An expression of interest from other possible landlords to assess fair value rent options (including options which may not have required a capital expenditure amount) should have been undertaken. As a comprehensive procurement process was not undertaken, it is uncertain whether value for money was achieved when entering into these two leases. Refer to management response #20 in Section 1.5.
  - Both leases were renegotiated in advance of the expiry of the existing leases. This resulted in estimated cost savings on base rent for 395 of approximately $1.5 million over the five years to the original expiry date which achieved value for money. However, base rent on the existing lease for 457 was lower for the remaining lease period, and by renegotiating early, the City incurred approximately $1.2 million of additional base rent costs. The financial analysis included in the Administrative Report did not substantiate why entering into a higher rate sooner than necessary was beneficial.
  - Both leases contained a 5% management fee for property management services. However, for the 395 lease this was based on a base rent amount (at $14.95 /sq. foot), and in the 457 lease this was based on a gross rent figure resulting in a higher property management fee for the 457 lease. Taxes and operating costs are estimated to be an additional $7 per square foot (will rise over the 25 years with inflation). At $7, it is estimated that an additional $24,000 in property management fees is being paid annually (or approximately $600,000 over the 25 year term), in comparison to the rate under the 395 lease.
    Refer to management response #6 - #9 and #13 in Section 1.5.

    Based on the nature of the leases for 395 and 457 (a triple net carefree lease with a majority/single tenant), property management fees would typically be more comparable to single tenant commercial leases (which range from 2% to 4%).

    In comparing the property management fee percentage to industry norms, both 395 and 457 leases are higher. In comparing the basis of the property management

fee of 395 to 457, the 457 lease management fees will be higher. As such, these elements negatively impacted achieving value for money.
The 457 lease contains a clause that there is an additional 15% management fee for any additional services provided, but there is no description of what type of work would be subject to that charge. Based on EY's experience, a typical rate for tenant work would be 5% to 10% for those types of services. As negotiation of rates or assessment of property management rates for additional services was not considered in the analysis, the transaction files or the Administrative Report to Council, this may have negatively impacted value for money being achieved. Refer to management response #21 in Section 1.5.

- In regards to the sale of Polo Park stadium site, several conditions were amended from the original Servicing Agreement – Schedule B - ACG Report issued on May 14, 2013 and the final issued on July 10, 2013, including:
  - Removed: Payment of 10% cash dedication and lot fees (equating to $842,000)
  - Revised:
    - Original ACG – "The Developer shall pay to the City, in cash, on demand 25% of all costs associated with the extension of St. Matthews Avenue roadway including land acquisition and roadway improvements on St. Matthews Avenue from Empress Street to Century Street".
    - Final ACG – "The Developer shall pay to the City, in cash, on demand 23.86% of all costs associated with the extension of St. Matthews Avenue roadway improvements from Empress Street to Century Street to a maximum of $3.8M. It is hereby acknowledged that the City will consider the approximately 1.7 acres provided by the developer as fair compensation for the developers 23.86% share of land acquisition costs associated with the roadway improvements on St. Matthews Avenue from Empress Street to Century Street."

Based on the file documentation, it was not clear on whether the City or the Developer would be responsible for the 10% cash dedication and lot fees, valued at $842,000. PPD has stated that as part of the negotiation process with the Developer, the City agreed to treat the cash dedication fee as a cost of sale. The Administrative Report presented to SPCPD stated that the City would be responsible for conducting all Survey Plans; however, there was no specific mention of the cash dedication fee. Subsequent internal correspondence by key individuals involved in the transaction within the City as well as correspondence between the City and the Developer implied that the Developer would be responsible for the cash dedication fee. Refer to management response #4 in Section 1.5.

The off-site improvement initiatives surrounding the Polo Park stadium site are currently in progress. As such, PPD is uncertain of the total off-site improvement costs incurred by the City and the Developer to date. PPD provided an explanation on the Developer's share of the estimated land acquisition and construction costs, however the file documentation did not include an analysis of projected costs to substantiate

the City's estimate of the Developer's share of off-site improvement costs. Given that nature and the dollar value of costs, the inconsistent file documentation surrounding the cash dedication fee, and the lack of file documentation supporting estimated off-site improvement costs, it is uncertain whether value for money was achieved. Refer to management response #22 in Section 1.5.

1.4 Summary recommendations

The recommendations outlined below represent opportunities for improvement and actions that may assist the City in addressing the findings discussed above. Section 4 outlines in detail recommendations related to the findings discussed in this report.

Recommendation 1 – Develop a Real Estate Transaction Management Framework

- A common theme identified in the findings was a requirement to enhance governance as well as establish a formal Real Estate Transaction Management Framework and confirm appropriate roles and responsibilities. The Real Estate Transaction Management Framework would include developing and documenting policies, directives and guidelines in a manual or framework for real estate transactions

- A framework (or similar) would serve a number of purposes and meet the needs of various internal and external stakeholders. The Framework would:

  - Provide guidance and direction to personnel involved in real estate transactions
  - Demonstrate to City Council, senior management and the general public that appropriate policies, directives, guidelines, standards, instructions, etc. are approved and implemented

  Based on EY's review of other Canadian municipalities, the following are elements for consideration in establishing a public sector real estate transaction framework:

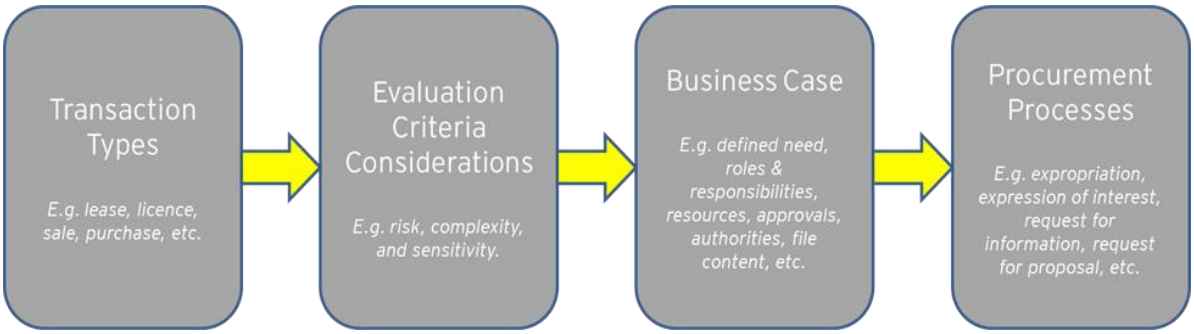
  1. Governance Structure

  City policy and programing requirements will determine required real estate transactions to respond to programs (or market opportunities, if value is demonstrated). The transactions should be managed and delivered through an accountability and responsibility structure with consideration of the type of transaction, transaction value and complexity.

  The roles and responsibilities of individuals within the Real Estate division should be clearly articulated and documented. This would also include roles and responsibilities of internal City stakeholders such the CAO and COO who may be involved in real estate transactions. Overall governance and oversight should be provided by senior management, Council committees, etc. Clearly defined roles should be established (i.e. oversight by City officials and Councillors is deemed appropriate, but sole negotiations by senior City officials and Councillors is not appropriate).

2. **Policy, Directives, and Guidelines**
A suitable policy suite including policies, directives, and guidelines should be documented and used in order to ensure operational consistency and to demonstrate transparency and prudence in the decision making process. Included in this component would be template forms, applications, process maps, delegated authorities, etc. and other associated standards and instructions.

3. **Transactions**
Documented transaction types (defined terms), evaluation criteria consideration, demonstrated need through business case, and defined procurement processes are expected to be in place to support the decision to undertake a transaction and the execution of a transaction. The following provides a visual overview:



4. **Performance Management**
The real estate program, in which real estate transactions occur, should have a performance management regime. Included would be such items as condition, utilization, functionality, and financial performance.

5. **Reporting, Monitoring, and Audit**
Periodic reporting and monitoring and random audits of transactions and their performance should be instituted via "directive" (as noted above in item 2).

Management response: *EY observed that there is no framework for real estate transactions and a lack of standardized processes. There are approximately 205 procedural and policies as adopted by Council, it's Committees and other authorities pertaining to the responsibilities of the Planning, Property and Development Department in the Acquisition, Appraisal, Sale, Lease, Survey and Management of property are kept within the offices of the Real Estate Division. In addition, approximately 50 Delegations of Authority pertaining to Real Estate transactions exist within the offices of the Real Estate Division.*

The Department agrees with the recommendation and will endeavor to work together with Legal Services to ensure Policies and Procedures are kept current and relevant.

EY comment: EY acknowledges that there are numerous procedures and policies that exist pertaining to real estate transactions. However, there is no real estate transaction management framework that incorporates all the elements as outlined in the recommendation above.

Recommendation 2 – Establish PPD directive for more complete reporting and provide checklist to assist with disclosures

- Outline alternatives, evaluations, and supporting analyses for decision making
- Review should continue to be undertaken of submission prior to it being put forward to assess that the information is complete and accurate.
- When it may not be advisable to share information publicly to respect privacy and the City's bargaining position, establish protocol for discussing such matter in a Council seminar or through other means.

Management response: *Management agrees with the recommendation and will incorporate as part of the development management framework process. The Public Service currently adheres to an Administrative Directive which limits the size of reports being presented to Council.*

Recommendation 3 – Establish appraisal guidelines

- Establish guidelines regarding the requirement for appraisals when:
  - Appraisals are required
  - Full narrative appraisals are required
  - Short narratives are acceptable
  - External independent appraisals are required
- Establish guidelines on timing of appraisals and updates
- Establish guidelines regarding consistency of appraisal assumptions when more than one appraisal is completed
- Explain significant differences between appraisal value and selling price
- Retain appraisal documentation in transaction files

Management response: *Management agrees with the recommendation and will establish appraisal guidelines*

Recommendation 4 – Engage Materials Management more consistently to ensure openness, fairness and transparency of procurement process

- Guidelines should be established when to engage Materials Management. Consideration should be given to size, complexity, and other characteristics of a transaction. The services of Materials Management should be utilized more consistently by the Real Estate division when undertaking the procurement process of significant transactions. By utilizing the services of Materials Management more consistently, the Real Estate division would benefit from additional support and

expertise and potentially improve the oversight and accountability of real estate procurement processes. This recommendation also applies to the procurement of leased assets, which in 2013 transferred from the Real Estate division to Municipal Accommodations.

Management response: *The Public Service maintains its current practice and involvement of engaging Materials Management in Real Property transactions where a RFP, RFQ, EOI, etc. is warranted.*

Recommendation 5 – Establish guidelines on retention of external real estate brokers

- Establish guidelines on when external real estate brokers are to be engaged by the City as well as defining explicitly what services will be provided as part of their engagement. A separate procurement process should be undertaken for additional or unique services that are not clearly defined in the original procurement documents related to real estate services (i.e.: RFP, RFQ, EOI, EOIQ, etc.) or that would be considered outside the scope of services on an original contract.

Management response*: Management agrees.*

Use of the Broker Program was introduced in 2008 as means of managing workloads due to significant staffing reductions (a total of six senior positions and employees). Winnipeg market was and has been very robust so seeking private sector assistance was deemed appropriate.

The Planning, Property and Development Department no longer utilizes the Broker Program per direction provided by SPCPD. Should this practice be reinstated, then Council approved guidelines will be introduced/adopted.

Recommendation 6 – Establish guidelines to document real estate brokers' roles

- Roles of real estate brokers need to be clearly identified and documented to avoid any potential conflicts of interest, especially when involving significant, high value assets.

Management response: *Management agrees. (Also refer to management response to recommendation #5)*

Recommendation 7 – Establish guidelines when negotiating and establishing commission rates

- Establish guidelines on negotiating and establishing commission rates with external real estate brokers. Consideration should be given to industry and municipal comparisons and the dollar value of the transaction being undertaken.

Management response: *Management agrees.*

Recommendation 8 – Retain documentation of internal communications

- Formal policies should be developed regarding consultation and communication with internal City stakeholders. This would include documentation and retention of the communication with internal City Stakeholders.

Management response: *Management agrees.*

Recommendation 9 – All significant agreements and contracts should be reviewed by Legal Services. Standard templates for all Real Estate transactions should be developed.

Involving Legal Services in real estate transactions in a timely manner, particularly when negotiating and entering into various contracts and agreements may reduce the City's exposure to contractual risks and especially with significant, high dollar value and complex transactions. Standard City templates which do not already exist, such as leasing transactions where the City is the lessee, real estate consultant agreements, should be developed and approved by Legal Services. Significant changes to the standard terms should be approved by Legal Services. This will limit contact risk to the City.

Management response: *Currently standard templates do exist for real estate transactions and any changes to documents required in a particular transaction are to be reviewed by Legal Services. With respect to the Exclusive Buyer Agency Agreement for 266 Graham and the Property Management contract these were not reviewed by Legal Services; this is not standard practice.*

Recommendation 10 – Develop standardized index and checklist for transaction files

- Develop a standardized index and checklist for real estate transaction files and a standardized approach to document retention to ensure that procedures are not inadvertently missed.
- Given the involvement of various departments in a transaction, consideration should be given to establishing a central database of documents with access granted to certain aspects as necessary.

Management response: *Agreed, the Public Service will develop and implement a standardized checklist for document retention.*

Recommendation 11 – Establish guidelines for comprehensive procurement process for significant lease or acquisition transactions

- Establish formal guidelines for a comprehensive procurement process when lease or acquisition transactions are over a certain size.

Management response: *Management agrees and will further review and enhance our procurement process.*

Recommendation 12 – Incorporate flexibility into lease terms

- Where possible and if the competitive environment will allow, lease renewal options beyond the base years, lease cancellation clauses, or options to purchase should be included in lease arrangements to protect City's interest and provide flexibility.

Management response: *Agreed, the Public Service will continue to incorporate flexibility into lease terms and is currently updating the standard lease template.*

Recommendation 13 – Perform market analysis for establishing lease rates

- Perform analysis of comparable properties in the area to determine market rates. When possible, external data should be obtained to corroborate estimates and validate the lease is consistent with market rates. The Public Sector Comparator tools could be used where applicable. A model should be used that considers all occupancy costs which includes base rent, management fees, operating costs, capital improvement obligations and taxes, net of rent free periods or tenant improvement allowances. Comparisons of like properties should include all aspects of the total occupancy costs of each property when doing a market analysis.

Management response: *Market analysis is continually preformed and applied to all transactions. See Management response to Recommendation 11.*

Recommendation 14 – Develop tracking mechanism

- Develop a tracking mechanism to monitor the progress of real estate transactions that will flag when transactions have reached various stages and follow up or action may be required. This will assist in reducing avoidable delays.

Management response: *Management agrees, a new directive relating to expropriation files will be developed and implemented immediately.*

Recommendation 15 – Restrict the use of personal email accounts for City business and establish policies regarding the removal of City files offsite

- To reduce the risks associated with sending sensitive data through unsecure emails, consideration should be given to restricting City employees to send or copy sensitive data through unapproved methods such as personal email accounts. Consideration should be given to updating City Policy regarding the use of personal email for City business (i.e. Administrative Directive No. IT-002 "Management of Electronic Mail")

- All City information, particularly confidential and sensitive information contained the in real estate transaction files should be held in a secure, City premise to reduce the risk of sensitive information being misplaced or stolen. A department policy should be implemented to restrict files from going offsite (or if it's deemed necessary to do so, have appropriate sign-off by senior resource to authorize).

Management response: *Management agrees and will review City's Administrative Standards.*

Recommendation 16 – Update the policy for the valuation and sale of industrial park land

- The Real Estate division should prepare a report for SPCPD's consideration to update the policy for the valuation and sale of industrial park land. This policy should specifically address the frequency of valuations and how transactions are dealt with that occur during a change in value.

Management response: *Management agrees and will review and confirm all relevant policies related the sale/disposal of industrial parklands and present to Council for approval.*

Recommendation 17 – Develop an ESA procedure

- An ESA procedure should be developed that determines when an ESA is required for an acquisition, the rules for the engagement of the assessor, the qualifications necessary to review an ESA and how to determine if a more in depth ESA is required.

Management response: *Management agrees and an ESA procedure will be developed together with a "brownfield" strategy for Council's consideration.*

1.5 Management responses to executive summary

Management response #1 - Exclusive Buyer Agency Agreement (page 6,19)
The difference in commission rate was negotiated for additional services beyond the commission identified in RFQ 472-2008 for services. Enquiries were made by the City with the proponent to identify further details that are currently not on file or contained in this audit.

An email dated May 27, 2014 from the proponent was provided to the City citing the following:

"In January 2009, [the proponent] was engaged by the city to work on the acquisition of 266 Graham Avenue. We were expected to perform the following functions

- Work with representatives of the City to negotiate a price with [the vendor]
- Negotiate the Terms of an Agreement of Purchase and Sale including matters associated with the new mail sorting plant as well as benefits for [the vendor's] employees in the office tower such as parking in the Library Parkade and Wellness privileges available from the City.
- Assemble a team of consultants to work with representatives of WPS to determine whether or not the plant located south of the office tower could accommodate the WPS including a potential range on site.
- Use the same team to perform diligence on the various mechanical and electrical systems to confirm their functionality as well as how elements of the building might be isolated from other elements for confidentiality, safety or sound control and

what the costs might reasonably be to fit up the space for WPS. It should be noted that what was built differed significantly from what our team contemplated.
- While respecting the commitment to [the vendor] to perform no additional structural or environmental testing, rely on the many reports that [the vendor] made available to ensure that there were no major surprises in either area.
- Upon identifying environmental issues beyond those indicated in the reports provided, negotiate a price reduction which we did in the amount of $750,000.
- Negotiate 5 year leases with [the vendor] for the office space and the retail space and a 1 year lease for the continued occupancy of the plant by [the vendor]
- Negotiate terms of a new lease with [a lessee], taking into account the changes since the previous lease was executed including the fact that the new landlord was not the Federal Government.
- Ensure delivery of all documentation required by the Vendor's solicitor, working in co-operation with the City's legal department, for closing.

Our fee for all the services we provided was 2.75%. This fee was all inclusive for the work we did and the period involved was from January to December 2009."

EY comment: As noted by management above, the City reached out to the proponent and received an email response itemizing services obtained under the Exclusive Buyer Agency Agreement. The Exclusive Buyer Agency Agreement does not contain this listing of services, and the services differ from those outlined in the RFP under which the contract was awarded. As such, given these differences and amount of fees involved, a separate competitive process for the provision of these services should have been considered.

Management response #2 - RFQ 472-2008 (page 7, 18)
It is not always the practice that the contract administrator is also the selector in an RFQ process – they are two separate and distinct processes.

Management response #3 - RFQ 472-2008 (page 8, 14, 20)
The City commissioned an external accredited appraiser on May 5, 2008 to determine the combined value of air rights and parkade at $24.8 million.

The Broker was engaged initially to provide a Real Estate Opinion of Value to the Director of PPD however the Broker was not providing this information as an accredited appraiser or certified business evaluator (CBE). The Value provided to the City September 2008, was $43,635,500 and it was based on the following:
- Projected net operating results for 2009 based on increased rates for the year and years after as well.
- Verbal assurances from the City Parking Authority that the life safety and structural elements of the parkade were well maintained on an annual basis and there was no deferred maintenance to be done.
- A Capitalization Rate of 6%.

July 2009, the City engaged a consulting firm as professional advisers to provide valuation assistance related to discount rate research for Off-Street Parking Facilities for the potential divestiture of the Winnipeg Square Parking Facility which concluded an appropriate Capitalization Rate at 11.85%. It was determined that the estimated value of the parkade was approximately $21 million. Three offers were received for the EOI and the highest offer at $24 million was selected by Council.

Management response #4 -Sale of Polo Park stadium site (page 9, 24)
Both PPD and Legal Services agreed that Report #8 approved by the Standing Committee Property and Development on July 3, 2012 provided the authority to negotiate and enter into the Servicing Agreement.

The City's payment of the Dedication Fee was an appropriate cost of sale. Both the report on the sale and the Purchase/Sale Agreement required the City at its sole cost and expense to create a survey plan (8 acre parcel at the northwest corner) to facilitate the site. Dedication is a requirement as part of this process.

Management response #5 - Expropriation and sale of 344 Gertrude Ave. (page 10, 22)
The existing business is not the same as the business that was operating before the expropriation. The business was unable to continue to operate as it was prior to the partial taking because the Gas Bar and lands had to be removed resulting in lost contracts due to the lack of room for large vehicles exiting the carwash, and decrease in room for rental business.

The City was aware that a carwash would be able to continue to operate, however, the business could not continue to operate as it had been. The property owner had a valid claim for the inability of the business to continue to function as it was. The City was purchasing one thing and selling another (a carwash). If not settled, it would have cost the City significantly in LVAC and possible civil litigation.

EY comment: The disclosures in the Administrative Reports were not conveyed as included in management's response above.

Management response #6 - 395 and 457 Main St. leases (page 10, 23)
The leases were analyzed separately and included in separate Appendices as specifically recommended by the City Auditor pertaining to preparation of the associated Administrative Report.

The leases were additionally analyzed together to inform decision makers of the total (combined) implications of the recommendations contained in the Administrative Report.

Management response #7 - 395 and 457 Main St. leases (page 10)
The analysis was based on proposed terms and conditions conveyed by City Public Service staff professionals engaged in the negotiation process. Preparers of the financial analysis

reviewed terms and conditions as well as all factors requiring estimate for reasonableness to ensure a level of assurance commensurate with the nature and scope of analysis.

The purpose of the analysis is to provide an order of magnitude of potential cost and benefit associated with implementation as well as 25 year operation of the options presented. Specifically, this analysis presents a potential future financial requirement to the City of Winnipeg (City) which may be higher or lower than as identified herein. The inability to estimate or project a precise cost/benefit to the City results from (1) uncertainty as to Winnipeg real estate market conditions (e.g., changes in local construction industry inflation, utility rates, etc.), (2) uncertainty associated with financial market conditions, and (3) other risk factors associated with increasing the years under study in a financial analysis beyond a year. As such, a precise estimate of total financial impact to the City cannot be determined.

The analysis was prepared as at a specified date. Delegation of authority to the CAO which permits adjustments to lease terms and conditions in accordance with the Administrative Report approved by Council or committee of Council does not render the analysis as at the specified date invalid.

Management response #8 - 395 and 457 Main St. leases (page 10)
Audit discussion implies that, because the financial analysis was not based on final terms and conditions, it was incomplete. The analysis was based on proposed terms and conditions prevailing at the time of analysis. Those same terms and conditions are included in the final lease documents. Such analysis is consistent with (a) any delegation of authority to the CAO which permits adjustments to lease terms and conditions following Council approval and (b) existing practice to prepare final legal documents after approval of the report by Council.

Management response #9 - 395 and 457 Main St. leases (page 10, 23)
Based on existing civic practices, proposed terms and conditions are attached to associated Administrative Reports. However, the CAO is often given authority to finalize terms and conditions contained in the Lease Agreement in accordance with the Administrative Report approved by Council or committee of Council.

Management response #10 - Acquisition of CPR Marconi lands (page 11, 22)
The City's appraisal valued the property between $1.6 and $2.0 million, and management indicated that [the Vendor] was asking in the vicinity of $4.0 million. In the summer of 2005, the City was made aware that a third party purchased the property (including +/- 20 acres in the RM of East St. Paul) for $1.35 million. The new owner of the property agreed to sell the City the portion of the Marconi Line within the City limits and PPD was instructed to proceed with negotiations to acquire the lands.

The net purchase price paid by the City was $1.35 million for 50.4 acres.

This was approved by Council September 27, 2006.

Management response #11 - Parker Lands exchange (page 11, 21)
At the time the land exchange was negotiated and presented to Council for approval (2009), none of the Parker Avenue Lands were identified as being required for Rapid Transit. Pursuant to the Transportation Master Plan in 2013, Council approved the preferred south-westerly Rapid Transit alignment which now requires a portion of the Parker Avenue lands.

Furthermore, the land exchange negotiated pursuant to Council approved Policy provided the City with an opportunity to reduce its capital costs for the project. The City required land from the owner near Hugo Street in order to expand its Transit facilities. Both sites in the land exchange were equally valued at approximately $1 million. Subsequently, approximately 3.81 acres of the property acquired from the owner became surplus to the needs of the City and now is conditionally sold at a purchase price of $1.315 million.

Management response #12 - Transcona Joint Venture (page 13, 21)
The City relied on its contract Development Engineer to provide analysis. His professional advice was followed. In addition, the Manager of Real Estate at the time also had previous employment experience in the land development industry.

Management response #13 - 395 and 457 Main St. leases (page 13, 22, 23)
All factors requiring estimate were based on prior year or current incurred costs and quotes/opinions obtained from City Public Service staff professionals, external consultants, and/or external service providers based on their training and experience related to the items requiring estimate.

Technical Maintenance estimates associated with 457 Main utilized VFA[15] reporting (a City Public Service Building Condition Assessment [BCA] database).

Audit Recommendation to obtain a comprehensive external BCA is valid for assets the City is entering into agreement to lease or purchase that (1) have not previously been under civic care and control and (2) are for a medium to long term duration. As at the date of analysis, Both 457 and 395 Main had been in the civic portfolio for approximately 20 years. As such, City Public Service staff professionals were (1) highly experienced and informed re: subject assets and (2) were in possession of, or had readily available access to, any/all technical information and studies pertaining to the assets under study. As such, external BCA was not warranted.

EY comment: The VFA report was not retained in the file to support that a comprehensive investigation into the state of the building and to support the financial estimates

[15] A public service building assessment database

presented to council. Given the magnitude of these transactions, external building condition assessments should have been considered.

Management response #14 - Sale of 780 Marion lands (page 14, 21)
On April 4, 2006, the Standing Policy Committee on Property and Development approved the sale of approximately 20.4 acres of land at the Public Markets site. The sale was made conditional upon approval, among other things, of financing within six months of the Date of Approval. On October 5, 2006, the City informed the proponent that they had not met this condition, and therefore the sale of the lands to the proponent was terminated. To state in the report that the "transaction did not close at the City's request" is incorrect.

This conditional sale at $2.03M was for a fully serviced site (i.e., the City was going to service the entire 170 acres and create a new Industrial Park) and market fully serviced buildable lots similar to St. Boniface Industrial Park. Instead, the City chose to unconditionally sell the entire un-serviced site for $1million which was approved by the SPCPD.

EY comment: Upon receipt of Management's response, the report was amended to remove the reference to "transaction did not close at the City's request".

Management response #15 - Polo Park stadium site and Parcel 4 (page 16)
The former CAO gave direction to provide a site plan with dimensions of the Stadium Site. It should be noted that a site plan of any property (public or private) within the Corporate boundaries of the City of Winnipeg are available to the general public at any time upon request.

PPD, Legal Services and Materials Management were not aware that the EOI for the Polo Park Stadium site was provided in advance nor information being provided for the EOI of Parcel 4.

Management response #16 - Expropriation and sale of 344 Gertude Ave. (page 17, 22)
The subject business could no longer operate after the partial taking. The existing business is not the same as the business that was operating before the expropriation.

Management response #17 - 395 and 457 Main St. leases (page 18)
Negotiating two years in advance of the expiry of the term of lease is not uncommon considering the amount of time required to find alternate suitable location(s), fit-up.

Management response #18 - Sale of Pine Ridge Gravel (page 22)
The City engaged an external valuation expert to provide the following services:

- Preparation of a discount rate memo, including revisions to the memo.
- Review and analysis of City information and correspondence including internal correspondence, Glacial's business plan, Phase 1 and 2 RFP's and expressions of interest from potential purchasers.

- Assistance with financial modeling – multiple revisions to net present value assumptions, quantification of monopoly risk, labour redeployment costs and impact of cash flow reinvestment
- Assistance with ranking offers, including review of Phase 1 ranking system, revisions to weighting and ranking for Phase 2 and preparation of memo.
- Meeting with other professionals and the City of Winnipeg.
- Advise on term sheets/negotiations and miscellaneous.
- Review of City prepared Administrative report.

City Auditor comment: A business valuator was engaged to assist with the offer evaluation process. Their services included assistance with developing a discount rate, financial modeling, ranking offers, negotiations, reviewing phase 1 & 2 RFP, and the Administrative Report. They did not perform an appraisal.

Management response #19 - 395 and 457 Main St. leases (page 22)
All factors requiring estimate were analyzed to ensure accuracy and completeness commensurate with the scope of analysis. In addition, all estimation included contingencies and/or risk quantification as warranted to ensure conservatism.

Management response #20 - 395 and 457 Main St. leases (page 23)
Based on existing civic policies/procedures, RFP/EOI for asset leasing is not required.

EY comment: EY agrees that under current City policies the Administration is not required to follow materials management processes. Recommendation 11 is provided suggesting this policy be revisited.

Management response #21 - 395 and 457 Main St. leases (page 24)
Prevailing market rates at the time of analysis for all cost factors were estimated for the "Surrogate Lease" alternative contained in the financial analysis.

Management response #22 - Sale of Polo Park stadium site (page 25)
The reduction of off-site improvement obligations for the developer is an inaccurate statement as the final obligation placed upon the developer was determined on the basis of the ACG report and an independent traffic study. The reduction of costs from 25% to 23.86% was based upon information included in the Traffic Study and applied using a weighted mean average of traffic counts.

During the EOI process, the City inadvertently included approximately 1.7 acres of the stadium site which was required for the widening of St. Mathews Avenue. On a straight forwarded acreage rate, approximately $2 million was paid by the Purchaser for land it did not receive. The purchase price of $30.25 million was not adjusted and it was determined through negotiations with the developer that the City would consider the approximate 1.7 acres provided by the developer as fair compensation for the developers 23.86% share of land acquisition costs associated with the roadway improvements on St.

Mathews Avenue from Empress Street to Century Street. The developer is still required to pay its 23.86% share (to a maximum of $3.8 million) of the costs associated with the construction of roadway improvements on St. Mathews Avenue from Empress Street to Century Street.

The foregoing only addresses roadway improvements for the extension of St. Mathews Avenue to Century Street. The developer, pursuant to the Servicing Agreement is also responsible for 100% of costs associated to other improvement works along St. James Street including, but not limited to, traffic signalization, additional lane of pavement, etc. and has provided the City $4.54 million as security that the overall roadway improvements will be completed.

2. Introduction

2.1 Background and retainer of EY

EY was engaged by the City, based on a resolution passed by City Council, to conduct an objective and independent review of the City's real estate processes and policies. The review focused on significant property acquisitions, expropriations, sales, transfers, and external leasing transactions over a minimum period of five years. A sample of over 30 real estate transactions were reviewed based on significance, potential risks, and concerns raised by City Councillors, internal City stakeholders, and other stakeholders. The objective of the review was to:

- Assess that the policies, administrative standards and procedures for these transactions were complied with and are adequate
- Evaluate the City's processes and procedures undertaken to verify value for money was achieved on the significant transactions tested
- Comment on the reasonability of commissions or management fees associated with the significant transactions
- Assess whether roles and responsibilities were appropriate and performed satisfactorily

PPD is comprised of five divisions. The two divisions that primarily fall within the scope of this engagement are the Real Estate and Municipal Accommodations divisions.

- Real Estate: oversees and has primary responsibilities for all land and property acquisitions, sales, and transfers. Property sales include residential, commercial, or industrial properties. Prior to 2013, the Real Estate division was also involved in leasing City owned properties which includes land, commercial buildings and residential buildings.

- Municipal Accommodations: In 2013, Municipal Accommodation became responsible for leasing City owned properties which includes land, commercial buildings and residential buildings. This division also manages leases, operates, maintains, protects, and preserves the City's physical building infrastructure/assets to provide for current and future program accommodation needs, and provides design and project management of new and existing civic buildings.

Between 2007 and 2011, the City sold 471 real estate properties with a sales value of $88.3 million. During this same period, the City completed 84 acquisitions of property at a cost of $56.6 million, and 4 land exchanges valued at $1.7 million. At December 2011, the City was engaged in 533 leases where the City is the lessor and 59 leases where the City is the lessee.

2.2 Scope of work and methodology

This engagement focused on assessing the policies governing real estate management and the processes and practices used for executing significant land and property acquisitions, expropriations, sales, transfers, and external leasing transactions over a minimum period of five years. Significant transactions in this context are defined as follows:

- Sales: all transactions that occurred between 2007 and 2011 with a sales value equal to or greater than $1 million. In addition, the following two transactions were also included in the scope of work:
  - The process undertaken for the proposed sale of Parcel 4 as it had a contemplated value of over $1 million
  - Based on the results of interviews and in consultation with the City Auditor, a limited[16] review of the sale of the former Polo Park Stadium site was also conducted

- Acquisitions and expropriations: all transactions that occurred between 2007 and 2011 with an acquisition / expropriation value equal to or greater than $1 million.

- Leases (City as the lessee): all lessee transactions with an annual base rent value equal to or greater than $500,000 that were entered into or renewed between 2007 and 2011.

- Leases (City as the lessor): all lessor transactions with an annual base rent value equal to or greater than $100,000 that were entered into or renewed between 2007 and 2011. EY also identified several $1 lease arrangements. To gain an understanding of these types of transactions, a sample of three $1 lease arrangements were reviewed.

- All land transfers that occurred between 2007 and 2011 were reviewed, regardless of dollar value.

All transactions reviewed were identified in collaboration with the City Auditor. Based on the parameters outlined above, 33 transactions were reviewed, 28 were reviewed by EY and 5 reviewed by the City Auditor[17]. A table outlining the significant transactions reviewed is included in the executive summary Section 1.1.

In performing this review, EY examined the transaction files and documentation retained by the Real Estate division and when applicable, various documents made available by

[16] A walkthrough of the transaction was conducted against City policies and processes. Based on the results of the walkthrough, an expanded detailed review was conducted. Refer to Section 3.4 and Appendix C for further information.
[17] City Auditor findings and observations have been incorporated into the report for ease of presentation. EY takes no responsibility for these findings and observations.

departments within the City, such as Materials Management (when involved in the procurement of a transaction), Legal Services, and Corporate Finance.

In addition, EY conducted interviews with a number of parties that were identified as possible sources of information that would be relevant to the review. Such persons were identified as a result of their names being included in relevant documentation examined. It was also assumed that those parties who EY has not identified but possessed relevant information would have brought such information to the attention of the City Auditor given the publicity of the review. A listing of the parties interviewed is attached as Appendix G to this report.

For all types of transactions, EY's approach included gaining an understanding of:
- Roles and responsibilities
- Formal policies, such as Council approved policies and By-Laws
- General practices, such as process overviews and procedures
- The objective and timing of key tasks performed

EY developed testing procedures based on walkthroughs, review of transaction files, industry practices, review of City policy and available documentation on procedures, and discussions with PPD. Based on EY's understanding of the general process for each type of transaction and incorporating industry practices for real estate transactions in a public sector environment[18], EY developed procedures against which each transaction within the scope of the engagement was reviewed. An expanded detailed review was undertaken on certain transactions based on the results of the initial review of significant transactions. The transactions identified for the expanded detailed review were due to the size of the transaction; potential areas of non-compliance with City policies, processes, and procedures; potentially contradictory information; limited documentation in the transaction file; or information obtained during interviews with City Councillors, internal City stakeholders, and other stakeholders. The expanded detailed review included an examination of emails and City documents that were obtained through "keyword" searches of the City email system. The expanded detailed review was conducted on the following transactions:
- Sale of Winnipeg Square Parkade
- Sale of Polo Park stadium site
- Proposed sale of Parcel 4 lands
- Acquisition of 266 Graham Ave
- Parker Lands transfer

[18] A jurisdictional review was completed on a sample of municipalities. Publically available real property transaction-based policies were reviewed and assessed for a number of municipalities, including but not limited to: City of Calgary (Alberta); City of Vancouver (British Columbia); City of Brandon (Manitoba); City of Ottawa (Ontario); City of Mississauga (Ontario); City of Timmins (Ontario); City of Toronto (Ontario); City of Saskatoon (Saskatchewan).

The review of significant sales transactions included, but was not limited to:
- Date transaction commenced
- Process undertaken to identify the property as surplus
- Property valuation process, including evidence that a property valuation / appraisal was conducted
- Public marketing process undertaken by the City to advertise the property for sale
- Offer to purchase evaluation process
- Transaction finalization procedures, including obtaining appropriate approval based on delegated authority
- Date transaction completed

The review of significant acquisition transactions included, but was not limited to:
- Date transaction commenced
- Need for the property and evidence of user department securing appropriate authority for project
- Competitive procurement process undertaken to determine eligible properties
- Property valuation process, including evidence that a property valuation / appraisal was conducted
- Transaction finalization procedures, including obtaining appropriate approval based on delegated authority
- Date transaction completed

The review of significant expropriation transactions included, but was not limited to:
- Date transaction commenced
- Evidence of user department securing appropriate authority for project
- Property valuation process, including evidence that a property valuation / appraisal was conducted
- Transaction finalization procedures, including obtaining appropriate approval based on delegated authority
- Date transaction completed

The review of significant land transfer transactions included, but was not limited to:
- Date transaction commenced
- Need for the property being acquired and process undertaken to identify the City property as surplus
- Property valuation process, including evidence that a property valuation / appraisal was conducted
- Process undertaken by the City to advertise the property for sale / determine eligible properties
- Offer evaluation process
- Transaction finalization procedures, including obtaining appropriate approval based on delegated authority
- Date transaction completed

The review of significant lease transactions where the City is the lessee included, but was not limited to:

- Date transaction commenced
- Market analysis and competitive procurement process undertaken to determine eligible properties
- Process undertaken to evaluate eligible properties
- Review of draft terms and conditions
- Transaction finalization procedures, including obtaining appropriate approval based on delegated authority
- Date transaction completed

The review of significant lease transactions where the City is the lessor included, but was not limited to:

- Date transaction commenced
- Process undertaken for determining property is available for lease
- Property valuation process, including evidence that a property valuation / appraisal was conducted
- Review of draft terms and conditions
- Transaction finalization procedures, including obtaining appropriate approval based on delegated authority
- Date transaction completed

Excluded from the scope of the review were any construction contracts and day to day facilities management of the City properties.

2.3 Restrictions on the use of this report

This report is confidential and has been prepared to assist City of Winnipeg City Council. Our report is based on the requested scope of work detailed above and may not be appropriate for use by third parties. Any use a third party may choose to make of this report is entirely at its own risk.

EY has not obtained any consent to the disclosure of any personal or confidential information detailed in this report.

In the event you wish to disclose some or all of this report to third parties (or in the public domain) we would caution that you may need to obtain appropriate legal advice as to any matters which may need to be redacted prior to disclosure (i.e. for privacy or contractual reasons). This report is based on our review of the documents available and representations made by those parties interviewed to date as described in this report. In the event further documents or other information becomes available that could impact our findings, we reserve the right to review such records and reconsider and amend the findings set out in this report.

3. Findings and observations

3.1 Engagement of external real estate advisors and services

Real estate commissions and management fees were incurred for a number of transactions which were within the scope of this review. Real estate advisors were engaged by the City to assist with an acquisition of 266 Graham (Exclusive Buyer Agency Agreement), provide real estate management services for 266 Graham (Real Estate Management Contract), and to list the 344 Gertrude property for sale. Services were also received from a real estate advisor on the sale of the Winnipeg Square Parkade. Broker commissions were paid by the City for certain transactions where the purchaser had engaged a broker (four sales transactions).

Request for Proposal for Real Estate Services and 266 Graham acquisition
In July 2008, an RFQ process was undertaken by the City to qualify proponents to assist the City in performing commercial real estate transactions with estimated commissions exceeding $100,000. RFQ 472-2008 stated that the City intended to maintain a list of approximately four prequalified proponents for the provision of commercial real estate services for a period of two years. Proponents were asked to provide a fee schedule and include anticipated commissions for performing commercial real estate transactions on behalf of the City.

PPD engaged Materials Management to assist with the procurement process. Materials Management's involvement was limited to assisting in developing the RFQ document and assisting with the preparation of an evaluation matrix. The evaluation of proposals was facilitated by Materials Management; however it was the responsibility of PPD to determine successful proponents. The proponent evaluation was based on qualifications, references, and proposed fee schedule, among other factors. Five proponents were prequalified by the City. In July of 2010 this RFQ expired and the City undertook a similar process under RFQ 357-2010, after which three proponents were prequalified.

A timeline related to the RFQs and the 266 Graham acquisition has been included in Appendix A for reference purposes. Observations relating to the contracts awarded under these RFQs include[19]:

- In all cases where an external advisor was engaged, there was no file documentation explaining the rationale why an external advisor was required for the particular transaction.

[19] EY reviewed contracts awarded to real estate advisors for the transactions which were included in the scope of review. Two of the five contracts awarded under the RFQs did not relate to transactions within EY's scope and as such were not reviewed by EY. Payments made under these contracts amounted to $92,000, based on a payment schedule provided by PPD.

Management response: *We concur that the rationale for engaging an external real estate broker be documented in the file.*

- Specific to the Exclusive Buyer Agency Agreement for the acquisition of 266 Graham, EY observed that between July - December 2008, prior to the engagement of an external broker, significant efforts were undertaken by the City and exclusive negotiations commenced with the seller (item #5 in 266 Graham timeline). Commission rates will typically vary depending on the efforts required of the advisor, including whether efforts are required to identify a property, the complexity of the transaction, and the value of the transaction. The commission rate per the Exclusive Buyer Agency Agreement for 266 Graham may not reflect the efforts exerted by the City, who had identified the property and convinced the seller to deal exclusively with the City.

  Management response: *Complexity of due diligence period together with concluding a very complex transaction including negotiating a lease back arrangement with the seller and limited resources. We do not believe the commission rate should have been lower.*

- There was no file documentation evidencing the selection process undertaken to determine which of the prequalified proponents to engage in all cases where an external advisor was retained.

  Management response: *We concur that the rationale for selecting which prequalified proponents will assist the City in various transactions be documented in the file.*

- According to information provided by PPD, five contracts were awarded under the RFQs. Three of the contracts were awarded to one proponent ("Proponent 1") who scored the highest in the 2008 evaluation process (90 points). The remaining two contracts were awarded to a second proponent (Proponent 2) who scored second highest (89 points). A total of $1.2 million[20] in commissions and management fees were paid under the RFQs, 95% of which was paid to Proponent 1.

- On July 15, 2008 (item #3 in 266 Graham timeline), during the period that RFQ 472-2008 was open, the former CAO sent an email to Proponent 1, who was ultimately awarded the Exclusive Buyer Agency Agreement, stating to call him about the owner of 266 Graham. PPD management stated that they cannot speculate on whether the conversation occurred or what it was about. To maintain the integrity and transparency of the RFQ evaluation process, and subsequent awards under the RFQ, the City should refrain from having discussions with one proponent regarding a pending transaction. Any pertinent information shared with one proponent should be made publicly available. By publicly disclosing key information to all parties, the City will encourage a fair and competitive procurement process.

[20] According to payment schedule provided by PPD

- When the RFQs were issued, transaction value was not specified. The proponent submissions received for RFQ 472-2008 set out commission rates for certain transaction values. The highest transaction values varied, however the highest was $5 million. The contract for the Exclusive Buyer Agency Agreement for 266 Graham, which had a transaction value of $29.25 million, far exceeded the highest transaction value provided by the proponents. A lower commission rate may have been negotiated rather than applying the commission rate set out for a much lower transaction value to a transaction six times this size. Transactions of this magnitude are uncommon for the City and as such a separate competitive procurement process and negotiations should have been undertaken in order to attain the lowest rate.

- Under RFQ 472-2008, an Exclusive Buyer Agency agreement was awarded to Proponent 1 to assist with the acquisition of 266 Graham. The commission rate in the Exclusive Buyer Agency agreement differed from the rate outlined in the proponent's submission to RFQ 472-2008. The commission fee paid was $804,375. According to the proponent's submission to RFQ 472-2008, the calculated commission would have been $478,750. As such, the City paid a commission 68% higher than would have been calculated according to the proponents submitted rate structure.

  Management response: *The difference in commission rate was negotiated for additional services beyond the commission identified in RFQ 472-2008 for services. Enquiries were made by the City with the proponent to identify further details that are currently not on file or contained in this audit. The following email response dated May 27, 2014 was received:*
  "In January 2009, [the proponent] was engaged by the city to work on the acquisition of 266 Graham Avenue. We were expected to perform the following functions
  - *Work with representatives of the City to negotiate a price with [the vendor]*
  - *Negotiate the Terms of an Agreement of Purchase and Sale including matters associated with the new mail sorting plant as well as benefits for [the vendor's] employees in the office tower such as parking in the Library Parkade and Wellness privileges available from the City.*
  - *Assemble a team of consultants to work with representatives of WPS to determine whether or not the plant located south of the office tower could accommodate the WPS including a potential range on site.*
  - *Use the same team to perform diligence on the various mechanical and electrical systems to confirm their functionality as well as how elements of the building might be isolated from other elements for confidentiality, safety or sound control and what the costs might reasonably be to fit up the space for WPS. It should be noted that what was built differed significantly from what our team contemplated.*
  - *While respecting the commitment to [the vendor] to perform no additional structural or environmental testing, rely on the many reports that [the vendor] made available to ensure that there were no major surprises in either area.*

- *Upon identifying environmental issues beyond those indicated in the reports provided, negotiate a price reduction which we did in the amount of $750,000.*
- *Negotiate 5 year leases with [the vendor] for the office space and the retail space and a 1 year lease for the continued occupancy of the plant by [the vendor]*
- *Negotiate terms of a new lease with [a lessee], taking into account the changes since the previous lease was executed including the fact that the new landlord was not the Federal Government.*
- *Ensure delivery of all documentation required by the Vendor's solicitor, working in co-operation with the City's legal department, for closing.*

Our fee for all the services we provided was 2.75%. This fee was all inclusive for the work we did and the period involved was from January to December 2009."

EY comment: As noted by management above, the City reached out to the proponent and received an email response itemizing services obtained under the Exclusive Buyer Agency Agreement. The Exclusive Buyer Agency Agreement does not contain this listing of services, and the services differ from those outlined in the RFP under which the contract was awarded. As such, given these differences and amount of fees involved, a separate competitive process for the provision of these services should have been considered.

- Under RFQ 472-2008 a listing agreement was awarded to Proponent 2. The rate per the agreement was consistent with the rate outlined in the proponent's submission to the RFQ.

- EY observed internal City email correspondence discussing invoices received from Proponent 1, where the former CAO stated that even if the transaction did not close it would still be a reasonable amount for all of the work done so far by the real estate broker (item #14 in 266 Graham timeline). An agreement was in place between the City and Proponent 1, where Proponent 1 would earn a commission for services upon the transaction closing and transfer of title. According to the Exclusive Buyer Agency contract: "In consideration of Broker procuring an accepted agreement of purchase and sale of the Property, and the agreement of purchase and sale being fully executed by Buyer and Vendor, Buyer agrees to pay Broker commission in the amount of 2.75% of the Purchase Price. It is understood that commission is payable to Broker upon transfer of title of Property to Buyer." The agreement did not provide provisions for payments or agreement to negotiate reasonable fees in good faith for work completed if the transaction did not close. EY obtained a copy of the related PO noting that the description stated "this $100,000 represents an advance on the agent's commission per "Exclusive Buyer Agency Agreement". EY notes that additional invoices were subsequently received and a total amount of $173,910 was paid to the real estate broker. When the transaction closed later in the year, the real estate broker also earned the full commission in addition to the $173,910 amount. PPD stated that the payments related to third party due diligence costs which were paid by the broker on

behalf of the City. The advisor's invoice was supported by invoices from firms performing due diligence work. The Exclusive Buyer Agency Agreement did not include terms regarding reimbursement for due diligence costs.

- If it is contemplated that payments will be made regardless of whether the transaction closes, provisions for such payments or agreement to negotiate reasonable fees in good faith for work completed should be documented in the contract.

- On June 29, 2010, a management agreement was signed with Proponent 1 (effective date December 1, 2009), under RFQ 472-2008, to provide property management services for 266 Graham (item #21 in 266 Graham timeline). However, EY observed that none of the successful submissions to RFQ 472-2008, including Proponent 1's submission, contemplated property management services. The management agreement outlined various fees for services such as leasing, construction management, financing, and lease agreement preparation. Given that none of the successful submissions to RFQ 472-2008 contemplated property management services, a separate competitive procurement process should have been undertaken in order to attain the lowest possible fees. When another RFQ was issued in 2010 (RFQ 357-2010), revisions were made to address the absence of reference to property management services. EY notes that RFQ 357-2010 included the following comment relating to property management services "Proponents may be required to sign the City's indemnification form when contracted to market and/or manage properties on behalf of the City". However, EY notes that under RFQ 472-2008, and RFQ 357-2010, no proponents were asked to provide rates for property management services. There was no file documentation explaining the need to hire an external property manager nor was there file documentation explaining the rationale to engage Proponent 1.

  Management response: *Considerations included capacity, resources, major property (160,000 ft2 office/retail space) and all of the due diligence work the property manager conducted.*

- The Exclusive Buyer Agency Agreement which was signed by the current Acting CAO (item #10 in 266 Graham timeline), who was the Director of PPD at the time, was not signed by the City's Solicitor and there is no evidence that Legal Services reviewed the agreement or was involved. By not engaging Legal Services when negotiating and entering into the agreement, the City may be exposed to various contractual risks. Also, the agreement did not include a requirement for the proponent to agree to the City's standard terms and conditions for the provision of services. As stated in RFQ 472-2008, Section C0.1 "any work performed as a result of this Request for Qualifications will be subject to the General Conditions for Supply of Services".

  Management response: *The agreement outlined all duties owed to the City by Proponent 1, acting as Buyers agents.*

The agreement should have included the General Conditions for Supply of services based on the RFQ requirements and should have been subject to review by Legal Services.

- There was no file documentation to support Legal Services review of the management agreement for 266 Graham. By not engaging Legal Services prior to entering into the management agreement, the City exposed itself to various contractual risks. Based on documentation retained in the transaction file, once Legal Services became aware of the agreement 2 years later, prompted by the review of a lease in the building, Legal Services put forward the following observations:
  - General Conditions, as stated under RFQ 472-2008, were not incorporated within the management agreement.
  - RFQ 472-2008 terminated on July 31, 2010. Management agreement expired after that date (January 1, 2012).
  - Management agreement delegates the authority to execute lease documents to the Property Manager (Proponent 1) which is not permissible under the City of Winnipeg Charter.
  - Management Agreement does not have provisions that require the Property Manager (Proponent 1) to report their management activities to the City. The Property Manager (Proponent 1) may have entered into lease agreements on behalf of the City that the City has no knowledge of.

  No file documentation was noted or evidence found that the issues identified by Legal Services were addressed or resolved in a timely manner.

  Management response: *At its meeting held on November 6, 2012, SPCPD directed the Public Service to provide 90 days' notice to the Property Manager of 266 Graham Avenue that the City will be terminating its property management contract. Immediately issue a RFP for property management of 266 Graham. By cancelling the management agreement in which the issues were identified, there was no longer a possibility that the issues may remain unresolved exposing the City to risk. Management confirmed no action was taken to address the concerns raised by Legal Services.*

  The notice of termination was sent to Proponent 1 on January 7, 2013 with a termination date of April 30, 2012 (item # 23 of 266 Graham timeline).

- The roles and responsibilities within the Real Estate division on who would determine when to engage a prequalified proponent and which prequalified proponent to engage were not clearly defined. The Real Estate Manager was the contract administrator, and it would be appropriate for the Real Estate Manager to be involved in the selection and negotiation of contracts with the prequalified proponents. However, based on various correspondences retained in the transaction files and EY's review of City emails, it appears the decision to award the266 Graham Exclusive Buyer Agency Agreement and

the 266 Graham real estate management agreement was made primarily by the former CAO.

Management response: *It is not always the practice that the contract administrator is also the selector in an RFQ process – they are two separate and distinct processes*

- EY noted that Proponent 1 was managing the 266 Graham property from December 2009 to June 2010; however the real estate management contract was not entered into until approximately seven months later (item #21 in 266 Graham timeline).

Services related to sale of Winnipeg Square Parkade ("Parkade")

- During the latter part of 2008 and early 2009, discussions occurred with one purchaser interested in the Parkade who had identified themselves to the City. PPD had a real estate broker (Proponent 1) in an advisory capacity provide advice on the Winnipeg Square Parkade throughout the period from August 2008 to the end of March 2009. There was no written agreement between the City and the real estate broker. Roles and fees for services were not documented and a confidentiality agreement was not signed by the real estate broker.

- In August 2008 the real estate broker advised on the retention of a commercial appraiser and in September 2008 the real estate broker prepared a report on market value of the Parkade, which as already noted, was $20 million higher than the externally prepared combined value of the parking structure and air rights effective December 1, 2007 and the final selling price. The report was provided to the former CAO and he acknowledged receipt of the report and indicated "don't forget to send us an invoice". The real estate broker replied that they would like the mandate to sell the Parkade. On October 30, 2008, the former CAO communicated to the real estate broker that he has informed the purchaser that the real estate broker "will represent the City in any negotiations and/or listing".

- The lack of involvement of other PPD managers and with no written agreement on the real estate broker's role caused confusion inside and outside the City.

- On February 6, 2009, PPD was contacted by external parties inquiring whether the real estate broker had an exclusive listing on the Parkade as the listing was posted on the real estate broker's website. Clarification was sought from other PPD managers and the current Acting CAO, with a response from the former CAO that "yes, they are representing our interest in negotiations with a buyer who has identified themselves."

- The purchaser who had identified themselves to the City questioned the sales process. In an email dated February 6, 2008 to the real estate broker, the purchaser congratulated the real estate broker on the listing and stated that they "have been in discussions with your office as well as the City on this matter. For a variety of reasons, we were under the impression that the City would be negotiating with us, with a view of selling at the appraised market value." The purchaser requested the real estate

broker's "version of the sales process". This email was forwarded to the former CAO on February 8, 2009.

- On February 8, 2009, the real estate broker referenced discussions with the current PPD Director, in his role as Manager Economic Development at the time, and that the real estate broker had informed that "we were talking to logical candidates for the purchase and had it on our web site and he asked us to hold off on the marketing until he can check out the Council committee instructions."

- On March 20, 2009, EOI 145-2009 was issued by the City regarding the sale of the Parkade. The real estate broker's advice continues to be sought by the City. Management indicated that the real estate broker continued to have an advisory role supporting the City.

- In May 2009, the real estate broker communicates it is representing the purchaser, the initial purchaser who identified themselves to the City, and the purchaser also confirms this role. In a letter dated May 14, 2009 to the current Acting CAO, PPD Director at that time, the real estate broker advises that if their client, the initial purchaser who identified themselves to the City, "is successful in its bid to acquire the Winnipeg Square Parkade, resulting in payment of the selling commission to [real estate broker], we will waive all fees for the services provided to the city for the evaluation of the city's freehold interest." Further, in a letter from the purchaser to Materials Management, dated May 15, 2009, the purchaser states that the real estate broker "is advising us as broker in the valuation and submission of the EOI. We also understand that the City of Winnipeg will pay the broker fees for the successful purchaser of the Property".

- The purchaser's submission was accepted and the real estate broker received commission. Management indicated no other fees were paid regarding the advisory services that were provided to the City.

- There could be increased risk of a conflict of interest when the same external advisor has roles representing the City's interests with the purchaser and then acting as the broker for the purchaser after it was determined Materials Management would proceed with an EOI. The role of the real estate broker was not clear, it was not documented and there was no written agreement in place. The real estate broker did not sign a confidentiality agreement. Email communications within the PPD department following the posting on the broker's website indicates there was confusion about the real estate broker's role internally within the City. Decisions were made on including an advisor in the sale without involvement from other key PPD managers. Roles need to be clearly identified and documented to avoid any potential conflicts of interest, especially when involving a significant, high value asset such as the Parkade. There was no disclosure in reports to council and committees of council regarding the advisory role of the real estate broker.

- The real estate broker was included in discussions regarding the Parkade well in advance of the EOI. Information was shared and advice sought on representing the City's interests. In late March 2009, advice was sought from the real estate broker by the City, whether a property condition report on the Parkade should be provided to the purchaser. There was agreement that the purchaser should "get their own report." By having the real estate broker later move to represent the purchaser's interests, without having signed a confidentiality agreement, the City exposes itself to the risk that the City's interests may not be well served.

Other commission payments

Commissions were paid on 4 of 15 sales transactions included in the scope of the review where a real estate advisor was engaged by the purchaser in the transaction. The transactions were: sale of Winnipeg Square Parkade, North South Transportation Corridor South of Dugald Road, St. Boniface Industrial Park (2010), and St. Mary's and Avalon.

The commission paid on the sale of the Winnipeg Square Parkade was consistent with the Proponent's response to RFQ 472-2008. EOI 145-2009 issued for the purchase of the Winnipeg Square Parkade did not reference broker fees or commissions. The transaction value of the sale of the Winnipeg Square Parkade was $24 million which far exceeded the highest transaction value provided by the proponents responding to RFQ 472-2008. As such, the commission rate should be negotiated rather than apply the commission rate set out for a much lower transaction value which may have resulted in a lower rate.

In the other three transactions, commissions were paid as outlined in the City's sales listing.

Other municipalities[21] similarly pay real estate commissions to brokers representing purchasers of city owned land. The commission rates vary, however commissions for lower transaction values appear comparable to those paid by the City. Some municipalities will cap real estate commissions and others will negotiate on a transaction by transaction basis.

[21] City of Saskatoon (Saskatchewan), City of Regina (Saskatchewan), City of Calgary (Alberta), City of Edmonton (Alberta), City of Mississauga (Ontario)

3.2 Acquisitions

A City initiative or a departmental need may lead the City to acquire property. EY reviewed the 3 significant acquisition transactions summarized in the table below.

Timeline				
Transaction		Date transaction commenced	Date transaction finalized	Duration
1	222 Pembina Hwy	Oct 22, 2008	Aug 31, 2009	0.9 years
2	266 Graham Ave	Nov 2008	Dec 7, 2009	1.1 years
3	CPR Marconi	Apr 6, 2005	Mar 26, 2007	2 years
			Average duration	**1.3 years**

3.2.1 Summary of testing procedures

Refer to Appendix A for detailed notes on the results of the testing procedures below:

		222 Pembina Hwy	266 Graham Ave	CPR Marconi
Testing procedures				
1	Evidence of trigger retained in file	✔	✔	✔
2	Project approval obtained and funding secured	✔	✔	✔
3	Process undertaken to determine which properties best met the City's needs	✔	See Appendix A (note 3)	✔
4	Timely land title search performed and retained in file	See Appendix A (note 4)	✔	See Appendix A (note 4)
5	Appraisal conducted and retained	X	X	✔
6	Property inspection conducted	X	✔	✔
7	Purchase proposal is drafted and agreed to	✔	✔	X
8	Council approval or appropriate delegation of authority occurred	✔	✔	✔
9	Final agreement is completed or reviewed by Legal Services	✔	✔	✔
10	Request made to Geomatics to complete required procedures	✔	See Appendix A (note 10)	✔
11	Final agreement retained in the file	✔	✔	X
12	Reporting to Council	See Appendix A (note 12)		

		222 Pembina Hwy	266 Graham Ave	CPR Marconi
13	Commissions paid to external broker	No broker engaged	Yes – See Appendix A (note 13)	No broker engaged

Summary of testing results

Overall EY observed support and evidence in the transaction files that the acquisition procedures tested occurred:

- Funding approval was obtained by Council before any of the properties were acquired
- In two of three transactions, a purchase proposal was drafted by the City and agreed to by the property owner
- Acquisition agreements were reviewed by Legal Services prior to being finalized
- Approval of the transaction was obtained from Council or proper delegated authority for all acquisitions

The transaction files did not consistently retain key documents or include documentation that all procedures were undertaken:

- Land title searches were not consistently performed and retained in the transaction files
- Two transactions reviewed did not contain an appraisal to support the acquisition price
- One transaction reviewed did not contain evidence that a property inspection was performed prior to acquiring the property
- One transaction reviewed did not contain a copy of the final executed agreement, supporting the transaction value
- EY observed one transaction where disclosure of relevant information was not included in an Administrative Report

Refer to Appendix A for detailed notes on the results of the above testing procedures.

Roles and responsibilities for acquisitions

For the acquisition transactions tested, EY noted that the key individuals involved in completing the transaction appeared appropriate. File documentation supported that transaction execution was driven by PPD, without undue pressure or direction from other departments or other City stakeholders. However, there appears to have been confusion about roles and responsibilities regarding the engagement of real estate advisors to assist with an acquisition transaction (266 Graham), which have been discussed in section 3.1. EY notes that there is no governance framework outlining the roles and responsibilities of individuals within the Real Estate division, as well as roles and responsibilities of other individuals regarding their involvement in real estate transactions (i.e. Legal Services, Materials Management).

3.2.2 Observations for improvement opportunities

Reporting to Council and committees of Council

EY observed instances where relevant information was not included in Administrative Reports. The seller of the CPR Marconi lands had acquired the 70.4 acre property for $1.35 million in the months leading up to the City's acquisition of a portion of these lands. The City acquired 50.4 acres of the CPR Marconi Lands for $1.5 million[22]. The difference in acreage and price was not disclosed in the Administrative Report. Management indicated the price paid by the seller was known by decision makers and as such, was not included in the Administrative Report. Refer to Appendix A, Note 12 for management response.

As discussed further below, no appraisal was performed by the City on the 266 Graham property and this was not specifically disclosed in the Administrative Reports recommending the acquisition to Council.

The Administrative Report presented to Council recommending the acquisition of 266 Graham for the purposes of housing the new police headquarters did not mention that a comprehensive procurement process had not been undertaken. EY did not observe file documentation evidencing that a process was undertaken to identify other potential properties, and a procurement process, such as an EOI, was not undertaken to determine the options available.

Appraisals

Currently the City does not have guidelines governing when appraisals are required, the requirement for full narrative appraisals, and circumstances that may require additional external independent appraisals.

For the 222 Pembina acquisition, the City relied on an appraisal provided by the owner, which PPD indicated was performed by an accredited appraiser, however the appraisal was not retained by the City. The property was acquired for $5.75 million, which included the land and building value, as well as the business value (as a business was operating on this property).

No appraisal was performed by the City prior to acquiring the 266 Graham property. Advisors were engaged to assist with the analysis of alternatives for the new police headquarters facility. The options analyzed included but were not limited to renovating the existing police headquarters, building a new facility, and acquiring and converting the building at 266 Graham. Advisors were engaged to assist with a due diligence and feasibility study, to assess whether the 266 Graham building could accommodate the requirements of the new police headquarters (this included a building evaluation, identification of requirements for the new police headquarters and assessment of whether

[22] As part of the settlement agreement the owner agreed to donate $150,000 toward the costs of providing a bicycle path.

the building could accommodate these requirements, and a "class D" budget for converting the facility as only block schematic drawings were prepared) .While a process was undertaken to analyze alternatives, assess whether 266 Graham could be converted for the purposes of the new police headquarters, and to estimate the cost of conversion, no appraisal was performed and retained in the file to support the acquisition price of $29.25 million.

Comprehensive procurement process
While an analysis was performed to assess whether 266 Graham could accommodate the police headquarters, EY did not observe file documentation evidencing that properties other than 266 Graham were considered as potential locations for the new police headquarters, and the City did not advertise the need for such property (i.e. EOI process) in order to identify the options available to the City. For capital projects of this magnitude and complexity, a more comprehensive procurement process, such as an EOI, is recommended.

Document retention and file consistency
The state of the files reviewed was inconsistent, with some better organized and more complete than others. A standardized index and checklist should be considered to facilitate more consistent document retention and file organization. A checklist will help ensure procedures are not inadvertently missed.

3.2.3 Observations on value for money achieved

The 266 Graham property was acquired for $29.25 million. Management indicated to EY that the vendor determined the value of the property at $30 million and the City was provided a direct opportunity to acquire the property at this price. The City did not obtain their own independent appraisal to verify the vendor's value, did not advertise the need for property, and did not solicit bids for potential alternate locations for the new Police Headquarters. A comprehensive procurement process was not undertaken and for a facility of this size and magnitude should have been considered. As such, it is uncertain if value for money was achieved.

For the 222 Pembina acquisition, the City relied on an appraisal provided by the owner, which PPD indicated was performed by an accredited appraiser, however the appraisal was not retained by the City. The property was acquired for $5.75 million, which included the land and building value, as well as the business value (as a business was operating on this property). As such, it is uncertain if value for money was achieved.

The seller of the CPR Marconi lands had acquired the 70.4 acre property for $1.35 million in the months leading up to the City's acquisition of a portion of these lands. The City acquired 50.4 acres of the CPR Marconi Lands for $1.5 million[23]. The difference in

[23] As part of the settlement agreement the owner agreed to donate $150,000 toward the costs of providing a bicycle path.

acreage and price was not disclosed in the Administrative Report. No documentation was retained in the transaction file outlining the rationale as to why the City was prepared to pay a higher price compared to the recent market transaction. Without such information, it is uncertain whether value for money was achieved. Refer to Appendix A, Note 12 for management response.

3.3 Expropriations

A City initiative or a departmental need may lead the City to acquire property. EY reviewed the 4 significant expropriation transactions summarized in the table below.

Timeline				
	Transaction	Date transaction commenced	Date transaction finalized	Duration
1	470 & 471 Warsaw Ave.	Oct 22, 2008	Apr 26, 2010	1.5 years
2	344 Gertrude Ave.	Oct 22, 2008	Apr 1, 2010	1.4 years
3	109 Pioneer Rd.	Oct 21, 1987	Jun 26, 2008	20.7 years
4	Vista Enterprises and Van Hull Gardens	Feb 12, 1975	Jan 12, 2007	32 years
	Average duration excluding 109 Pioneer and Vista/Van Hull			**1.5 years**[24]

3.3.1 Summary of testing procedures

Refer to Appendix B for detailed notes on the results of the testing procedures below:

		470 & 471 Warsaw	344 Gertrude	109 Pioneer[25]	Vista/Van Hull[26]
Testing procedures					
1	Evidence of trigger retained in file	✔	✔		
2	Project approval obtained and funding secured	✔	✔		
3	Real Estate division attempts to acquire property prior to expropriation	✔	✔		
4	Council passes By-Law and makes declaration of expropriation	✔	✔		
5	Notices of intended expropriation are released	✔	✔		
6	If formal objection filed by owner, require inquiry officer report to be	N/A	N/A		

[24] Average duration excludes 109 Pioneer and Vista/Van Hull given the significant duration of these expropriations.

[25] This expropriation was initiated in 1975 and as such many of steps in the Real Estate process occurred outside of the period of scope. EY has tested compliance with those procedures that should have occurred during the period of scope as part of the expropriation settlement.

[26] This expropriation was initiated in 1975 and as such many of steps in the Real Estate process occurred outside of the period of scope. EY has tested compliance with those procedures that should have occurred during the period of scope as part of the expropriation settlement.

		470 & 471 Warsaw	344 Gertrude	109 Pioneer[25]	Vista/Van Hull[26]
	obtained				
7	Expropriation confirmed by Council	✔	✔		
8	Appraisal is conducted and retained	✘	✔		
9	Offer of compensation is prepared based on appraised value	See Appendix B (note 9)	✔		
10	Offers of compensation are approved based on delegated authority	✔	✔		
11	Offers of compensation are served within 120 days of registration of declaration of expropriation	✔	✔		
12	Negotiated settlement approved by Council or delegated authority	✔	✔	✔	✔

Summary of testing results

Overall EY observed support and evidence in the transaction files that all the expropriation procedures tested occurred. One transaction reviewed did not contain an appraisal to support the expropriated value.

Refer to Appendix B for detailed notes on the results of the above testing procedures.

Roles and responsibilities for expropriations

For the expropriation transactions tested, EY noted that the key individuals involved in completing the transaction appeared appropriate. File documentation supported that transaction execution was driven by PPD, without undue pressure or direction from other departments or other City stakeholders. EY notes however that there is no governance framework outlining the roles and responsibilities of individuals within the Real Estate division, as well as roles and responsibilities of other individuals regarding their involvement in real estate transactions (i.e. Legal Services, Materials Management).

3.3.2 Observations for improvement opportunities

Reporting to Council and committees of Council

The entire 344 Gertrude property, which included the land, building, equipment, and business was expropriated, even though less than 20% of the property was required for Phase 1 of the Bus Rapid Transit Corridor. PPD concurred with the property owner that a partial taking would render the business inoperable even though a City engineer expressed concern over the full taking as he observed the business operating through

construction, which was previously determined to not be feasible. The concerns expressed by the City engineer were not included in the Administrative Report presented to Council.

EY observed that the interest costs resulting from the significant time period of certain expropriations reviewed was as much as seven times the principal amount resulting in a total settlement amount in excess of $2 million over the original expropriation value. Management has indicated that a directive is being established whereby expropriations more than two years in process will be reported to the CFO and CAO to determine whether to conclude a settlement or to proceed to LVAC.

Process for tracking status of unresolved expropriations
In the absence of formal processes for tracking and reporting the status of unresolved expropriations, transactions may go unresolved for an extended period of time, resulting in additional interest costs to the City and additional management effort. In two of the four expropriations tested, the transaction spanned greater than 20 years.

Document retention and file consistency
The state of the files reviewed was inconsistent with some better organized and more complete than others. No file documentation was noted in the file for the 109 Pioneer expropriation to support the events that occurred between 2004 (advance agreement entered into) and 2008 (Council approval of a modified agreement). Also, an appraisal supporting the settlement amount for 470 Warsaw was conducted; however an appraisal supporting the settlement amount for 471 Warsaw was not retained in the file. Subsequent to EY's review, an electronic copy of the appraisal was provided to EY. Refer to Appendix B, note 8 for management response.

3.3.3 Observations on value for money achieved

As noted, the decision was made to proceed with a full taking of the property at 344 Gertrude, which included the land, building, equipment, and business, even though less than 20% of the property was required for Phase 1 of the Bus Rapid Transit Corridor (~5,300 square feet of a 28,910 square foot property). The City did not engage an external advisor to validate that the business would indeed be inoperable. A business at 344 Gertrude operates as a going concern less the portion of land retained by the City. As such, it is uncertain whether a full taking of the property may have been avoided. The property was acquired by the City for $3.36 million, and subsequently sold, excluding the portion required for the Bus Rapid Transit Corridor, for $1.5 million. Refer to Section 3.4 regarding the sales process for this property. Refer to Appendix B, note 8 for management response.

3.4 Sales transactions

The declaration of surplus or excess land by the City, or an unsolicited offer from an external party expressing interest in purchasing City-owned land, may lead to a sales transaction of City property. EY reviewed the significant sales transactions numbered 1 to 10, and the City auditor reviewed transactions numbered 11 to 13 summarized in the table below.

		Timeline		
	Transaction	Date transaction commenced	Date transaction finalized	Duration
1	344 Gertrude Avenue	Oct 15, 2009	Jul 8, 2011	1.7 years
2	100 Murray Park Road	Apr 13, 2007	Jan 24, 2008	0.8 years
3	780 Marion Street	May 24, 2006	Jun 1, 2007	1.2 years
4	Parcel 4	Jun 3, 2009		Transaction was not completed
5	Portion of the North/South Transportation Corridor South of Dugald Rd	Jul 3, 2007	Oct 8, 2009	2.3 years
6	South side of Wilkes Ave (Stovel Street & Paget Street)	Oct 31, 2008	Jun 23, 2009	0.6 years
7	Sterling Lyon Parkway & Paget Street	Sep 11, 2006	Mar 20, 2009	2.5 years
8	St Mary's & Avalon	Aug 16, 2005	Jul 31, 2009	4 years
9	Transcona Joint Venture	Jun 25, 2002		Transaction is ongoing
10	Winnipeg Parkade	Jun 13, 2008	Jun 3, 2010	2 years
11	St. Boniface Industrial Park (2008)	Aug 2007	Apr 2008	0.7 years
12	St. Boniface Industrial Park (2010)	Jul 2010	Nov 2010	0.4 years
13	Pine Ridge Gravel	Oct 2006	Feb 2007	0.4 years
			Average duration	**1.4 years**[27]

As noted in Section 2.2, a limited walkthrough of the sale of the Polo Park stadium site was conducted against City policies and processes.

[27] Average transaction duration excludes ongoing transactions and transactions not completed.

3.4.1 Summary of Testing Procedures

Refer to Appendix C for detailed notes on the results of the testing procedures below:

		344 Gertrude Avenue	100 Murray Park Road	780 Marion Street	Parcel 4	North/South Transportation Corridor South of Dugald Rd	South side of Wilkes Ave (Stovel Street & Paget Street)	Sterling Lyon Parkway & Paget Street	St Mary's & Avalon	Transcona Joint Venture	Winnipeg Parkade	St. Boniface Industrial Park (2008)	St. Boniface Industrial Park (2010)	Pine Ridge Gravel
Testing Procedures														
1	Evidence of trigger retained in file	C1*		✔	C1	✔	Unsolicited offer	✔	✔	unsolicited offer	✔	✔	✔	✔
2	Land title search retained in file	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
3	Evidence of Circular letter issued to key City stakeholders	C3	N/A	✔	✘	✔	✔	✔	✔	✘	✘	N/A	N/A	N/A
4	Response from Ward Councillor received (as part of declaring property surplus)	✘	N/A	C4	✘	✘	N/A	✘	✔	✔	✘	N/A	N/A	N/A
5	SPCPD approval to declare property as surplus	✔	N/A	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
6	Council approval to declare property surplus	✔	N/A	✔	C6	✔	✔	✔	✔	✔	C6	✔	✔	✔
7	Evidence of property valuation conducted and retained in the file	C7					✘	C7		✘	C7			
8	Evidence supporting how the property was advertised for	✔	N/A	✔	N/A	✔	C8	✔	✔	C8	✔	✔	✔	✔

		344 Gertrude Avenue	100 Murray Park Road	780 Marion Street	Parcel 4	North/South Transportation Corridor South of Dugald Rd	South side of Wilkes Ave (Stovel Street & Paget Street)	Sterling Lyon Parkway & Paget Street	St Mary's & Avalon	Transcona Joint Venture	Winnipeg Parkade	St. Boniface Industrial Park (2008)	St. Boniface Industrial Park (2010)	Pine Ridge Gravel
	sale / purchase was retained in the file													
9	Evidence of Legal Services review of the draft offer	✔	N/A	✔	✔	C9	✔	✔	✔	✔	✔	✔	✔	✔
10	Evaluation of offers	C10	N/A	C10		✔	N/A	✘	✔	C10		✔	✔	✔
11	All offers received were retained in the file	✔	N/A	✘	✔	✔	N/A	✘	✘	N/A	✔	✔	✔	✔
12	Evidence supporting the rationale for the offer that was accepted was retained in the file	✔	N/A	✔	✘	✔	N/A	✔	✔	✔	✔	✔	✔	✔
13	Response from Ward Councillor	✘	N/A	✘	✘	✘	C13	✘	✘	✘	✘	N/A	N/A	N/A
14	Offer approval received based on delegation of authority	✔	N/A	✔	N/A	✔	✔	✔	✔	✔	✔	✔	✔	✔
15	Notice from Legal Services to Geomatics (requesting preparation of land transfer) was retained in the file	✔	✔	✔	N/A	✔	✘	✔	✔	✔	✘	✔	✔	✔
16	Official land transfer retained in the file	✔	✔	✔	N/A	✔	✔	✔	✔	✔	✔	✔	✔	✔
17	Revised Statement of Adjustment retained in the file	✔	N/A	✔	N/A	✔	✔	✔	✔	N/A	✔	✔	✔	N/A

		344 Gertrude Avenue	100 Murray Park Road	780 Marion Street	Parcel 4	North/South Transportation Corridor South of Dugald Rd	South side of Wilkes Ave (Stovel Street & Paget Street)	Sterling Lyon Parkway & Paget Street	St Mary's & Avalon	Transcona Joint Venture	Winnipeg Parkade	St. Boniface Industrial Park (2008)	St. Boniface Industrial Park (2010)	Pine Ridge Gravel
18	Closure letter issued retained in the file	✔	✔	✔	N/A	✔	✘	✔	✔	C18	✔	✔	✔	✔
19	Commissions paid to external broker involved	Yes	No	No	N/A	Yes	No	No	Yes	No	Yes	No	Yes	No

* References such as C1 should be read as see Appendix C, note 1.

Summary of testing results

All of the sales transactions reviewed were initiated due to specific circumstances that triggered a transaction. Section 3.3 addresses the acquisition of 344 Gertrude. If a full taking of the property at 344 Gertrude did not occur, the City may have avoided acquiring surplus land that was then marketed and sold for less than half the amount paid by the City to acquire the entire property.

Overall EY observed support and evidence in the transaction file that the sales procedures tested occurred:

- All sales transaction files contained evidence that a land title search was conducted prior to finalization of the land transfer agreement
- SPCPD and Council approval to declare the property as surplus was noted
- Notification that the excess property was for sale occurred for all transactions where this was applicable
- Legal Services reviewed the draft offers for all transactions as required, except the offer for one transaction was reviewed subsequent to it being accepted
- Rationale for accepting the offer received was retained in all but one transaction file
- Offer approval was received based on delegation of authority
- Evidence of the official land transfer was noted for all the transactions where applicable
- Where applicable, the revised Statement of Adjustment and closure letters were retained in the files

The transaction files did not consistently include key documents or evidence that all procedures were undertaken:

- There were gaps with respect to retention of all offers in the files

- Evaluation of offers did not always include evaluation criteria or provide fulsome explanations for pricing differences.
  - One submission was received to EOIQ 379 – 2009 for the design and construction of an indoor waterpark. The submission, which identified Parcel 4 as the proposed waterpark site scored 41 out of a possible 75 points. There were numerous comments, questions, and clarifications that were raised by the City in the evaluation report. There was no file documentation prepared by PPD outlining the responses received by the proponent to address the City's comments and questions, nor were these comments and questions included in the Administrative Report presented to Council. Other than facilitating the evaluation discussion, Materials Management did not play a role in determining whether the City should award the design and construction of the waterpark to the proponent. This decision was made by PPD.
  - There was no file documentation outlining the evaluation criteria used to assess the offers received for Sterling Lyon Parkway & Paget Street.
  - There was no file documentation to support that a financial analysis comparing the expected cash flows from the Transcona Joint Venture to other alternatives was included in the file. When a transaction involves the sale or exchange of a significant amount of City land, a financial analysis should be performed and retained in the file.

- An appraisal was not completed for the City land contributed to the Transcona Joint Venture. Refer to Appendix C, note 7 for management response.

- An appraisal was not observed in the file documentation for the sale of the property on the South side of Wilkes Ave, however, a City appraiser prepared a value range for Wilkes and Paget lands in a spreadsheet and noted in the email communication that the value range was assembled in just a few hours on a rush basis.

- Notice from Legal Services to Geomatics was not retained in two files. Legal Services should notify Geomatics to prepare the land transfer. Documentation of such requests should be retained in the file.

- The closure letter is designed to notify the Real Estate division that all conditions of the transaction have been satisfied. As such, it is a critical document that should be retained in the file. Evidence of the closure letter was not observed in one file.

Refer to Appendix C for detailed notes on the results of the above testing procedures.

Roles and responsibilities for sales transactions

For the sales transactions tested, EY noted that for the most part, the key individuals involved in completing the transaction appeared appropriate. File documentation supported that transaction execution was driven by PPD, without undue pressure or direction from other departments or other City stakeholders. However, there appears to

have been confusion about roles and responsibilities regarding the engagement of real estate advisors to assist with the sale of the Winnipeg Square Parkade, which have been discussed in section 3.1. In addition, there is no governance framework outlining the roles and responsibilities of individuals within the Real Estate division, as well as roles and responsibilities of other individuals regarding their involvement in real estate transactions (i.e. Legal Services, Materials Management).

3.4.2 Observations for improvement opportunities

Reporting to Council and committees of Council

EY observed information in the transaction file that was not included or referenced in Administrative Reports, this included information on prior offers, valuations, stakeholder concerns, and other relevant information. Management indicated other means, such as Council seminars were used, but there was no documentation of these other means in the transaction file.

- A valuation report was prepared by the City's real estate broker acting in an advisory role for the Winnipeg Square Parkade. This valuation report, which valued the property at an amount approximately $20 million higher than the final transaction value of $24 million, was not retained in the transaction file nor was it referenced in reports when assessing the responses to the EOI or in reports to Council or committees of Council. The reports disclosed the three EOI submissions received, that the City engaged the services of a consultant to support staff in the preparation of the City's financial analysis by providing research and information regarding discount rates and methodology, and the external appraisal dated May 5, 2008. Management indicated that once it became known, during due diligence, that there was significant deferred maintenance costs, the valuation became inaccurate and would not have provided useful information. However, given the large difference in value, the results of the valuation report should have been disclosed and information on deferred maintenance costs explained rather than not shared. Refer to Appendix C, pages 148-149 for management response.

- There were no disclosures in reports to Council and committees of Council regarding the advisory role of the broker acting in an advisory role to the City on the sale of the Winnipeg Square Parkade and subsequently representing the buyer's interest in this transaction.

- Various discussions occurred between PPD and Legal Services regarding the appropriate process for approving amendments to conditions included in the Servicing Agreement, as part of the sale of the Polo Park stadium site. Legal Services advised PPD that if the agreement is being imposed as a condition of the subdivision approval, as the Agreement states, under the Development Procedures By-Law, the approving authority for the terms of the agreement would be at a minimum SPCPD. PPD replied to this response stating that the Agreements will be amended to delete all references to the Short Form Subdivision application, eliminating the requirement of SPCPD approval. PPD informed Legal Services that the approval of the sale of the Polo Park

Stadium site on July 3, 2012 serves as the authority for the agreement and as such, further approval from SPCPD was not obtained. Based on the file documentation, it was not clear on whether the City or the Developer would be responsible for the 10% cash dedication and lot fees, valued at $842,000. PPD has stated that as part of the negotiation process with the Developer, the City agreed to treat the cash dedication fee as a cost of sale. The Administrative Report presented to SPCPD stated that the City would be responsible for conducting all Survey Plans, however, there was no specific mention of the cash dedication fee. Subsequent internal correspondence by key individuals involved in the transaction within the City as well as correspondence between the City and the Developer indicated that the Developer would be responsible for the cash dedication fee. Given the value of the cash dedication fee, lack of clarity of in the file documentation, and confusion by key internal individuals involved in the transaction, the Administrative Report should have clearly addressed the cash dedication fee. Refer to Appendix C, pages 151-155 for management response.

- There were two external appraisals conducted on the Parcel 4 lands. One appraisal valued the property at $10 million, based on its highest and best use, but was not included in the Administrative Report presented to Council. The second appraisal, valuing the property at $5.9 million was referenced in the Administrative Report; however, this appraisal was based on the limited use of the lands being a hotel, waterpark, and parkade. The limitations of the second appraisal were not disclosed in the Administrative Report.

- The information presented to SPCPD on April 3, 2007, relating to the sale of 780 Marion, stated that 20.4 acres was originally conditionally sold (transaction did not close as certain conditions placed on the purchaser were not met by the deadline) however, the amount of the original conditional sale, $2.03 million, and terms of the conditional sale were not presented to SPCPD on April 3, 2007. The City received $1 million for the sale of the unserviced170 acre property. The 170 acres included the land in the original condition sale. Refer to Appendix C, note 10 for management response.

- The fact that no formal appraisal of Pine Ridge Gravel was performed prior to the sale was not disclosed in the Administrative Reports presented to Council. A business valuator was engaged to assist with the offer evaluation process and was disclosed in the Administrative Reports presented to Council. Their services included assistance with developing a discount rate, financial modeling, ranking offers, negotiations, reviewing phase 1 & 2 RFP, and the Administrative Report. They did not perform an appraisal. Refer to Appendix C, note 7 for management response.

Consultations and communication with internal City stakeholders

While management may rely on other means to consult with relevant stakeholders, consistent use of circular letters was not observed. Concerns raised by stakeholders should be addressed and these concerns documented and communicated to support decision making.

Appraisals

The City has no guidelines on when appraisals are required, on the requirement for full narrative appraisals and circumstances that require additional external independent appraisals. This is inconsistent with practices in public sector environments.

- There was no file documentation to support that appraisals were conducted prior to entering the Transcona Joint Venture, to assess whether the lands contributed by each party were of comparable value. Part of the land contributed by the City was "serviceable" land which generally is regarded as having a higher value than land that is not serviceable. According to the Joint Venture agreement, both parties contributed 129 acres. Refer to Appendix C, note 7 for management response.

- An appraisal was not observed in the file documentation for the sale of the property on the South side of Wilkes Ave, however, a City appraiser prepared a value range for Wilkes and Paget lands in a spreadsheet and noted in the email communication that the value range was assembled in just a few hours on a rush basis. The analysis included several parcels of land. Without having completed full narrative appraisal, specifically for the parcels sold, it is uncertain what the appraisal value of the land may have been. This property was sold by the City for $1.02 million.

Industry practice suggests that an appraisal update be conducted approximately 6 months after the effective date of an appraisal or as market conditions change. Appraisal updates were not observed in many cases, and there was no documentation in the file to indicate why an update may not be required (i.e.: due to static market conditions or other factors that remain unchanged).

- An appraisal was conducted on May 24, 2007 for the North/South Transportation Corridor South of Dugald Road valuing the property in the range of $1.47 million - $1.678 million, almost one year prior to SPCPD approval. No file documentation to support that an update appraisal was conducted or documentation of static market conditions. The property was sold for $2.1 million.

EY observed appraisals for the same property that were based on different assumptions or for different elements of a given property. This can make comparisons difficult and may not provide complete information upon which to make decisions.

- As part of the analysis to determine whether it was more beneficial to sell or retain ownership of the Winnipeg Square Parkade, an external appraiser was engaged to provide an opinion of value. An opinion of value of the parking structure was provided in January 2008, effective December 1, 2007, which appraised the structure at $16 million. The scope of the external appraisal was expanded to consider the potential value of the air rights associated with the Parkade which valued the air rights at $8.8 million in May 2008.

- There was no file documentation to support that an all-inclusive appraisal of all elements of the Winnipeg Square Parkade property and air rights was conducted within six months of the sale of the property. As noted, an opinion of value report on the Winnipeg Square Parkade, including the lease of air rights was prepared by the City's real estate advisor in September 2008 (over one year prior to the property being declared as surplus). This report valued the property at $43.6 million, an amount approximately $20 million higher than the final transaction value of $24 million. This valuation was not in the transaction file during EY's review, and was subsequently provided by PPD. It was not referenced in reports to Council or committees of Council.

- A limited investigation and analysis was completed internally by PPD dated March 14, 2006 regarding the potential land value of approximately 170 acres of "brown field" land located at 780 Marion. After the property was declared surplus by Council on March 22, 2006, on April 4, 2006, 20.4 acres were conditionally sold. An EOI was issued on May 24, 2006 for the remaining acres. An internal appraisal was conducted by City appraiser dated June 1, 2006 for two parcels, 2.4 acres and 18 acres. No file documentation was found to support that an all-inclusive appraisal of the entire property (170 acres) was conducted for 780 Marion Street. Refer to Appendix C, note 10 for management response.

Explanations were not documented in the files where there were significant differences between appraised value and selling price.

- An appraisal was conducted by a City appraiser on September 28, 2006, valuing the Sterling Lyon Parkway & Paget Street property at $1.3 million. The property was advertised for sale in March and April 2007 for $1.3 million. On June 20, 2007, Council approved the sale of the property for $2 million (based on the offers received). On December 3, 2008, almost two years after offers were received and presented to SPCPD and Council, an appraisal was conducted a City appraiser, valuing the total property at $2 million. There was no file documentation explaining the reason for the difference in the September 28, 2006 appraised value and selling price.

- An appraisal was completed by a City appraiser in January 2007, valuing the St. Mary's and Avalon property at $1.13 million. The property was advertised for sale in February and March 2007. The selected offer (highest bid) was $1.76 million, 40% higher than the appraiser value. There was no file documentation explaining the reason for the difference in appraised value and selling price.

While EY agrees with management that it may not always be known precisely the reasons for all differences, monitoring differences and documenting known factors can help the City understand how its appraisals compare to selling prices and whether its appraisals tend to be higher or lower than market which may prompt adjustments to how appraisals are conducted.

No appraisal of Pine Ridge Gravel was performed prior to the sale. A business valuator was engaged to provide several services including assistance with the offer evaluation process but did not conduct an appraisal to determine the expected value of the asset. Refer to Appendix C, note 7 for management response.

Openness, fairness and transparency of the procurement process

- On June 3, 2009, EOIQ 379-2009 was issued for the design and construction of an indoor waterpark. The EOIQ 379-2009 stated that the proposal must identify a proposed site within the City and preference will be given to sites located downtown. The availability of the Parcel 4 site was not made publicly available prior to or as part of EOIQ 379-2009 however the cover letter included with the submission prepared by the Proponent indicated:
  - The availability of the Parcel 4 site had been confirmed with the City prior to the issue of the EOIQ
  - The Proponent has been advised by City representatives that the site is available for development

  PPD is not aware of where or whom the Proponent received information from regarding the availability of Parcel 4. An addendum to EOIQ 379-2009 advising proponents that City owned property may be considered in the submissions.

- In April 2011, EOI 257-2011 was issued for development of the Polo Park stadium site. On December 9, 2010, approximately four months prior to the public release of EOI 257-2011, the City provided the Developer with a site plan and dimensions of the Polo Park stadium site. On April 11, 2011, the Developer was also provided a copy of EOI 257-2011 in advance of the EOI being publicly released. There was no file evidence to support that any other interested parties were provided the same information in advance of the public release of the EOI. Refer to Appendix C, page 152 for management response.

In both circumstances, the information was provided to the same proponent. There was no file evidence to support that any other interested parties were provided the same information in advance of public release.

- There were 3 responses to EOI 145-2009 for the sale of the Winnipeg Square Parkade. An offer of $21 million from the proponent who ultimately purchased the Parkade, a second offer from a proponent for $20 million, and a third offer which was considerably lower. EOI 145-2009 outlined the evaluation process which noted "the City will only negotiate with a short list of the proponents submitting, in the City's opinion, the most advantageous proposals; after completion of the evaluation of all EOI submissions, will short list those that are of the most interest to the City and then contact short listed proponents and enter into negotiations with proponents having EOI submissions that are considered to have the most merit and benefits for the City." There was indication that the proponent offering $20 million may have been prepared

to increase their proposed purchase price. PPD communicated to Corporate Finance by email that the sense was the proponent was prepared to significantly increase their proposed purchase price. The proponent indicated in an email dated May 22, 2009 to PPD that their offer did not account for increases in air rights lease amounts in future years and this will likely have a significant upside movement on the pricing submitted in their offer.

- The evaluation summary of the offers received for the Winnipeg Square Parkade was provided to the evaluation team on May 28, 2009 from Corporate Finance. The evaluation summary adjusted the proponent's offer based on assumptions made by the City. The footnote on the evaluation summary stated that the party has since indicated its proposal did not account for future adjustments to the air rights lease. With this anticipated adjustment, the offer was revised in the evaluation summary to $23.8 million, 10% higher than the $21 million offer submitted. The evaluation summary identified advantages of the $21 million offer and that the adjusted offer of $23.8 million was conditional on reaching acceptable agreement with the holder of leased air rights permitting their contemplated development as outlined in their submission. The recommendation of the evaluation committee was to enter into negotiations with the proponent who submitted the $21 million offer and to obtain a sale price of $23.8 million at minimum.

- The Administrative Reports to Council and committees of Council did not reference the adjustment to the offer to an assumed $23.8 million, but did note the condition of the proponent's offer. Without confirming the adjustment directly with the proponent which may have resulted in a value higher or lower than $23.8 million and without disclosure in the Administrative Report of an anticipated adjustment amount, it is unclear whether this may have impacted how the other submissions were reviewed and if this may have led to different negotiating strategies. It appears the value of $23.8 million was used as a benchmark to negotiate with purchaser of the Parkade and resulted in the final adjusted offer of $24 million.

Timeliness of declaration of surplus

While all transactions received appropriate SPCPD and Council approvals to declare the property as surplus as required, there were two instances where the land was declared surplus sometime after the EOI's were publicly issued. Preparing, issuing, and evaluating an expression of interest requires a significant amount of City resources. Property should therefore be declared as surplus prior to issuance of procurement documents. Where applicable, all sales transactions reviewed received appropriate approvals based on the delegation of authority.

Document retention and file consistency

The state of the files reviewed was inconsistent with some better organized and more complete than others. A standardized index and checklist should be considered to facilitate more consistent document retention and file organization. A checklist will help ensure procedures are not inadvertently missed.

Industrial Park Sales
For industrial park land, a selling price per acre is used and sold on a first come basis at the price. The price is determined by the Real Estate division and approved by the SPCPD as per a Council Order. The Administrative Reports where the valuations were presented to the SPCPD referenced a Council Order from 1990 requiring annual revaluations. However, this council order does not exist per inquiry with City Clerks. The Council Order actually in effect for industrial park land was from 1976 and required semi-annual revaluations. The frequency of the Real Estate's division's revaluations was not in compliance with either. The 1976 Council Order may no longer be relevant; it is recommended that the Real Estate division prepare a report for SPCPD's consideration to update the Council Order.

3.4.3 Observations on value for money achieved

The property and business located at 344 Gertrude was expropriated for City purposes. As discussed in Section 3.3, it is uncertain whether value for money was achieved. If a full taking of the property did not occur, the City may have avoided acquiring surplus land that was then marketed and sold for less than half of what it was acquired for.

The lack of appraisals or reliance on short, brief appraisals may not give full consideration to the value of a property.

- While the sale of South side of Wilkes to a government entity did not require a public tender process to be followed, without an appraisal and reliance on a rushed analysis, it is uncertain whether value for money was achieved.

- Several parcels of land at 780 Marion were appraised, but an all-inclusive appraisal of all the lands was not conducted. By not having complete information on the value of all of the lands, value for money many not have been achieved.

- No file documentation to support appraisals were conducted prior to entering the Transcona Joint Venture, to assess whether the lands contributed by each party were of comparable value. Part of the land contributed by the City was "serviceable" land which generally is regarded as having a higher value than land that is not serviceable. By not conducting a comprehensive appraisal to assess the value of lands contributed by each party, it is uncertain whether value for money was achieved. Refer to Appendix C, note 7 for management response.

There were several valuation reports prepared for the Winnipeg Square Parkade. One report determined value at a significantly higher amount than previously prepared reports. This information was not retained in the transaction file and was not disclosed in Administrative Reports. There were three submissions in response to EOI 145-2009 for the purchase of the Winnipeg Square Parkade. The highest offer was $21 million and the second highest was $20 million with the third offer being considerably lower. There was indication that the proponent with the second highest offer may have been prepared to increase their proposed purchase price given the proponent indicated to PPD that their

offer did not account for increases in air rights lease amounts in future years.

The evaluation summary of the offers received for the Winnipeg Square Parkade was provided to the evaluation team on May 28, 2009 from Corporate Finance. The evaluation summary adjusted the second highest proponent's offer based on assumptions made by the City. The footnote on the evaluation summary stated that the party has since indicated its proposal did not account for future adjustments to the air rights lease. With this anticipated adjustment, the offer was revised in the evaluation summary to $23.8 million, 10% higher than the highest offer of $21 million submitted. The evaluation summary identified advantages of the $21 million offer and that the proponent's offer which was adjusted to $23.8 million was conditional on reaching acceptable agreement with the holder of leased air rights permitting their contemplated development as outlined in their submission. The recommendation of the evaluation committee was to enter into negotiations with the proponent submitting the $21 million offer and to obtain a sale price of $23.8 million at minimum. There was no documentation in the real estate transaction file to provide further insights into the adjustment of the bid to $23.8 million. A calculation in support of the adjustment was subsequently provided to EY by Corporate Finance.

EOI 145-2009 provided the City the opportunity to contact short listed proponents and enter into negotiations with proponents having EOI submissions that are considered to have the most merit and benefits for the City. PPD was unable to confirm for EY whether the City entered into discussions with the proponent submitting the $20 million offer regarding their offer and/or amount of potential adjustment. Corporate Finance indicated they were not aware of further discussions with the proponent to determine a potential updated offer to account for the increase in air rights leases.

The Administrative Reports to Council and committees of Council did not reference the adjustment to the offer to an assumed $23.8 million, but did note the condition of the proponent's offer. Without confirming the adjustment directly with the proponent which may have resulted in a value higher or lower than $23.8 million and without disclosure in the Administrative Report of an anticipated adjustment amount, it is unclear whether this may have impacted how the other submissions were reviewed and if this may have led to different negotiating strategies. It appears the value of $23.8 was used as a benchmark to negotiate with the purchaser who initially offered $21 million and which, following negotiations, was revised to $24 million and accepted.

Sale of Polo Park stadium site

Several conditions were amended from the original Servicing Agreement – Schedule B - ACG Report issued on May 14, 2013 and the final issued on July 10, 2013, including:

- Removed - Payment of 10% cash dedication and lot fees (equating to $842,000)
- Revised:
  - Original ACG – "The Developer shall pay to the City, in cash, on demand 25% of all costs associated with the extension of St. Matthews Avenue roadway including land

acquisition and roadway improvements on St. Matthews Avenue from Empress Street to Century Street".

- Final ACG – "The Developer shall pay to the City, in cash, on demand 23.86% of all costs associated with the extension of St. Matthews Avenue roadway improvements from Empress Street to Century Street to a maximum of $3.8M. It is hereby acknowledged that the City will consider the approximately 1.7 acres provided by the developer as fair compensation for the developers 23.86% share of land acquisition costs associated with the roadway improvements on St. Matthews Avenue from Empress Street to Century Street."

Based on the file documentation, it was not clear on whether the City or the Developer would be responsible for the 10% cash dedication and lot fees, valued at $842,000. PPD has stated that as part of the negotiation process with the Developer, the City agreed to treat the cash dedication fee as a cost of sale. The Administrative Report presented to SPCPD stated that the City would be responsible for conducting all Survey Plans, however, there was no specific mention of the cash dedication fee. Subsequent internal correspondence by key individuals involved in the transaction within the City as well as correspondence between the City and the Developer implied that the Developer would be responsible for the cash dedication fee.

The off-site improvement initiatives surrounding the Polo Park stadium site are currently in progress. As such, PPD is uncertain of the total off-site improvement costs incurred by the City and the Developer to date. PPD provided an explanation on the Developer's share of the estimated land acquisition and construction costs, however the file documentation did not include an analysis of projected costs to substantiate the City's estimate of the Developer's share of off-site improvement costs. Given that nature and the dollar value of costs, the inconsistent file documentation surrounding the cash dedication fee, and the lack of file documentation supporting estimated off-site improvement costs, it is uncertain whether value for money was achieved. Refer to Appendix C, pages 151-155 for management response.

3.5 Land transfers

The declaration of surplus or excess land by the City, or an unsolicited offer from an external party expressing interest in a land transfer arrangement, may lead to a land transfer transaction of City property, building or facilities. EY reviewed the transactions numbered 1 to 3 and the City Auditor reviewed transaction 4, summarized in the table below.

Timeline			
Transaction	**Date transaction commenced**	**Date transaction finalized**	**Duration**
1 21 Iroquois Bay	Oct 20, 2006	7+ years – transaction is still in progress	
2 North side of Wilkes Ave for the Privately-owned Property located North of Lemay Ave - Villa Maria	Apr 11, 2007	Jan 12, 2012	4.8 years
3 Parker Lands	Aug 1, 2008	Dec 13, 2010[28]	2.4 years
4 Estella Street for Mission Street	May 2002	Jan 28, 2008	5.7 Years
Average transaction duration, including transaction that is in progress			5 years

3.5.1 Summary of testing procedures

Refer to Appendix D for detailed notes on the results of the testing procedures below:

		21 Iroquois Bay	North side of Wilkes Ave and North of Lemay Ave -Villa Maria	Parker Lands	Estella Street for Mission Street
Testing procedures					
1	Evidence of trigger retained in file	✔	✔	✘	✔
2	Land title search retained in file	✔	✔	✔	✔
3	Evidence of Circular letter issued to key City stakeholders	✔	✔	✘	✔
4	Response from Ward Councillor received (as part of declaring property as surplus)	✘	See Appendix D (note 4)	✘	See Appendix D (note 4)
5	SPCPD approval to declare property as surplus	✔	✔	✔	✔
6	Council approval to declare	✔	✔	✔	✔

[28] No file documentation of the final executed land transfer agreement. As such, EY was unable to verify the accuracy of this date.

		21 Iroquois Bay	North side of Wilkes Ave and North of Lemay Ave -Villa Maria	Parker Lands	Estella Street for Mission Street
Testing procedures					
	property as surplus				
7	Evidence of property valuation conducted and retained in the file	✔	✔	See Appendix D (note 7)	See Appendix D (note 7)
8	Evidence supporting how the property was advertised for sale / purchase was retained in the file	N/A	N/A	N/A	✔
9	Evidence of Legal Services review of the draft offer	✘	✘	✔	✔
10	Evaluation of offers	✔	✔	✘	✔
11	All offers received were retained in the file	✔	✔	✔	✔
12	Evidence supporting the rationale for the offer that was accepted was retained in the file	✔	✔	✘	✔
13	Response from Ward Councillor	✘	✔	✘	✘
14	Offer approval received based on delegation of authority	✔	✔	✔	✔
15	Notice from Legal Services to Geomatics (requesting preparation of land transfer) was retained in the file	N/A*	✔	✔	✔
16	Official land transfer retained in the file	N/A*	✔	✘	✔
17	Revised Statement of Adjustment retained in the file	N/A*	✔	✔	✔
18	Closure letter issued retained in the file	N/A*	✔	✘	✔
19	Commission paid to external broker	No	No	No	No

* Transaction still in progress

Summary of testing results

Overall EY observed support and evidence in the transaction file that the land transfer procedures tested occurred:

- With the exception of Parker Lands, there was evidence of specific circumstances that triggered the transaction for all land transfers reviewed. All land transfer transaction files contained evidence that a land title search was conducted prior the finalization of the land transfer agreement.
- Three of the four transaction files had support that circular letters notifying other City departments that the property is being identified as surplus.
- SPCPD and Council approval was obtained to declare the properties as surplus
- An appraisal report in accordance with CUSPAP was conducted for 21 Iroquois Bay and the North side of Wilkes Ave and North of Lemay Ave -Villa Maria transactions. Only a short brief memo for the Parker Lands transaction was prepared by a City appraiser.
- Evidence for the evaluation criteria used to assess offers and the rationale for accepting an offer was retained in two of the transactions reviewed.
- Appropriate approval based on delegated authority was noted for all land transfers reviewed.
- Where applicable, notice from Legal Services to Geomatics was retained in the file.
- Where applicable, the revised Statement of Adjustment was retained in the files.
- Where applicable, evidence of the official land transfer was noted in two of the transaction files.

The transaction files did not consistently include key documents or there was no evidence that all procedures were undertaken:

- Only two transaction files had evidence of Legal Services review of the draft offer. Legal Services should review draft offers prior to acceptance
- Response from Ward Councillor was noted in only one transaction file

Refer to Appendix D for detailed notes on the results of the above testing procedures.

Roles and responsibilities for land transfers

For the land transfer transactions tested, EY noted that the key individuals involved in completing the transaction appeared appropriate. File documentation supported that transaction execution was driven by PPD, without undue pressure or direction from other departments or other City stakeholders. However, there is no governance framework outlining the roles and responsibilities of individuals within the Real Estate division, as well as roles and responsibilities of other individuals regarding their involvement in real estate transactions (i.e. Legal Services, Materials Management).

3.5.2 Observation for improvement opportunities

Reporting to Council and committees of Council

Transit required lands adjacent to its facility at 421 Osborne and the owner of these lands was interested in a parcel located north of Parker Avenue. A land exchange of the properties was completed. City appraiser prepared a short memo on the value of the two parcels and determined the value to be similar.

The internally prepared two page memo, dated October 21, 2008, regarding value of the Parker Lands comprised of approximately 59 acres of raw unserviced land with drainage challenges and unknown costs to service, estimated the value between $986,000 - $1.16 million. The memo included the following comments:

- "The subject site was not inspected
- A highest and best use analysis was not completed
- Planning and servicing issues have not been investigated
- A full appraisal of the subject parcel was not completed due to time constraints"

A City appraiser also conducted an estimated value range for the 421 Osborne Street lands comprised of 8.95 acres adjacent to the City's transit garage which would be serviced from the existing Transit site. The initial estimated value range was $806,000 to $1.07 million. An internally prepared two page memo, dated August 1, 2008, regarding the value of the 421 Osborne property included the following comments:

- "There has not been a full appraisal in accordance with CUSPAP completed on the subject property as time restraints were not reasonable to permit a proper investigation and analysis
- The employer has requested that the appraiser (the employee) complete a rush value range; therefore the value provided may or may not be the same under a complete, time permitted appraisal assignment in accordance with CUSPAP
- The value was completed for internal Departmental purposes
- The subject site was not inspected
- The value provided assumes that the Planning and Land Use Division would support the future use of the subject site.
- The estimate of value is based on lands being clean of contamination
- A highest and best use analysis was not completed
- Servicing related costs such as land drainage requirements for the future expansion are not known. The assumption is that there are no land drainage implications to the site"

Further, the City appraiser reviewed the original memo dated August 1, 2008 and noted additional sales of rearage lands were reviewed and when considering that the 421 Osborne lands were to be valued as part of the Transit lands, the acreage rate is higher than originally estimated. The second memo, dated October 2, 2008, estimated the value of the 421 Osborne property between $1.1 and $1.6 million. The assumptions and notes of the August 1st and October 2nd memos were the same.

The Administrative Report presented to EPC and Council noted that each property had a market value of $1 million; however, the Administrative Report did not disclose the significance of the limitations of the brief analyses conducted to determine the estimated market value of both properties. Understanding the significance of these limitations may have led to a different outcome. Refer to Appendix D, note 7 for management response.

Appraisals
The reliance on short, brief internal analyses, such as the analyses conducted on the Parker Lands transaction, may not give full consideration to the value of the land, especially if not marketed through a public competitive sales process. Guidelines on when appraisals are required, the requirement for full narrative appraisals and circumstances that require additional external independent appraisals should be developed so consistent procedures are followed. Refer to Appendix D, note 7 for management response.

For the land transfer of Estella Street for Mission Street property, the appraisal used was completed in 2002. SPCPD approval occurred in 2006. There was a four year period between the appraisal and approval of the land transfer. There could have potentially been significant changes in value of either property during that time period. There was no documentation in the file to indicate why an update was not required (i.e. due to static market conditions or other factors that remain unchanged). Refer to Appendix D, note 7 for management response.

Advertisement of the property
Given there was no public tendering process for the Parker Land exchange, combined with a brief analyses conducted on both properties to determine market value (as opposed to a full narrative appraisal), the City may have limited the potential sales price.

There is no file documentation to support that the land transfer properties were advertised for sale in order to attract potential interested parties, as opposed to parties only interested in a land exchange transaction. It was noted in the North side of Wilkes Ave and North of Lemay Ave -Villa Maria transaction file that there were other interested parties, however, there was no file documentation to support whether any inquiries were made or negotiations took place between the City and the other parties that expressed interest in the City-owned land. By not advertising a property for sale to the entire market, the City may be limiting the potential sales price.

Consultations with Ward Councillor
The testing results show that Ward Councillor notification is lacking. As noted, the Ward Councillor can be a valuable resource to the Real Estate division given their familiarity with the region and potential insights of the property and future development needs. Management agrees that consultation with Ward Councillor is important and that it became practice of the Real Estate division to provide written correspondence with Ward Councillor on all transactions.

Tracking status of transactions and lengthy timeframe to complete transactions
The average timeframe to complete a land transfer transaction is 5 years, including one transaction that commenced in 2006 that is still ongoing. The absence of a formal tracking system which outlines the status of ongoing transactions may result in periods of stagnancy and lack of forward progress resulting in inefficient use of City resources.

Environmental Site Assessment
A phase 1 ESA of the Mission Street Property was provided to the City by the seller. Within the ESA, there were indications that a more in depth assessment could have been warranted, as the property is located across the street from a hydrocarbon storage site and a former oil refinery. The Real Estate division does not have a standard procedure for ESAs, as they are dealt with on a case by case basis. As a result potentially contaminated land could be acquired without potential environmental liabilities known.

In this transaction the City relied on an ESA provided by the seller. This adds additional risk, as the seller has control over the assessment. Guidelines do not exist on who engages the assessor to ensure the City obtains an independent report and who should review an ESA. An individual with the appropriate knowledge and experience should review the ESA to assess whether further investigation and a Phase II ESA may be warranted.

Document retention and file consistency
The state of the files reviewed was inconsistent with some better organized and more complete than others. A standardized index and checklist should be considered to facilitate more consistent document retention and file organization. A checklist will help ensure procedures are not inadvertently missed.

3.5.3 Observations on value for money achieved

The reliance on short, brief appraisals or analyses where the valuation has been completed within short time constraints and estimates based on limited investigation, may not give full consideration to the value of a property. The Parker Lands exchange was based on brief analysis of the estimated value of the properties involved and in a rushed manner. The highest and best use of either property was not determined nor was either property inspected. As such, it could be questioned whether the City achieved value for money on the transaction, as full consideration may not have been given to the value of the land and a competitive tendering process was not undertaken. Refer to Appendix D, note 3 for management response.

The value of the Parker Lands was raised approximately two years after the land exchange was completed. In August 2012, as part of another development project (unrelated to Parker Lands), the owner of the Parker Lands provided information to the City's Finance Department on the value of his assets to support financing arrangements

for the project. The value of the Parker lands in the submission suggested a substantially greater value of the Parker lands compared to the value of the land under which the land transfer was completed. PPD reviewed the appraisal that supported the subsequent information regarding the owner's value of the Parker lands, but a copy of the appraisal was not retained by the City.

Management indicated the subsequent information and appraisal of the Parker Lands assumed the site was fully serviced, rezoned to accommodate mixed use high density residential development. The opinion of the City's appraiser was that the value established was optimistic at best and issues with both land and wastewater need to be accounted for.

Without having completed full narrative appraisals prior the completion of the land transfer, it is uncertain whether the value of the land may have been different than the brief memos concluded. It appears the basis of the appraisal two years subsequent to the land transfer was very different than the estimate of value outlined in the brief memos prepared by the City appraiser. A direct comparison cannot therefore be made. Refer to appendix D, note 3, for management response.

The North side of Wilkes Ave / North of Lemay Ave was listed for sale by the purchaser shortly after the land transfer transaction closed with the City. A City appraisal valued the Wilkes Ave property at $0.3 million in March 2010, however within 3 years of the City transferring the land, the Wilkes Avenue property sold for $1.7 million. By not engaging in a public tendering process, given the significant difference in value within an approximate three year timeframe, it is uncertain whether value for money was achieved.

3.6 Lease transactions (City as the Lessee)

Lease transactions are generally initiated when a City user department notifies Municipal Accommodations that a lease space is required. EY reviewed 3 significant lease (City as the lessee) transactions summarized in the table below.

Timeline				
Transaction		Date transaction commenced	Date transaction finalized	Duration
1	395 Main Street	Mar 17, 2011	May 31, 2012	1.2 years
2	1750 Dugald Road	Jul 13, 2007	May 22, 2008	0.9 years
3	457 Main Street	Apr 18, 2011	Oct 4, 2013	2.5 years
			Average transaction duration	**1.5 years**

3.6.1 Summary of testing procedures

Refer to Appendix E for detailed notes on the results of the testing procedures below:

		395 Main	1750 Dugald	457 Main
Testing procedures				
1	Background of transaction trigger	✔	✔	✘
2	Appropriate approval exists to commence leasing process	✔	✔	✔
3	Comprehensive market analysis was conducted to determine market rates	See Appendix E (Note 3)	See Appendix E (Note 3)	See Appendix E (Note 3)
4	Comprehensive procurement process to identify potential properties	✘	✔	✘
5	Evaluation criteria used to assess options and alternatives	See Appendix E (note 5)	✔	See Appendix E (note 5)
6	All option details were retained in the file	✔	✘	✔
7	Evidence supporting the rationale for the option that was selected was retained in the file	✔	✔	✔
8	Negotiations to discuss lease rate, tenant inducement/ improvements, etc. are retained in the file	✔	✔	✘
9	Approval of the proposed lease of the recommended site (based on delegated authority)	✔	✔	✔

		395 Main	1750 Dugald	457 Main
10	Comments / approval received from Legal Services	✔	✔	✘
11	Appropriate signing authority is obtained	✔	✔	✔
12	Lease agreement is consistent with approved terms	See Appendix E (note 12)	See Appendix E (note 12)	See Appendix E (note 12)
13	Commission paid to external broker	No	No	No

Summary of testing results

Overall, for the lease transactions where the City is the lessee, several of the procedures were followed and there was documentation in the transaction files to provide support. For all transactions reviewed:

- Appropriate approval was obtained to commence the leasing process
- Evidence supporting the rationale for the option that was selected was retained in the file
- Approval, based on delegated authority, was received
- Appropriate signing authority was obtained

However, EY noted there was no file documentation to support a comprehensive procurement process was performed to identify potential properties and ensure competitive rates were achieved for two of the leases (395 and 457). Only a comparison to lease rates for other heritage buildings was undertaken. Also, there was no correspondence relating to the transaction trigger as well as the negotiation process of items such as lease rates and tenant inducements for the 457 Main Street lease. There was no evidence in the file supporting that a narrative appraisal or comprehensive external building condition assessment report was obtained prior to recommending the 395 and 457 leases. Based on discussions with Municipal Accommodations, a non-invasive building condition assessment was performed for 457 (no building assessment report prepared for 395) to determine the estimated capital maintenance costs, however this assessment did not include a complete building envelope study and under the 457 leases the City was going to be required to pay 50% of the costs for the building envelope.

Certain information relating to the leases which may have been relevant was not included in the Administrative Report to Council.

Refer to Appendix E for detailed notes on the results of the above testing procedures.

Roles and Responsibilities for Lease transactions (City as the Lessee)
For the lease transactions tested, EY noted that the key individuals involved in completing the transactions appeared appropriate. File documentation supported that transaction execution was driven by PPD, without undue pressure or direction from other departments or other City stakeholders. EY notes that there is no governance framework outlining the roles and responsibilities of individuals within the Real Estate division, as well as roles and responsibilities of other individuals regarding their involvement in real estate transactions (i.e. Legal Services, Materials Management).

3.6.2 Observation for improvement opportunities

Reporting to Council and Committees of Council

- On December 14, 2011, renegotiations of the 395 Main Street ("395") and 457 Main Street ("457") leases were recommended in the same Administrative Report and analyzed together. The leases were with different landlords and not all aspects of the leases were prominently highlighted in the Administrative Report to Council. Based on documentation in the transaction files, neither of the proposed leases was drafted prior to the recommendation to Council. The financial analysis supporting the recommendation was based on assumed lease terms. Certain final terms do not appear to have been considered in the financial analysis (i.e. management fees under 457 lease are based on a gross rent figure and also include 15% on additional services, which is not noted in the Administrative Report). Given the magnitude of the renegotiated leases and the expiry date of the existing leases, time would have permitted for the draft terms to be agreed to and used as the basis for the financial analysis included in the Administrative Report recommending the transactions. Due to the differences noted above between the financial analysis presented and the final lease terms, bundling of the analysis of the two separate leases and differences in the lease terms between the two properties, clear, separate, complete reporting to Council was warranted. Refer to Appendix E, note 5 for management response.

    - Both leases were renegotiated in advance of the expiry of the existing lease (395 was to expire December, 2016 – in 5 years and 457 was to expire January 2015 – in just under 3 years). This resulted in estimated cost savings on base rent for 395 Main Street of approximately $1.5 million over the five years to the original expiry date. However, base rent on the existing lease for 457 was lower for the remaining lease period, and by renegotiating early, the City incurred approximately $1.2 million of additional base rent costs. The savings on 395 were highlighted in the "Implications of Recommendation" section of Administrative Report however the additional cost on 457 were not highlighted in that section (although this information was included as "additional comments" in the Financial Impact Statement in the Report). It was not specifically noted in the Administrative Report, nor was it noted in the transaction file, why it was in the City's best interest to enter into a higher lease rate on 457 so far in advance of the lease expiration date. Refer to Appendix E, note 1 for management response.

- Both leases contained a 5% management fee for property management services. However, for the 395 lease this was based on a base rent amount (at $14.95 /sq. foot), and in the 457 lease this was based on a gross rent figure; resulting in a higher property management fee. This was not disclosed in the Administrative Report, and it appears as though the financial analysis assumes a management fee based on base rent for both leases.
- The 457 lease contains a clause that there is an additional 15% management fee for any additional services provided, but there is no description of what type of work would be subject to that charge and a typical rate for tenant work would be 5% to 10% for those type of services. There is no comparable clause for the 395 Main Street lease. As negotiation of rates or assessment of property management rates for additional services was not considered in the analysis, the transaction files or the Administrative Report to Council.
- It is unclear from the information provided in the Administrative Report or retained in the real estate transaction files why both leases were presented and analyzed on a combined basis in the Administrative Report to Council at the same time as they were separate negotiations with separate landlords on leases that had different expiry dates well into the future. Base rent was the same, but operating costs and other aspects of the leases were quite different from one another.
- The financial analysis included in the Administrative Report to Council was based on incomplete information as the lease terms had not been finalized. Given the magnitude of these leases and the expiry date of the existing leases, time would have permitted for the draft terms to be agreed to and used as the basis for the financial analysis included in the Administrative Report recommending the transactions. Other concerns with the financial analysis:
    - The fair value calculation under the buy option on both properties assumed cap rate applied to a cash flow stream of lease income consistent with the 25 year lease being entered into by the City. This would not be appropriate in a lease versus buy analysis where the City was the purchaser of the building. The fair value should be based on assumptions of what the purchase price would be if the property was acquired by the City; consideration would be given to future rents collected over the 25 years if the City did not renew its lease (which likely would include more vacancy, cost of a lease-up period and a multi-tenant scenario which typically requires more costs).
    - For the lease versus buy analysis on the 2 properties, the buy option calculation included substantial maintenance costs and a financial risk cost component which were not explained in detail, and it excluded a residual value benefit of the owned property after 25 years however the operating vs. capital analysis earlier in the report suggests there is value beyond the 25 year lease. Details of these significant calculations were not included in the Real Estate transaction files.

Appraisals

There was no file documentation evidencing that a full narrative appraisal or specific building condition assessment was performed to support the financial analysis in the Administrative Report prior to approval of the 395 and 457 leases. Based on discussions with Municipal Accommodations, a non-invasive building condition assessment was performed for 457 (no building assessment report prepared for 395).Given the magnitude of the leases, the age of the buildings, the significant estimates relating to future capital costs, and the requirement of the City to share in capital and maintenance costs based on the lease terms, a comprehensive external building condition assessment report and / or a narrative appraisal should have been considered. The City was responsible for 50% of the building envelope costs under the lease; however a complete building envelope analysis had not been performed at the time the leases were being recommended, which was disclosed in the Administrative Report.

Lack of flexibility in lease transactions

The leases at 395 and 457 are for a period of 25 years each and do not have cancellation clauses or options to purchase. Priorities of the City could change over time. Longer term leases do occur in practice in the public sector; however they would typically contain shorter than 25 year terms, with renewal options. For example, a lease might contain a10 year base term with renewal options of 5 years each. This achieves the flexibility required if priorities of the City do change. Terms providing the City with flexibility should be incorporated into leases by including options to renew or cancellation clauses, where possible.

Comprehensive procurement process

Prior to entering into two lease agreements (457 and 395), a comprehensive procurement process was not undertaken to identify other potential suitable properties and determine the best lease rate for the City. The total committed lease payment on these two properties was for a combined amount in excess of $50 million over the term of the leases with no price escalation on the base lease rate. The 457 lease agreement had a requirement for the City to share equally in capital expenditures for the building which was primarily comprised of building envelope and lighting upgrade costs for a total estimated capital expenditure of $4.3 million over 10 years.

Given the large amount of square footage (over 120,000 square feet), a committed revenue stream ($50 million over the 25 years), and a low risk tenant (the City), requesting expression of interest from other possible landlords to assess fair value rent options (including options which may not have required a capital expenditure amount) should have been considered. Given the large amount of square footage to be rented, the City had substantial negotiation power, which may not have been leveraged. Reliance on comparison to lease rates for other heritage buildings alone for a lease of this size is insufficient.

Current City policies do not require a competitive process or the involvement of Materials Management in procuring leases. A requirement that a comprehensive procurement process be undertaken for leases of above a certain magnitude would help to ensure value for money is achieved.

Support for transaction initiation
The lease renegotiation of 457 was started in early 2011 and recommended for renegotiation in December 2011 in an Administrative Report to Council. This lease did not expire until January, 2015 and it is unclear from documentation in the Real Estate file why the renegotiation was undertaken so early; given that the renegotiated lease rate was higher than the lease rate that would have been paid under the remaining lease terms to January, 2015. Refer to Appendix E, Note 1 for management response.

Analysis of lease rates

- When entering into a lease agreement, an analysis should be performed of various comparable properties in the area to determine market rates. A model should be used that considers all occupancy costs which includes base rent, management fees, operating costs, capital improvement obligations and taxes, net of rent free periods or tenant improvement allowances. Comparisons of like properties should include all aspects of the total occupancy costs of each property when doing a market analysis. For the 457 and 395 leases, base rent was the same, but operating costs and other aspects of the leases were quite different from one another. Presentation to Council of a "gross" rent figure would be more appropriate when the City is presenting the costs of a lease to Council and analyzing the lease against market rent.

3.6.3 Observations on value for money achieved

As noted above, prior to entering into the two lease agreements for 457 and 395, a comprehensive procurement process was not undertaken to identify other potential suitable properties. Given the large amount of square footage (over 120,000 square feet), a committed revenue stream ($50 million over the 25 years), and a low risk tenant (the City), requesting expression of interest from other possible landlords to assess fair value rent options (including options which may not have required a capital expenditure amount) should have been undertaken. As a comprehensive procurement process was not undertaken, it is uncertain whether value for money was achieved when entering into these two leases.

- Base rent on the existing lease for 457 was lower for the remaining lease period, and by renegotiating early, the City incurred approximately $1.2 million of additional base rent costs over the next five years. The 457 lease negotiation could have been deferred until the expiry of the lease to achieve value for money savings of $1.2 million.

- Both leases contained a 5% management fee for property management services. However, for the 395 lease this was based on a base rent amount (at $14.95 /sq. foot), and in the 457 lease this was based on a gross rent figure; resulting in a higher

property management fee for the 457 lease. Taxes and operating costs are estimated to be an additional $7 per square foot (will rise over the 25 years with inflation). At $7, it is estimated that an additional $24,000 in property management fees is being paid annually (or approximately $600,000 over the 25 year term), in comparison to the rate under the 395 lease.

Based on the nature of the leases for 395 and 457 (a triple net carefree lease with a majority/single tenant), property management fees would typically be more comparable to single tenant commercial leases (which range from 2% to 4%).

In comparing the property management fee percentage to industry norms, both 395 and 457 leases are higher. In comparing the basis of the property management fee of 395 to 457, the 457 lease management fees will be higher. As such, these elements may have negatively impacted value for money being achieved.

- The 457 lease contains a clause that there is an additional 15% management fee for any additional services provided, but there is no description of what type of work would be subject to that charge. Based on EY's experience, a typical rate for tenant work would be 5% to 10% for those types of services. As negotiation of rates or assessment of property management rates for additional services was not considered in the analysis, the transaction files or the Administrative Report to Council, this may have negatively impacted value for money being achieved.

- As noted in the appraisal section, given the magnitude of the leases, the age of the buildings, the significant estimates relating to future capital costs, and the requirement of the City to share in capital and maintenance costs based on the lease terms, a comprehensive external building condition assessment report and / or a narrative appraisal should have been considered. As such, it is uncertain whether value for money was achieved.

3.7 Lease transactions (City as the Lessor)

The process for leasing City property is initiated when the City receives notice that an interested party would like to utilize the property. EY reviewed five transactions where the City is the lessor.

Timeline				
Transaction		Date transaction commenced	Date transaction finalized	Duration
1	95 Arrowwood Drive	Jul 31, 2007	Sep 1, 2007	1 month
2	266 Graham	Mar 22, 2011	Apr 27, 2012	1.1 years
3	Bishop Grandin – SE corner of St Vital Center	Feb 10, 2010	Jan 11, 2012	1.9 years
4	Charleswood Place Baseball Facility	Apr 24, 2007	Oct 26, 2009	2.5 years
5	100 Sinclair	Sep 10, 2007	6+ years – transaction is still in progress	
			Average transaction duration	2.3 years

3.7.1 Summary of testing procedures

Refer to Appendix F for detailed notes on the results of the testing procedures below:

		95 Arrowwood Drive	266 Graham	Bishop Grandin – SE corner of St Vital Center	Charleswood Place Baseball Facility	100 Sinclair
Testing Procedures						
1	Land title search retained in file	✔	✔	✘	✘	✘
2	An appraisal and/ or market analysis conducted	N/A	F-2*	✔	✘	✘
3	Misc. Plan and tenant original request circulated to City departments	✘	✔	✔	✔	✔
4	Response from Ward Councillor received	✘	✘	✘	✘	✘
5	Administrative fee	F-5*	✔	✔	✔	Transaction is not complete.

		95 Arrowwood Drive	266 Graham	Bishop Grandin – SE corner of St Vital Center	Charleswood Place Baseball Facility	100 Sinclair
						An agreement has not been finalized
6	Rent based on appraised or market value	F-6*		✔	F-6*	
7	Cancellation clause	✔	✘	✔	✔	
8	Terms and conditions approved by tenant	✔	✔	✔	✔	
9	Evidence of Real Estate division review of agreement	✔	✔	✔	✔	
10	Evidence of approval based on delegated authority	✘	✔	✔	✔	
11	Appropriate signing authority is obtained (including Legal Services)	F-11*	✔	✔	✔	
12	Commission paid to external broker	No	F-12*	No	No	

* References such as F-5 should be read as See Appendix F, Note 5.

Summary of testing results

Overall, most of the lease transactions where the City is the lessor, procedures were followed and there was documentation in the transaction files to provide support.

- The Misc. Plan and tenant original request was circulated to relevant City departments for comments
- Where applicable, an administrative fee was included in the lease terms and conditions
- Terms and conditions were negotiated and approved by the tenant and Real Estate division prior to involving Legal Services and obtaining final approval in order to streamline the process
- Evidence of approval, based on delegated authority was retained the file
- Appropriate signing authority was obtained

However, there were several instances where a particular step may have been missed or was carried out in a different sequence.

- Evidence of a land title searches were not observed in three transactions

- An appraisal or market analysis was not conducted to support the basis for the rent price
- Evidence of consultation with the Ward Councillor was not noted

Refer to Appendix F for detailed notes on the results of the above testing procedures.

Roles and responsibilities for lease transactions (City as Lessor)
For the lease transactions tested, EY noted that the key individuals involved in completing the transaction appeared appropriate. File documentation supported that transaction execution was driven by PPD, without undue pressure or direction from other departments or other City stakeholders. EY notes that there is no governance framework outlining the roles and responsibilities of individuals within the Real Estate division, as well as roles and responsibilities of other individuals regarding their involvement in real estate transactions (i.e. Legal Services, Materials Management).

3.7.2 Observations for improvement opportunities

Consultations with Ward Councillor
The testing results show that Ward Councillor notification is lacking as none of the transaction files reviewed included evidence to support Ward Councillor consultation. As noted, the Ward Councillor can be a valuable resource to the Real Estate division given their familiarity with the region and potential insights of the property and future development needs. Management agrees that consultation with Ward Councillor is important and that it became practice of the Real Estate division to provide written correspondence with Ward Councillor on all transactions.

Appraisal or market analysis
There was no file documentation to support that an appraisal or market analysis was conducted for the Charleswood Place Baseball Facility (annual lease rate of $1) and 100 Sinclair (an annual lease rate of $13,267, which the City considers a credit in kind under the recreational programming under the Winnipeg Partnership Agreement). In accordance with Policy on the Sale / Lease of City lands to Non-Profit Organizations, the City may lease property at a rate below market rate if the tenant meets certain eligibility criteria. All subsidies or grants and corresponding revenues under this policy need to be clearly identified and reported back to Council on a yearly basis through SPCPD. A market analysis of such properties would inform decision makers of the contributions made by the City relative to the fair value of the properties.

Cancellation clause
The City does not have a policy or guideline relating to cancellation clauses in lease agreements. By negotiating this clause in all City lease agreements, the City will have access to the property should the property be needed for other purposes.

Lengthy time period required to execute a lease agreement
EY observed for the Charleswood Place Baseball Facility lease transaction the City was leasing space for which there was no formal lease agreement in place for 2.5 years.

Without a formal agreement, the rights and responsibilities of the City may be at risk. A formal agreement should be obtained prior to the City leasing any space.

EY observed for 100 Sinclair lease transaction, although Council approval to enter into a lease agreement was obtained in 2010, the lease agreement has not been executed. Without a lease agreement, the rights and responsibilities of the City may be at risk.

3.7.3 Observations on value for money achieved

An appraisal or market rate analysis can provide the City evidence of the market value of the property and should be information to support the rental rate charged to tenants. The appraisal conducted to determine market rates for the 266 Graham transaction was not retained in the file. When an appraisal or market analysis is not conducted, it is uncertain whether value for money was achieved.

3.8 Other observations

In the course of the review, EY noted additional observations relating to City processes and practices which were not specific to a transaction type. Recommendations addressing the observations below are included in Section 4 of this report.

Use of personal email accounts
EY observed several instances where confidential and sensitive information relating to various real estate transactions was sent to the personal email accounts of City employees.

Real estate transaction files taken offsite
EY was informed that a number of the transaction files were temporarily kept at the residence of a City employee for an interim period of time.

4. Recommendations

Below are recommendations to address the findings and observations of this review.

1	**Observation** - No real estate transaction management framework

There is no real estate transaction management framework and a lack of standardized processes. EY's testing results showed certain procedures were not performed, there was inconsistent application of informal procedures, and key documentation was not retained in transaction files. A common theme identified in the findings was a requirement to enhance governance as well as establish a formal Real Estate Transaction Management Framework and confirm appropriate roles and responsibilities.

Recommendation 1 – Develop a real estate transaction management framework

A framework (or similar) would serve a number of purposes and meet the needs of various internal City and external stakeholders. The framework would:

- Provide guidance and direction to personnel involved in real estate transactions
- Demonstrate to City Council, senior management and the general public that appropriate policies, directives, guidelines, standards, instructions, etc. are approved and implemented

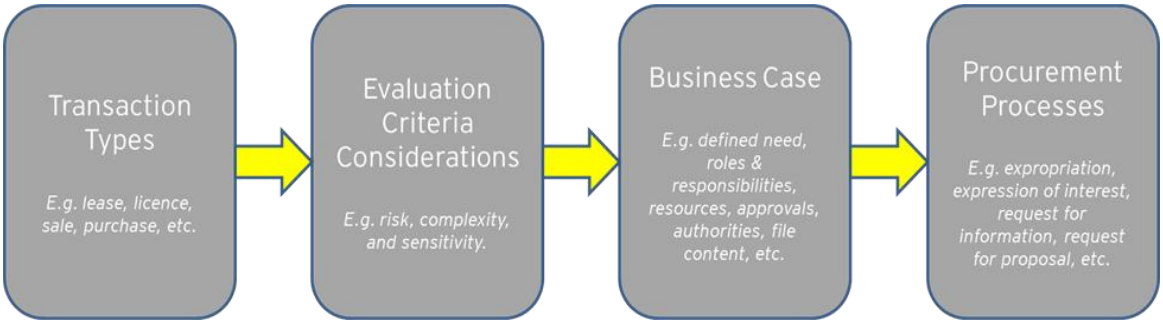
Based on EY's review of other Canadian municipalities, the following are elements for consideration in establishing a public sector real estate transaction framework:

1. Governance structure:
City policy and programing requirements will determine required real estate transactions to respond to programs (or market opportunities, if value is demonstrated). The transactions should be managed and delivered through an accountability and responsibility structure with consideration of the type of transaction, transaction value and complexity.

The roles and responsibilities of individuals within the Real Estate division should be clearly articulated and documented. This would also include roles and responsibilities of internal City stakeholders such the CAO and COO who may be involved in real estate transactions. Overall governance and oversight should be provided by senior management, Council committees, etc. Clearly defined roles should be established (i.e. oversight by senior City officials and Councillors is deemed appropriate, but sole negotiations by senior City officials and Councillors is not appropriate).

2. Policy, directives, and guidelines:
A suitable policy suite including policies, directives, and guidelines should be documented and used to ensure operational consistency, and to demonstrate transparency and prudence in the decision making process. Included in this component would be template forms, applications, process maps, delegated authorities, etc. and other associated standards and instructions.

3. Transactions:
Documented transaction types (defined terms), evaluation criteria consideration, demonstrated need through business case, and defined procurement processes are expected to be in place to support the decision to undertake a transaction and the execution of a transaction. The following provides a visual overview:



4. Performance management:
The real estate program, in which real estate transactions occur, should have a performance management regime. Included would be such items as condition, utilization, functionality, and financial performance.

5. Reporting, monitoring, and audit:
Periodic reporting and monitoring and random audits of transactions and their performance should be instituted via "directive" (as noted above in item 2).

Included in this manual or framework would be: template forms, applications, process maps, delegated authorities, etc. It should contemplate incorporating the recommendations noted in this review.

The Real Estate division is in the process of developing a formal checklist for transactions for implementation. This checklist would be one component of the manual or framework. Based on the testing results and findings, elements of the checklist should include:

- Obtaining a copy of title search for the file
- Documentation retained in the file to support that property inspections are conducted prior to acquisitions being completed
- Retention of a final copy of signed agreements in the real estate files

	▶ Requesting Geomatics to finalize transactions ▶ Ensuring policies related to appraisals are adhered to ▶ Outlining the process for documenting the business case to support engaging external real estate advisors ▶ Processes for expropriation specific matters such as having check-points and milestone dates (formal process for tracking and reporting status) to keep the expropriation process moving forward ▶ Evidence of evaluation of various offers considered in the specific transactions ▶ Involvement of Legal Services at the appropriate stages of transactions
	Management response
	EY observed that there is no framework for real estate transactions and a lack of standardized processes. There are approximately 205 procedural and policies as adopted by Council, it's Committees and other authorities pertaining to the responsibilities of the Planning, Property and Development Department in the Acquisition, Appraisal, Sale, Lease, Survey and Management of property are kept within the offices of the Real Estate Division. In addition, approximately 50 Delegations of Authority pertaining to Real Estate transactions exist within the offices of the Real Estate Division. The Department agrees with the recommendation and will endeavor to work together with Legal Services to ensure Policies and Procedures are kept current and relevant.
	EY comment
	EY acknowledges that there are numerous procedures and policies that exist pertaining to real estate transactions. However, there is no real estate transaction management framework that incorporates all the elements as outlined in the recommendation above.

2	**Observation** – Opportunity for more complete reporting to support decision making
	EY observed instances where information in the transaction file, developed from analyses, or market intelligence was not documented in Administrative Reports or did not appear to be shared in the decision making process with Council or committees of Council. Historical offers for property, appraisal information, and stakeholder concerns should be documented and shared in the decision making

	process. Council and committees of Council are responsible for making decisions on significant real estate transactions and need to be provided with complete information.
	Recommendation 2 – Establish PPD directive for more complete reporting and provide checklist to assist with disclosures
	a) Establish a PPD directive to outline alternatives, evaluations, and supporting analyses for decision making that will facilitate more complete reporting. The checklist noted in Recommendation 1, outlining key elements, will assist in improved disclosures. b) A review should continue to be undertaken of the submission prior to it being put forward to assess that the information is complete and accurate. This may involve a review of the transaction file to verify that key information is included in the Administrative Report. If input from other departments (i.e. Finance, Legal Services, etc.) is included, a review by that department of the final submission should be undertaken to ensure accuracy of information submitted. c) When it may not be advisable to share information publicly to respect privacy and the City's bargaining position, consideration should be given to establishing protocol for discussing such matters in a Council seminar or through other means, with the results of the discussions documented in summary notes or the transaction file.
	Management response
	Management agrees with the recommendation and will incorporate as part of the development management framework process. The Public Service currently adheres to an Administrative Directive which limits the size of reports being presented to Council.

3	**Observation** – Lack of appraisal guidelines
	The City has no guidelines on when appraisals are required, on the requirement for full narrative appraisals, and circumstances that require additional independent external appraisals. EY observed reliance on short, brief internal analyses completed

by City appraisers to support decision making on significant transactions or instances where appraisals were not completed or completed but not kept on file. Short, sometimes rushed brief appraisals and analyses may not give full consideration to the value of the property, especially if not marketed through a public competitive process.

There were instances where decisions made based on appraisals conducted almost one year prior to SPCPD approval. This may not consider market conditions or other factors that may have changed.

EY observed appraisals for the same property that were based on different assumptions or for different elements. This can make comparisons difficult and may not provide complete information upon which to make decisions.

Explanations were not documented in the files where there were significant differences between appraised value and selling price.

Recommendation 3 - Establish appraisal guidelines

a) Establish guidelines regarding the requirement for appraisals

Clear, consistent guidelines for appraisals are essential to ensure value for money is achieved and to ensure consistent procedures are followed. This should include when:

- Appraisals are required
- Full narrative appraisals are required
- Short narratives are acceptable
- External independent appraisals are required

Guidelines could consider establishing thresholds when second independent external appraisals are necessary. For example, the City of Ottawa requires one appraisal for transactions less than $750,000 and two appraisals are required if the transaction value is greater. The City of Mississauga requires an appraisal to be conducted for any acquisition greater than $100,000.

b) Timing of appraisals and updates

Industry practice suggests that appraisal updates should be conducted approximately 6 months after the effective date of the original report or as market conditions change in order to account for any changes in the status of the subject properties, market conditions or other factors affecting value.

The Appraisal Institute of Canada also suggests that if there is a large time period after the initial appraisal, such as a year or more, a new appraisal, not an update,

	should be prepared. Depending on the time period, conducting either a new appraisal or an updated appraisal, or documenting why it is not required, provides further assurance that changing market conditions or other factors are considered in decision making. The City should establish guidelines on: ► The time period after which an update should be done to a previously prepared appraisal ► The time period after which a new appraisal is warranted c) Consistency between assumptions Guidelines should be established so there is consistency between assumptions used for appraisals, where more than one is completed. This will increase transparency and help in decision making. Clear parameters and instructions for the basis of appraisals will help ensure consistency where more than one appraisal is required. d) Explanation for significant differences Guidelines should be established so that explanations are documented in the files where there are significant differences between appraised value and selling price. While EY agrees with management that it may not always be known precisely the reasons for all differences, monitoring differences and documenting known factors can help the City understand how its appraisals compare to selling prices and whether its appraisals tend to be higher or lower than market which may prompt adjustments to how appraisals are conducted. e) Documentation Appraisals and all documentation of assessment of value should be retained in the transaction files as support for recommendations brought forward to Council.
	Management response
	Management agrees with the recommendation and will establish appraisal guidelines

4	**Observation** – Openness, fairness and transparency of the procurement process
	In two transactions reviewed, sale of Polo Park stadium site and Parcel 4, information was provided to a proponent in advance of being publicly released. There was no file evidence to support that any other interested parties were provided the same information in advance of the public release.

Information related to procurement processes should be made available to all parties at the same time to ensure actual and perceived fairness in all tendering processes whether it is run through an RFQ, RFP, EOI or EOIQ process.

Also given the complexity and factors involved in negotiating the 395 Main Street and 457 Main Street leases, a competitive process involving Material Management would have supported more rigour around the renegotiation of those leases.

Openness of procurement in the public sector is mandated by common law, Agreement on Internal Trade, and the upcoming European Trade Agreement.

Greater involvement of Materials Management can help facilitate an open, fair and transparent procurement process.

Recommendation 4 – Engage Materials Management more consistently to ensure openness, fairness and transparency of procurement processes.

Guidelines should be established outlining when to engage the Materials Management. Consideration can be given to size, complexity, and other characteristics of a transaction (leases, acquisitions, etc.) or retention of broker or advisory services.

By utilizing the services of Materials Management more consistently, the Real Estate division would benefit from additional support and expertise and potentially improve the oversight and accountability of real estate procurement processes.

- Ensuring information is shared fairly (at the same time and in the same level of detail) to all proponents in procurement processes
- Allocation of work to prequalified proponents (managing that process for PPD to ensure fair allocation)
- Assistance with RFP/EOI/RFQ documents – determining which is most appropriate process to undertake, considerations of what base services to include / what would need to go to a separate new procurement process – or what would require a further competition between prequalified proponents

Management response

The Public Service maintains its current practice and involvement of engaging Materials Management in Real Property transactions where a RFP, RFQ, EOI, etc. is warranted.

5	**Observation** – No guidelines were in place outlining when external real estate brokers are to be engaged by the City as well as distinguishing between routine and unique real estate transactions
	EY observed under RFQ 472-2008 and 357-2010 that no documentation was found to explain the rationale for the following: ► Why an external advisor was required for particular transactions ► Which prequalified proponent was considered for each of the transactions undertaken where an external broker was engaged ► Using the RFQ as a basis to engage firms for real estate management services when these services were not included within the scope of the RFQ ► Paying for services or expenses that were not explicitly identified under the RFQ
	Recommendation 5 – Establish guidelines on retention of external real estate brokers.
	Guidelines should be established on when external real estate brokers are to be engaged as well as defining explicitly what services will be provided as part of their engagement. The following should be considered: ► Requirement to document the basis for why external resources are required ► If additional services are required that were not contemplated in an original procurement document (due to transaction size, complexity of the transaction, or service not contemplated by an RFQ, RFP, EOI, EOIQ), a separate procurement process should be initiated for those transactions / services ► Specific documentation, identification and inclusion in final contracts if certain items are contemplated to be paid for even if a transaction did not close
	Management response
	Management agrees. Use of the Broker Program was introduced in 2008 as means of managing workloads due to significant staffing reductions (a total of six senior positions and employees). Winnipeg market was and has been very robust so seeking private sector assistance was deemed appropriate. The Planning, Property and Development Department no longer utilizes the Broker Program per direction provided by SPC P+D. Should this practice be reinstated, then Council approved guidelines will be introduced/adopted.

6	**Observation** – The roles of real estate brokers were not clearly identified and documented resulting in potential perceived conflict of interest
	The role of the real estate broker advising the City on the sale of the Winnipeg Square Parkade was not clear as it was not documented and there was no written agreement in place. The broker also represented the buyer's interest in this transaction. There could be increased risk of a conflict of interest when the same external advisor has roles representing the City's interest as the seller and then acting as a broker for the purchaser and given that a confidentiality agreement was not signed.
	Recommendation 6 – Establish guidelines to document real estate brokers' roles
	Guidelines should be established and consideration given to the following: ► Any work being completed by an external broker should be under specific contracts which have been subject to legal review ► If any perceived conflict could arise given involvement by the broker for other parties beyond the City in a given transaction, approval of that involvement by the City would be required and a Confidentiality Agreement put in place. Policy on the appropriate level of authority to approve this circumstance should be established
	Management response
	Management agrees. (see also management response to recommendation #5)

7	**Observation** – Commission rate guidelines on real estate transactions
	The responses to RFQ 472-2008 set out commissions at varying transaction values, but none greater than $5 million. EY did not observe documentation that PPD undertook to negotiate with brokers for transactions reviewed that were well in excess of the highest threshold proposed. In addition, the commission rate paid on 266 Graham transaction was higher than if commission was calculated using the rate as submitted by the proponent. Commission rates are typically set according to threshold amounts with larger value transactions being paid smaller percentage commissions.

Recommendation 7 – Establish guidelines when negotiating and establishing commission rates with external real estate brokers

a) Establish guidelines on commission rates to be paid on real estate transactions, ensuring they are reflective of industry standards, and comparable to the conventions of other municipalities for transactions of a similar nature. The level of transparency and rationale should increase relative to the magnitude of the transaction.

b) Commission rates for large transactions should be negotiated rather than applying the commission rate that was set for a much lower transaction value. This may result in lower fees. As an example, thresholds and commission rates in other Canadian market are as follows:

Association / Jurisdiction	Up to $10 million	$10 - $20 million	$20 million +
Build Toronto	1.75%	1.25%	0.75% - 0.8%
Greater Toronto Area	3.0% - 4.0%	2.0%	1.0%

Management response

Management agrees.

8	**Observation –** Retention of documentation regarding consultation and communication with internal City stakeholders

As a public entity, the City is held accountable to its stakeholders and the citizens at large. It bears a responsibility to remain transparent in its activities; this is especially the case with its real estate transactions, given the size of the transactions. Evidence of communication was not always retained in the transaction files and circular letters and Ward Councillor consultations was lacking.

Circular Letters issued to City stakeholders
A circular letter provides stakeholders important information related to a potential transaction and offers a forum for internal stakeholders to raise any concerns about the transaction. A formal Circular Letter also helps ensure that consistent information is provided to all stakeholders. EY observed transactions where there was no file documentation found that circular letters were retained in the files.

Correspondence with Ward Councillor regarding status of property as surplus
In 2010, it became practice of the Real Estate division to receive written correspondence from the Ward Councillor. In many instances, EY observed transactions where there was no file documentation found that consultation with the

	Ward Councillor occurred.
	Recommendation 8 – Retain documentation of internal communication in the transaction file
	a) The Real Estate division is in the process of developing a formal checklist for transactions, including verification of Councillor consultation. EY agrees with the Real Estate division's initiative to implement a formal checklist to ensure that consultation with the Ward Councillor occurs and results are retained in the file. b) Copy of Circular letters should be retained in the transaction file. If a Circular Letter was not issued, a valid justification for not doing so should be included in the file. When a circular letter is not retained in the file, there is no means to confirm that the appropriate parties have been notified.
	Management response
	Management agrees.

9	**Observation –** Certain transactions where contracts and agreements were entered into precluded involvement of Legal Services and terms of agreements varied
	Contracts and agreements entered into under RFQ 472-2008, specifically the Exclusive Buyer Agency Agreement and the Real Estate Management Services Agreement for 266 Graham Avenue were not reviewed by Legal Services prior to signing these agreements. These agreements did not incorporate the City's standard terms and conditions for provision of services as outlined in the RFQ. In many cases, standard templates for agreements were used. However, EY also noted that for certain transactions, the City was using agreements drafted by counter-parties for real estate transactions. In the public sector it is common to base agreements on standard templates (which have been approved by the Municipality) for real estate transactions to protect against contract risk and ensure adherence to the City's standard terms and conditions.
	Recommendation 9 – All significant agreements and contracts should be reviewed by Legal Services. Standard templates for all Real Estate transactions should be developed.
	All significant agreements and contracts should be reviewed by Legal Services. Consideration should always be given to adherence to standard City terms and conditions for the provision of services. Standard City templates which do not

	already exist, such as leasing transactions where the City is the lessee, real estate consultant agreements, should be developed and approved by Legal Services. Significant changes to the standard terms should be approved by Legal Services. This will limit contact risk to the City.
	Management response
	Currently standard templates do exist for real estate transactions and any changes to documents required in a particular transaction are to be reviewed by Legal Services. With respect to the Exclusive Buyer Agency Agreement for 266 Graham and the Property Management contract these were not reviewed by Legal Services; this is not standard practice.

10	**Observation** – Lack of consistency of file organization and document retention
	The state of files reviewed was variable with some better organized and more complete than others. There was inconsistency between documentation retained in the transaction files. Documents related to a transaction were at times found outside of the associated file or the department. EY understands that the scope and quantity of real estate transactions make managing documentation challenging. This is especially the case for transactions that span long periods of time, and as managers overseeing the transactions turn over. Transactions involve a number of departments within the City, which supports the need for a consistent approach towards documentation processes across all departments.
	Recommendation 10 – Develop standardized index and checklist for transaction files and standardized approach for document retention
	a) A standardized index and checklist should be developed to facilitate more consistent document retention and file organization. A checklist will help ensure procedures are not inadvertently missed. The City should consider a centralized option for document sharing across all related departments. All relevant documents to a real estate transaction should be accessible by PPD and their file documentation should contain support for all critical documents. A system of this nature could consist of a central database of documents, with access granted to certain aspects of the system as necessary for given departments (for example all final legal documents from real estate transactions would be accessible by Legal Services and PPD).

	Management response
	Agreed, the Public Service will develop and implement a standardized checklist for document retention.

11	**Observation** – Lack of comprehensive procurement process for significant lease or acquisition transactions
	Prior to entering into two lease agreements (457 Main and 395 Main), a comprehensive procurement process was not undertaken to identify other potential suitable properties and the best lease rate for the City based on a market analysis of other available properties. The total committed lease payment on these two properties was for a combined amount in excess of $50 million over the term of the leases with no price escalation on the base lease rate. The 457 Main Street lease agreement had a requirement for the City to share equally in capital expenditures for the building which was primarily comprised of building envelope costs for a total estimated capital expenditure of $4.3 million over 10 years. Given the large amount of square footage (over 120,000 sq. feet), a committed revenue stream ($50 million over the 25 years), and a low risk tenant (the City), requesting expression of interest for other possible landlords to assess fair value rent options should have been considered. Similarly for the new police headquarters facility, EY did not observe file documentation evidencing that properties other than 266 Graham were considered as potential locations, and the City did not advertise the need for such property (i.e. EOI process) in order to identify the options available to the City. Given the magnitude and complexity of this capital project, a comprehensive procurement process should have been considered.
	Recommendation 11 – Guidelines should be established for a comprehensive procurement process for significant lease or acquisition transactions over a certain size
	Guidelines should be established for undertaking a comprehensive procurement process (including an open market process) for leases \ or acquisitions of a significant dollar size or complexity in order to determine the best options and rates for the City.
	Management response
	Management agrees and will further review and enhance our procurement process.

12	**Observation** –Flexibility to be written in to leases
	The City entered into leases with a long life, both as the lessee and the lessor. As a lessee, the City has agreements outstanding for periods of at least 25 years (457 Main Street and 395 Main Street); as a lessor, it has undertaken leases for periods of at least 10 years. Priorities of the City could change over time, so incorporating renewal periods or cancellation clauses into the agreement should be undertaken where possible. For long-term leases, proper assessment and consideration of lease versus purchase options should be assessed (specific consideration should be given to leases of significant duration – such as over 20 years) – given the large financial commitment to the lease. EY understands that in the municipal environment, longer term leases are often entered into, but if they are over 10 years, any years beyond that should be at the option of the City. For example a 20 year term would be covered with a 10 year first term and two 5 year options; thus providing an ability to reconsider all civic needs after the original 10 year period of the original lease.
	Recommendation 12 – Incorporate flexibility into lease terms
	Where possible leases should include shorter base terms with options to renew, or cancellation clauses should be included to protect the City's interest and provide flexibility in lease agreements.
	Management response
	Agreed, the Public Service will continue to incorporate flexibility into lease terms and is currently updating the standard lease template.

13	**Observation –** Lack of market analysis for establishing lease rates
	A market analysis is not consistently performed when establishing lease rates. A model should be used that considers all occupancy costs which includes base rent, management fees, operating costs, capital improvement obligations and taxes, net of rent free periods or tenant improvement allowances. Comparisons of like properties should include all aspects of the total occupancy costs of each property when doing a market analysis.

	Recommendation 13 – Perform market analysis for establishing lease rates
	When entering into a lease agreement, an analysis should be performed of various comparable properties in the area to determine market rates. External data should be obtained to corroborate estimates and validate the lease is consistent with market rates (incorporating all aspects of occupancy costs). The Public Sector Comparator tool or other comprehensive model should be used in order to determine whether a proposed arrangement is cost effective for the City.
	Management response
	Market analysis is continually preformed and applied to all transactions. See Management response to Recommendation 11.

14	**Observation** – Tracking mechanisms are not used to monitor progress of transactions
	There were transactions that took a long time to conclude. This was especially the case with expropriations, where two of the four transactions took 21 and 32 years to complete. It is understandable that certain transactions, such as expropriations, may experience lengthy period of time to complete. However, a tracking process is currently not in place which escalates reminders or follow-up when a transaction is stalled for a substantial portion of time.
	Recommendation 14 – Develop tracking mechanism
	Develop a formal tracking mechanism to flag delays and highlight where additional actions or decisions may be required. Establishing protocols and milestones that trigger follow up when certain transactions have reached various stages will assist in reducing delays in the process. This will identify when follow-up action is required. Consideration of levels of management that should be notified at what stages should be included as part of this monitoring. Management has indicated that a directive is being established whereby expropriations more than two years in process will be reported to the CFO and CAO to determine whether to conclude a settlement or to proceed to LVAC.

	Management response
	Management agrees, a new directive relating to expropriation files will be developed and implemented immediately.

15	**Observation** – Personal email accounts and storage of real estate transaction files offsite
	Use of personal email accounts EY observed several instances where confidential and sensitive information relating to various real estate transactions was sent to the personal email accounts of City employees. **Real estate transaction files taken offsite** EY was informed that a number of the transaction files were temporarily kept at the residence of a City employee for an interim period of time.
	Recommendation 15 – Restrict the use of personal email accounts for City business and establish policies for removal of City files offsite
	To reduce the risks associated with sending sensitive data through unsecure emails, consideration should be given to restricting City employees to send or copy sensitive data through unapproved methods such as personal email accounts. Consideration should be given to updating policies relating to use of City email, such as Administrative Directive No. IT-002 (Management of Electronic Mail), to include policies around use of personal emails for City business. All City information, particularly confidential and sensitive information contained the in real estate transaction files should be held in a secure, City premise to reduce the risk of sensitive information being misplaced or stolen. A department policy should be implemented to restrict files from going offsite (or if it's deemed necessary to do so, have appropriate sign-off by senior resource to authorize).
	Management response
	Management agrees and will review City's Administrative Standards.

16	**Observation** - Industrial park policy not adhered to and no longer relevant
	For industrial park land, a selling price per acre is established for each industrial park. The selling price per acre is determined by the Real Estate division and approved by SPCPD. The land is then sold on a first come basis at the set price per acre. When the price for the land was submitted to SPCPD for approval, it made reference to a Council Order from July 16, 1990 that stated "SPCPD must approve, on an annual basis, the selling price of the City's industrial park lands." The July 16th, 1990 Council Order does not exist. City Clerks determined that the Council Order relating to industrial park land pricing is from a Council Meeting on May 5th, 1976 and states the following: *That the selling price and "conditions of sale" of the City's industrial lands be reviewed twice a year – on January 1st and July 1st – and that any new prices approved as a result of said review become effective for all negotiations commenced…* Between 2007 and 2012, the Real Estate division submitted a price update twice to SPCPD, on October 2, 2007 and September 2, 2008. This frequency does not satisfy the 1976 Council Order. More frequent valuation of industrial park land is required to ensure that it is accurate and results in maximum value to the City. However, the Council Order requirement of semi-annual valuations may be excessive. A new policy should be created that balances frequency of updates and administrative burden. The policy should also clarify how transactions that are ongoing during price changes are dealt with.
	Recommendation 16 – Update Industrial park policy
	The Real Estate division should prepare a report for SPCPD's consideration to update the policy for the valuation and sale of industrial park land. This policy should specifically address the frequency of valuations and how transactions are dealt with that occur during a change in value.
	Management response
	Management agrees and will review and confirm all relevant policies related the sale/disposal of industrial park lands and present to Council for approval.

17	**Observation** - Environmental site assessment
	A phase 1 ESA of the Mission Street Property was provided to the City by the seller. Within the ESA, there were indications that a more in depth assessment could have been warranted, as it is located across the street from a current hydrocarbon storage site and a former oil refinery. The Real Estate division does not have a standard procedure for ESAs. As there is no procedure for ESAs there are potential concerns: <u>Requirement of ESAs</u> There is no standard on when ESAs are required for the acquisition of property. As a result potentially contaminated land could be acquired without potential environmental liabilities known. A set of criteria should be in place to determine when an ESA is required. <u>Engagement of environmental assessor</u> The City used an ESA provided by the seller. This adds additional risk as the seller has control over the assessment. There should be specific procedures on who engages the assessor to ensure the City obtains an independent report. <u>Qualified review</u> There are currently no rules on who reviews an ESA. An individual with the appropriate knowledge and experience should review the ESA. Based on established criteria, that individual should conclude whether further investigation and a Phase II ESA is warranted.
	Recommendation 17 – Develop an ESA procedure
	An ESA procedure should be developed that determines when an ESA is required for an acquisition, the rules for the engagement of the assessor, the qualifications necessary to review an ESA and how to determine if a more in depth ESA is required.
	Management response
	Management agrees and an ESA procedure will be developed together with a "brownfield" strategy for Council's consideration.

Appendix A – Acquisitions

Detailed notes on the results of the testing procedures

		222 Pembina Hwy	266 Graham Ave	CPR Marconi
Testing procedures				
1	Evidence of trigger retained in file	✔	✔	✔
2	Project approval obtained and funding secured	✔	✔	✔
3	Process undertaken to determine which properties best met the City's needs	✔	Note 3	✔
4	Timely land title search performed and retained in file	Note 4	✔	Note 4
5	Appraisal conducted and retained	X	X	✔
6	Property inspection conducted	X	✔	✔
7	Purchase proposal drafted and agreed to	✔	✔	X
8	Council approval or appropriate delegation of authority occurred	✔	✔	✔
9	Final agreement is completed or reviewed by Legal Services	✔	✔	✔
10	Request made to Geomatics to finalize transaction	✔	Note 10	✔
11	Final agreement retained in the file	✔	✔	X
12	Reporting to Council and committees of Council	Note 12		
13	Commissions paid to external broker	No broker engaged	Yes – Note 13	No broker engaged

Notes:

1. **Procedure:** Clearly defined transaction trigger was documented in file

   Summary of testing results: File documentation should include information relating to the trigger or event which initiated the process by which a property was acquired. In the absence of this information, it may be difficult to support why it was in the City's best interest to acquire a piece of property. In all of the transactions that were reviewed, documentation was included in the file to determine the events which led the City to pursue acquiring the property.

2. **Procedure:** Project approval obtained and funding secured

   Summary of testing results: Project approval and secured funding from Council for a project should be obtained by the Department prior to entering into an agreement to acquire a property, or the agreement should state that it is subject to Council approval. EY observed that all of the transactions reviewed had documentation indicating project funding was obtained.

3. **Procedure:** Process undertaken to determine which property best suits the City's needs

   S**ummary of testing results:** EY observed documentation in the file supporting that a process was undertaken to determine which property best suited the City's needs for the 222 Pembina and CPR Marconi properties.

   For the 266 Graham acquisition, options were analyzed and included but were not limited to renovating the existing police headquarters, building a new facility, and acquiring and converting the building at 266 Graham. Advisors were engaged to assist with a due diligence and feasibility study, to assess whether the 266 Graham building could accommodate the requirements of the new police headquarters (this included a building evaluation, identification of requirements for the new police headquarters and assessment of whether the building could accommodate these requirements, and a "class D" budget for converting the facility as only block schematic drawings were prepared). The WPS was involved throughout this process. While an analysis was performed to assess whether 266 Graham could accommodate the police headquarters, EY did not observe file documentation evidencing that other properties other than 266 Graham were considered as potential locations for the new police headquarters, and the City did not advertise the need for such property (i.e. EOI process) in order to identify the options available to the City.

4. **Procedure:** Timely land title search performed and retained in file

   Summary of testing results: In one of the three transactions reviewed, documentation was retained in the file evidencing that a title search had been performed. There was no land title search in the CPR Marconi file evidencing that a land title search was performed. A land title search was included in the 222 Pembina file, however this search was performed subsequent to the signing of the purchase agreement and approval by Council.

   If a land title search is not performed prior to acquiring a piece of property, the City exposes itself to the risk of acquiring a property with legal liabilities or restrictions prohibiting the City from using it for the intended purpose, among other things.

Management response: *As one of the first steps in the negotiation process staff are instructed to research title, this is often done through Geomatics Branch. As part of the formal checklist for transactions staff will be asked to provide title, or consultation with Geomatics regarding title.*

EY comment: All key information and supporting documentation, such as land title searches, should be retained in the file.

5. **Procedure:** Appraisal conducted and retained

   Summary of testing results: EY observed that only the CPR Marconi file contained a full narrative appraisal. The 222 Pembina file contained an appraisal dated approximately six months after Council approved the acquisition price and subsequent to title transferring to the City. The 266 Graham file did not include an appraisal relating to the acquisition of the property for $29.25 million. Conducting a thorough and comprehensive appraisal is essential to ensuring that value for money is achieved when the City is purchasing property, and to support that a fair and transparent decision making process has occurred.

   Management response:
   222 Pembina: City agreed on the external accredited appraiser hired by vendor, and had the report submitted by the external party reviewed by the City Appraiser. We agree a memo could be placed on file to reflect this.

   266 Graham: The City did not have an appraisal completed prior to the acquisition of 266 Graham. The vendor determined the value of the building at $30 million and the City was provided a direct opportunity to acquire the property at this price. If the City had not moved forward at that price the vendor would have sold the property on the open market. The report submitted to, and approved by Council, for the acquisition of 266 Graham outlined the City's due diligence in acquiring the property.

   EY comment (222 Pembina): Management was not able to provide a copy of the appraisal. EY maintains that a copy of the appraisal should be retained in the file.

   EY comment (266 Graham): When acquiring a property of this magnitude an appraisal should be performed to assess whether the proposed purchase price is reasonable.

6. **Procedure:** Property inspection conducted

   Summary of testing results: Two of the transaction files contained documentation evidencing that an inspection of the property was performed prior to executing the purchase agreement. One transaction (222 Pembina) did not have file documentation to support that a property inspection was performed prior to acquiring the property.

An inspection would identify the existence of any significant issues with the property that could impact its value, such as unidentified site contamination issues, as well as identify the impact of the property on other City departments (e.g. Public Works, Water & Waste, etc.)

Management response: *Inspections were completed by the negotiator prior to acquisition. We agree documentation should be on file.*

EY comment: All key information and supporting documentation, such as property inspection, should be retained in the file.

7. **Procedure:** Purchase proposal drafted and agreed to

   Summary of testing results: Documentation in two of the three files evidenced that an offer to purchase had been prepared and agreed to. The CPR Marconi file did not contain a copy of an agreed upon purchase proposal nor did it contain a final purchase agreement.

   Management response: *Final executed copy is available through Legal Services.*

   EY comment: All key information and supporting documentation, such as purchase proposals, should be retained in the file. EY has confirmed that the final copy is with Legal Services.

8. **Procedure:** Council approval or appropriate delegation of authority occurred

   Summary of testing results: All transactions reviewed were approved in accordance with City policy based on its dollar value, either by SPCPD, Council, or delegated authority.

9. **Procedure:** Final agreement is completed or reviewed by Legal Services

   Summary of testing results: As the terms of purchase agreements can vary significantly, Legal Services should be involved, and should perform a detailed review of the purchase agreement prior to its execution. For the 3 acquisitions tested, there was evidence in the file of Legal Services review of the purchase agreements. However, there was no evidence of Legal Services review of the Exclusive Buyer Agent contract and the Real Estate Management agreement awarded relating to the 266 Graham Ave.

10. **Procedure:** Request made to Geomatics to finalize transaction

    Summary of testing results: There was documentation evidencing that Geomatics was requested to finalize the transaction (e.g. prepare land transfer documentation). The 266 Graham transaction file did not contain evidence that Geomatics was requested to finalize the transaction.

    Management response: *This was an acquisition so the City would have been provided completed transfer information prepared by the vendors lawyer. Geomatics would have provided title review prior to transfer, then legal would have provided Geomatics the completed transfer for signature. Real Estates role in transfer for acquisitions is usually limited to showing geomatics the appraisal, for purposes of filling out the transfer line for fair market value.*

    EY comment: Two of the three transactions tested contained notice to Geomatics.

11. **Procedure:** Final agreement retained in the file

    Summary of testing results: The final executed agreement was retained in the file for two of the three transactions. The executed agreement was not retained in the file for the CPR Marconi transaction.

    Management response: *Final executed documents are always put on file by Real Estate when Real Estate is provided a copy. When not provided a copy, final executed copy is available through Legal Services.*

    EY comment: The final version of the executed agreement should be retained in the file to support the negotiated transaction value and terms and conditions. EY confirmed with Legal Services the existence of the final agreement.

12. **Procedure:** Reporting to Council and committees of Council

    Summary of testing results: The Administrative Report to Council recommending the purchase of the CPR Marconi property referenced an internal appraisal, but did not reference the lower price the property owner had recently paid for the property.

    Management response: *The price paid by the third party was known by all relevant decision makers. Placing this information in the report could violate the third party's privacy. The City's appraisal valued the property between $1.6 and $2.0 million, and management indicated that [the vendor] was asking in the vicinity of $4.0 million. In the summer of 2005, the City was made aware that a third party purchased the property (including +/- 20 acres in the RM of East St. Paul) for $1.35 million. The new owner of the property agreed to sell the City the portion of the Marconi Line within the City limits and PPD was instructed to proceed with negotiations to acquire the lands.*

The net purchase price paid by the City was $1.35 million for 50.4 acres.

This was approved by Council September 27, 2006.

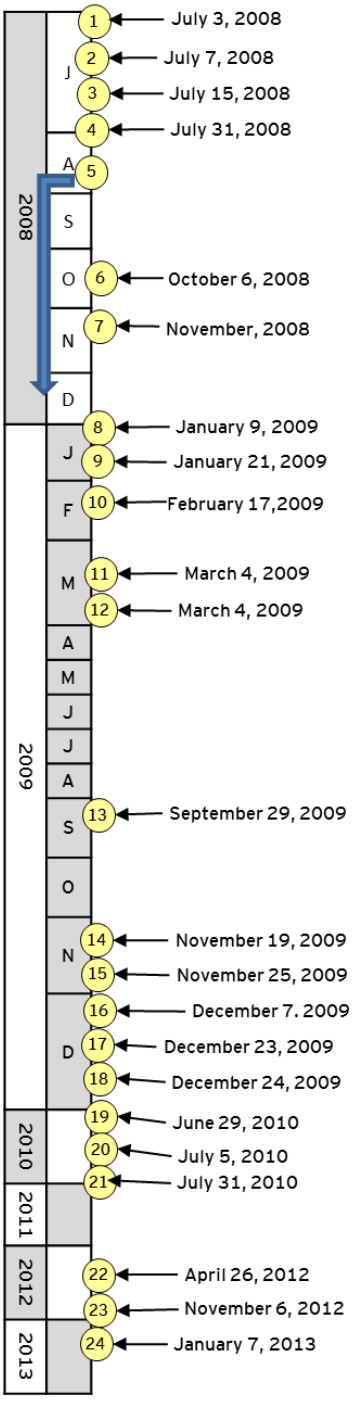
EY comment: Where important information is excluded from an Administrative Report, a note to file should be made documenting the reasons, and to identify who the key decision makers were, and relevant facts were brought to their attention.

13. **Procedure:** Commissions paid to external broker

    Summary of testing results: In two of the transactions reviewed, no broker was engaged to assist with the transaction. A broker was engaged for the acquisition of 266 Graham, and was subsequently awarded a Real Estate Management contract for the 266 Graham tower. Refer to Section 3.1 for findings and observations relating to these contracts.

Expanded Detailed Review for Selected Transactions

As noted in Sections 1 and 2 of the report, EY undertook an expanded detailed review on several transactions. Findings regarding 266 Graham are included in Section 3.1. A timeline of the related RFQ process and 266 Graham Acquisition Summary is included below.



RFQ process | 266 Graham acquisition process

1. 266 Graham (Canada Post building) is publicly listed for sale
2. RFQ for the Provision of Commercial Real Estate Services is publicly released
3. Email from former CAO to a Proponent (the party that was ultimately awarded the Exclusive Buyer Agency Agreement under this RFQ referred to from now on as "Proponent") stating "Call me about Canada Post"
4. RFQ 472-2008 closes. Five of nine proponents were pre-qualified
5. Former CAO and several other City officials lobby Canada Post (CPC) to deal exclusively with City from August through December 2008
6. Letter from seller to former CAO stating that the seller does not typically deal exclusively with one buyer however exception can be granted from the Board if there is a compelling case and key is obtaining market value
7. A proposal document prepared by the City and sent to the seller with an unsolicited offer to purchase the Canada Post building Avenue at fair market value
8. Email from former CAO to Acting CAO referring to a meeting to be held at the home of the Proponent that day to prepare a proposal for the seller
9. Exclusive Buyer Agency agreement signed by the current Acting CAO and the Proponent. The effective date of the agreement was January 1, 2009, and the end date is December 31, 2009
10. Email from Manager of Real Estate to former CAO and current Acting CAO stating that they should consider using the services of our other four pre-qualified brokers because the real estate community is starting to talk
11. City issued a letter (signed by former CAO) agreeing to the proposed sale agreement issued by the seller
12. Email from current Manager of Real Estate to current Acting CAO and former Manager of Real Estate stating that the Manager of Real Estate has received several calls from brokers expressing concern over the decision making process in choosing one of the five prequalified proponents
13. Email from former CAO to current Acting CAO stating "Just treat the $100,000 as an advance on the commissions. In the case that we don't close this would still be a reasonable amount for all the work done so far by the Proponent. Just make sure it is understood that this is an advance on the total commissions payable to the Proponent"
14. Email from former CAO to CFO, City Solicitor (cc. Proponent) stating the Proponent will be managing the property
15. Council approves the purchase of the Canada Post building at a price of $29.25 million
16. Commission of $804,375 paid to the Proponent
17. An individual in Property Management at the City expresses concerns in an email about the management of this property being outsourced to an external party. He feels the property could have been managed internally
18. Email from former CAO to current Acting CAO, cc the Proponent, stating that he is not going to let the City employee meddle in the deal.
19. Real Estate Management contract for 266 Graham is agreed to by the Proponent and the City. Effective date is December 1, 2009.
20. Bid opportunity RFQ 357-2010 closes
21. RFQ 472-2008 expires
22. Legal Services requests Real Estate Management contract and identifies risks to the City
23. SPCPD directs the Winnipeg Public Service to provide 90 days' notice to the Property Manager that the City will be terminating its property management contract
24. 90 days' notice for cancellation of property management contract is provided to Property Manager

Appendix B –Expropriations

Detailed notes on the results of the testing procedures

		470 & 471 Warsaw	344 Gertrude	109 Pioneer[29]	Vista/Van Hull[30]
Testing procedures					
1	Evidence of trigger retained in file	✔	✔		
2	Project approval obtained and funding secured	✔	✔		
3	Real Estate Division attempts to acquire property prior to expropriation	✔	✔		
4	Council passes By-Law and makes declaration of expropriation	✔	✔		
5	Notice of intention to expropriate is released	✔	✔		
6	If formal objection filed by owner, require inquiry officer report to be obtained	N/A	N/A		
7	Expropriation confirmed by Council	✔	✔		
8	Appraisal is conducted and retained	✘	✔		
9	Offer of compensation is prepared based on appraised value	See Note 9	✔		
10	Offers of compensation are approved based on delegated authority	✔	✔		
11	Offers of compensation are served within 120 days of registration of declaration of expropriation	✔	✔		
12	Negotiated settlement approved by Council or delegated authority	✔	✔	✔	✔

[29] This expropriation was initiated in 1975 and as such many of steps in the Real Estate process occurred outside of the period of scope. We have tested compliance with those procedures that should have occurred during the period of scope as part of the expropriation settlement.

[30] This expropriation was initiated in 1975 and as such many of steps in the Real Estate process occurred outside of the period of scope. We have tested compliance with those procedures that should have occurred during the period of scope as part of the expropriation settlement.

Notes:

1. **Procedure:** Evidence of trigger retained in file

   Summary of testing results: File documentation should include information relating to the trigger or event which initiated the process by which a property was expropriated. For the transactions that were reviewed, documentation was included in the file to determine the events which led the Real Estate division to pursue expropriation.

2. **Procedure:** Project approval obtained and funding secured

   Summary of testing results: Direction from Council, either through project or funding approval should be obtained by the Real Estate division prior to the expropriation process beginning. In two expropriations reviewed, Council approved Phase 1 of the Bus Rapid Transit Corridor on October 22, 2008, where 344 Gertrude and 470/471 Warsaw were identified as properties required.

3. **Procedure:** Real Estate division attempts to acquire property prior to expropriation

   S**ummary of testing results:** Documentation in the files provided evidence the Real Estate division attempted to negotiate the acquisition of the property prior to expropriating.

4. **Procedure:** Council passes By-Law and makes declaration of expropriation

   Summary of testing results: An expropriation should only be pursued if Council has passed a By-Law making a declaration of expropriation related to the property. EY observed in both cases that the file contained evidence that a declaration of expropriation was made by Council.

5. **Procedure:** Notice of intention to expropriate is released

   Summary of testing results: The City is required to serve the owner with a notice of intention to expropriate their property once Council has made a declaration of expropriation. EY observed evidence in the two files tested that the property owners were served notices of the City's intention to expropriate.

6. **Procedure:** If formal objection filed by owner, require inquiry officer report to be obtained

   Summary of testing results: The owner may serve a Notice of Objection at which point an inquiry officer should be appointed to assess whether the expropriation is

fair and reasonably necessary. No formal notice of objection was served.

7. **Procedure:** Expropriation confirmed by Council

   Summary of testing results: For both expropriations tested, Council confirmed the expropriation within 120 days of the declaration of expropriation.

8. **Procedure:** Appraisal is conducted and retained

   Summary of testing results: The determination of due compensation is based on the fair market value as at date the declaration of expropriation is signed. Performing an appraisal is a critical step in the process. An appraisal was noted in the 470 Warsaw file, however, an appraisal was not noted in the file for the 471 Warsaw property, supporting the settlement amount.

   Management response: *Expropriation identified the full taking of 470 Warsaw Avenue and a partial taking (land only) of 471 Warsaw Avenue. External appraisals were conducted, and are on file with the Real Estate Division. It was later determined for business reasons the owner required use of both buildings. The solicitor acting on behalf of the owner provided the City with a draft appraisal of 471 Warsaw Avenue prepared by [an external appraiser] @ $675,000, which formed part of the overall settlement of the full takings of both properties. Inadvertently, a copy of the [external appraiser] draft appraisal was not retained on file. An electronic copy of the final [external appraiser] appraisal report ($675,000) now resides with the Real Estate Division.*

   EY comment: Subsequent to EY's initial review the electronic copy of the appraisal was provided to EY. EY maintains that the City should retain a copy of the appraisal supporting a settlement amount with the transaction file.

   An appraisal was retained in the transaction file for 344 Gertrude. The City intend to expropriate approximately 18% of the property, however it was determined that the business would be inoperable after the taking and as such the entire property was acquired. The City did not engage an external advisor to validate that the business would indeed be inoperable. Prior to the Administrative Report being presented to Council, a City engineer expressed concern over the full taking as he observed the business operating through construction, which was previously determined to not be feasible. The concerns expressed by the City engineer were not included in the Administrative Report. A business at 344 Gertrude operates as a going concern less the portion of land retained by the City.

   Management response: *The opening anticipated at the time was reviewed by PPD and Public Works, and internal analysis resulted in the opinion that after the widening cars would not have sufficient turn radius to leave the wash as is. An external professional*

was not consulted as to the extent of impact of partial taking on business ability to continue as is. Internal decision was made that the full taking would allow for City to sell remainder of property after, and would result in a lower cost to the City then partial taking which would no doubt result in substantial legal costs and LVAC costs. The business was unable to continue to operate as it was prior to the partial taking. Gas bar was removed, business lost contracts such as a limousine company due to the lack of room for large vehicles exiting car wash, decrease in room for rental business, etc. The City was aware that a business would be able to continue to operate, however the business could not continue to operate as it had been. Property owner had valid claim for the inability of the business to continue to function as it was. The City was purchasing one thing and selling another. If not settled would have ended up costing City significant in LVAC / court. Buying and selling was seen as best option.

EY comment: EY Maintains that an external advisor should have been engaged to validate the property owner's claim that the business would be rendered inoperable, given the additional cost to the City of acquiring the entire property.

9. **Procedure:** Offer of compensation is prepared based on appraised value

   Summary of testing results: As noted in item 8 above, an appraisal was lacking for 471 Warsaw.

10. **Procedure:** Offers of compensation are approved based on delegated authority

    Summary of testing results: Offers of compensation must be approved by appropriate authority. Both transactions were approved by the appropriate delegation of authority.

11. **Procedure:** Offers of compensation are served within 120 days of registration of declaration of expropriation

    Summary of testing results: In accordance with the Expropriation Act, the owner must be served the offers of compensation within 120 days of registration of declaration of expropriation. For the two transactions tested offers of compensation were served within 120 days of registration of declaration of expropriation.

12. **Procedure:** Negotiated settlement approved by Council or delegated authority

    Summary of testing results: The negotiated settlement amount was approved by delegated authority for each of the four transactions tested.

    For two of the four transactions tested, significant interest costs were incurred as a result of an expropriation process which spanned a significant period of time (109 Pioneer – 21 years, Vista/Van Hull – 32 years).

Management response: *The City is in the process of implementing a checklist for property transactions. In the case of the Van Hull property the owner's lawyers did not provide necessary information to begin negotiating settlement until 2003, this was beyond the City's control. The expropriation process can take a long amount of time due to the steps involved, this matter was dealt with as soon as possible once the necessary information was provided.*

EY comment: EY agrees a checklist may help facilitate the expropriation process and decrease the time periods involved. A mechanism should be implemented to monitor the status of outstanding expropriations so as to avoid significant interest costs.

Appendix C – Sales transactions

Detailed notes on the results of the testing procedures

		344 Gertrude Avenue	100 Murray Park Road	780 Marion Street	Parcel 4	North/South Transportation Corridor South of Dugald Rd	South side of Wilkes Ave (Stovel Street & Paget Street)	Sterling Lyon Parkway & Paget Street	St Mary's & Avalon	Transcona Joint Venture	Winnipeg Parkade	St. Boniface Industrial Park (2008)	St. Boniface Industrial Park (2010)	Pine Ridge Gravel
Testing Procedures														
1	Evidence of trigger retained in file	N1*		✔	N1	✔	Unsolicited offer	✔	✔	unsolicited offer	✔	✔	✔	✔
2	Land title search retained in file	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
3	Evidence of Circular letter issued to key City stakeholders	N3	N/A	✔	✘	✔	✔	✔	✔	✘	✘	N/A	N/A	N/A
4	Response from Ward Councillor received (as part of declaring property surplus)	✘	N/A	N4	✘	✘	N/A	✘	✔	✔	✘	N/A	N/A	N/A
5	SPCPD approval to declare property as surplus	✔	N/A	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
6	Council approval to declare property surplus	✔	N/A	✔	N6	✔	✔	✔	✔	✔	N6	✔	✔	✔
7	Evidence of property valuation conducted and retained in the file	N7					✘	N7		✘	N7			
8	Evidence supporting how the property was	✔	N/A	✔	N/A	✔	N8	✔	✔	N8	✔	✔	✔	✔

		344 Gertrude Avenue	100 Murray Park Road	780 Marion Street	Parcel 4	North/South Transportation Corridor South of Dugald Rd	South side of Wilkes Ave (Stovel Street & Paget Street)	Sterling Lyon Parkway & Paget Street	St Mary's & Avalon	Transcona Joint Venture	Winnipeg Parkade	St. Boniface Industrial Park (2008)	St. Boniface Industrial Park (2010)	Pine Ridge Gravel
	advertised for sale / purchase was retained in the file													
9	Evidence of Legal Services review of the draft offer	✔	N/A	✔	✔	N9	✔	✔	✔	✔	✔	✔	✔	✔
10	Evaluation of offers	N10	N/A	N10		✔	N/A	✘	✔	N10		✔	✔	✔
11	All offers received were retained in the file	✔	N/A	✘	✔	✔	N/A	✘	✘	N/A	✔	✔	✔	✔
12	Evidence supporting the rationale for the offer that was accepted was retained in the file	✔	N/A	✔	✘	✔	N/A	✔	✔	✔	✔	✔	✔	✔
13	Response from Ward Councillor	✘	N/A	✘	✘	✘	N13	✘	✘	✘	✘	N/A	N/A	N/A
14	Offer approval received based on delegation of authority	✔	N/A	✔	N/A	✔	✔	✔	✔	✔	✔	✔	✔	✔
15	Notice from Legal Services to Geomatics (requesting preparation of land transfer) was retained in the file	✔	✔	✔	N/A	✔	✘	✔	✔	✔	✘	✔	✔	✔
16	Official land transfer retained in the file	✔	✔	✔	N/A	✔	✔	✔	✔	✔	✔	✔	✔	✔
17	Revised Statement of Adjustment	✔	N/A	✔	N/A	✔	✔	✔	✔	N/A	✔	✔	✔	N/A

		344 Gertrude Avenue	100 Murray Park Road	780 Marion Street	Parcel 4	North/South Transportation Corridor South of Dugald Rd	South side of Wilkes Ave (Stovel Street & Paget Street)	Sterling Lyon Parkway & Paget Street	St Mary's & Avalon	Transcona Joint Venture	Winnipeg Parkade	St. Boniface Industrial Park (2008)	St. Boniface Industrial Park (2010)	Pine Ridge Gravel
	retained in the file													
18	Closure letter issued retained in the file	✔	✔	✔	N/A	✔	✘	✔	✔	N18	✔	✔	✔	✔
19	Commissions paid to external broker involved	Yes	No	No	N/A	Yes	No	No	Yes	No	Yes	No	Yes	No

References such as N10 should be read as note 10 in Appendix C.

Notes:

1. **Procedure**: Clearly defined transaction trigger was documented in file

   Summary of testing results:
   All properties sold were due to specific circumstances that triggered a transaction.

   a. Eight occurred due to land being declared surplus and excess. Some of the lands were initially acquired approximately 20 and 30 years previously for planned development that ultimately changed or did not proceed. The Parkade was identified as surplus by PPD following analysis that there was no internal civic need for it and an external appraisal of the structure.

   b. Two unsolicited offers – The sale of the South Side of Wilkes occurred due to an unsolicited expression of interest in the City owned land wherein another government entity required the land for its development purposes. The Transcona Joint Venture, which is ongoing, resulted from an unsolicited expression of interest from an adjacent property owner.

   c. 100 Murray Park Road was sold as there was a requirement of the lessee for the City to purchase the property at the end of the lease agreement.

   d. 344 Gertrude was acquired by a full taking of the property by an expropriation where a portion of the land acquired that was not needed for City purposes was immediately declared excess and sold. Section 3.3 addresses the acquisition of 344

Gertrude. If a full taking of the property did not occur, the City may have avoided acquiring surplus land that was then marketed and sold.

Parcel 4 transaction did not conclude. A proponent, responding to EOIQ 379-2009, identified the Parcel 4 land in their submission and proposed to acquire this City-owned land.

2. **Procedure**: Land title search retained in file

   Summary of testing results: All sales transaction files contained evidence that a land title search was conducted prior the finalization of the land transfer agreement.

3. **Procedure:** Evidence of Circular letter issued to key City stakeholders

   Summary of testing results: Circular letters notifying other Departments that land is surplus was completed for most of the sales transactions.

   The lessee of 100 Murray Park Road was required to acquire the property at the end of the lease agreement. As such, there was no requirement to issue a circular letter. The property at 344 Gertrude was acquired by a full taking of land through expropriation and immediately the portion of land not required for City purposes was determined to be surplus and offered for sale. Communication regarding the sale of the surplus land occurred through discussions with key City stakeholders during the expropriation.

   For the St. Boniface lands, these properties were declared surplus to the needs of the City when the industrial park was established which was before the scope of this review. A circular letter was not required for Pine Ridge Gravel as this property is located outside of the City limits.

   While the sale of Parcel 4 did not occur, evidence that a circular letter or other means of notification occurred was also not available for this proposed sales transaction.

   Management response: *Management indicated there were other means used to notify key City stakeholders, including Council seminar, of the proposed Parcel 4 sale*.

   EY comment: the transaction file should document who attended the Council seminar and notifications made.

   A circular letter was not issued prior to the sale of the Parkade, however, analysis and communication was undertaken that involved relevant stakeholders. The WPA was notified on June 13, 2008. On June 17, 2008, concern was expressed by the COO of the WPA citing the impact of the sale on the Winnipeg Parking Authority. No file

documentation was observed supporting how the concerns raised by stakeholders were addressed and communicated. Decision makers rely on City Administration to provide them with all the necessary and relevant information required to make appropriate decisions that are in the best interest of the City. As such, concerns raised by various stakeholder groups should be presented to City decision makers in order to ensure that the interests of impacted parties are considered.

Management response: *Winnipeg Square Parkade – The Public Service was directed by SPCPD to move forward with the EOI. A detailed report was reviewed by Council at its meeting held on November 29, 2009; this report included the full results of the EOI. Management indicated that the Public Service was directed by SPCPD to move forward with an EOI for the Parkade. During due diligence conducted leading up to the decision to release an EOI, there was consultation with relevant stakeholders.*

EY comment: Concerns raised by stakeholders should be addressed and communicated to City decision makers.

A circular letter was not noted in the Transcona Joint Venture transaction file.

4. **Procedure:** Response from Ward Councillor received (as part of identify property as surplus)

   Summary of testing results: Ward Councillor notification was not required for the 100 Murray Park transaction as the sale was required as part of the lease agreement. Ward Councillor consultation was not required for the St. Boniface lands, as these properties were declared surplus to the needs of the City when the industrial park was established which was before the scope of this review. Ward Councillor consultation was not required for Pine Ridge Gravel as this property is located outside of the City limits. Ward Councillor consultation was not required for the South Side of Wilkes lands as the ward seat was vacant. Ward Councillor notification should have occurred for all other transactions, however, there was no evidence of Ward Councillor notification or response for six of these transactions.

   Management response: *The City agrees that consultation with Ward Councillor is important. In mid-2010 it became a practice of the Real Estate division to provide written correspondence with Ward Councillor on all transactions. The Real Estate Division is in the process of developing a formal checklist for transactions, including verification of Councillor consultation.*

   The Ward Councillor was involved in the sale of 780 Marion, a Council seminar was held regarding Parcel 4 which would provide an opportunity for the Councillors to state their opinions, and that the Ward Councillor regarding the sale of property at Sterling Lyon and Paget Street was contacted via letter dated September 11, 2006 and concurrence may have occurred via phone call. The Department system for contacting the Ward Councillor has improved since this time.

EY comment: EY agrees with the Real Estate division's initiative to implement a formal checklist to ensure that consultation with the Ward Councillor occurs and results are retained in the file. Management indicates the Ward Councillor was involved in the sale of 780 Marion, but there was no documentation made of this in the file. EY understands that a Council seminar regarding Parcel 4 was conducted on April 11, 2012, two weeks prior to the April 25, 2012 Council meeting, however, as of mid-2010, as stated by Management, the practice was to receive written correspondence from the Ward Councillor prior to declaring land as surplus. Written correspondence from the Ward Councillor regarding Parcel 4 was not observed.

5. **Procedure**: SPCPD approval to declare property as surplus

   Summary of testing results: All sales transactions received SPCPD approval as part of declaring the City land as surplus. The sale of 100 Murray Park Road did not require SPCPD approval. The lease agreement required the lessee to purchase the property at the end of the lease term.

6. **Procedure**: Council approval to declare property as surplus

   Summary of testing results: All sales transactions reviewed received Council approval as part of declaring the City land as surplus except where Council approval was not required or not provided – 100 Murray Park Road occurred in accordance with the lease agreement and Council approval of the sale at the end of the lease term was therefore not required; the sale of Parcel 4 did not proceed.

   There were 2 occurrences where the land was declared surplus sometime after the EOI's were publicly issued. The recommendation to declare Parcel 4 as surplus was submitted to Council over two years after a proponent identified the land in their submission to EOIQ 379-2009. The Winnipeg Square Parkade was declared as surplus by Council eight months after the issuance of EOI 145-2009.

   Preparing, issuing, and evaluating an expression of interest requires a significant amount of City resources. Undertaking this process and engaging in any subsequent negotiations prior to Council declaring the subject property as surplus may result in unnecessary time and effort being exerted and may cause inefficiencies. Property should be declared as surplus prior to issuance of procurement documents such as an expression of interest, request of qualification, or request for proposal.

   Management response:
   Parcel 4 - Before the Department reports to Council, we have to ensure we have all the facts. [Parcel 4] took longer as there was unclear information in the proponent's submission.

Winnipeg Square Parkade – At its meeting held on March 2, 2009, SPCPD concurred in the recommendation that the Planning Property and Development Department be authorized to prepare and issue an expression of interest for the City-owned property commonly known as Winnipeg Square Parkade. By releasing an EOI, prior to declaration of the property as surplus, the City was following instructions from the SPCPD, which is mandated by Council to deal with all real property related matters.

EY comment: As a general practice, land should be declared as surplus prior to undertaking and engaging in any negotiations. The rationale for deviating from this practice should be documented in the file.

7. **Procedure**: Evidence of property valuation conducted and retained in the file

Summary of testing results: Appraisals were not completed for South side of Wilkes and Transcona Joint Venture. A City appraiser prepared a value range for the Wilkes and Paget Lands in a spreadsheet, and noted in the email communication that the value range was assembled in just a few hours on a rushed basis. The analysis included several parcels of land. EY's observations on these and other appraisals that were completed are summarized below, with key observations being:

- Reliance on short or brief appraisals or analyses may provide limited information to support decision making especially for significant transactions and those that did not follow a public tender process.
- There was more than 6 months between the appraisal date and decision making. The passage of time between appraisals and decision making may not take into account changing market conditions or other factors that may influence value. If market conditions or other factors remain static, and it is determined an update or new appraisal is not required, this should be documented in the file.
- There were no explanations documented in the file on differences between appraised value and selling price.
- Where there were more than one appraisal completed for a property, EY observed differences in assumptions and basis of the appraisals, making comparisons difficult
- There were also appraisals completed for components of a property, but not an overall all-inclusive appraisal to assist with decision making.

344 Gertrude

The property at 344 Gertrude was acquired by an expropriation and a full taking of the property occurred even though a portion of the property was required for City purposes (refer to Section 3.3 regarding the acquisition of 344 Gertrude). Following the acquisition of the full property, the land, building and equipment on the property not required by the City was immediately listed for sale as a going concern business at the settlement price it was acquired by the City. As such, no additional appraisal was undertaken.

100 Murray Park Road

According to the lease agreement for 100 Murray Park Road, the market value of the property was to be determined based on an average of three independent appraisals:

1. One appointed by the City
2. One appointed by the purchaser
3. One mutually appointed

Management indicated that only two appraisals were conducted. No file documentation to support an amendment to the lease agreement was noted in the file. Although the lease agreement stated that a third jointly appointed appraisal was to be conducted, the Real Estate division indicated that both the City and the lessee agreed that this third appraisal was not necessary and that the transaction value would be based on the average of the two appraisals conducted. This was not noted in the documentation retained in the file. An amendment should be prepared, reviewed, and approved by the appropriate stakeholders to ensure the rights and responsibilities of the City are protected.

Management response: *100 Murray Park Road - The agreement to average the two completed appraisals to arrive at the purchase price, was decided on verbally, and therefore there was no email / written correspondence. While an amendment was not made to the lease agreement to reflect this decision, both parties entered an offer to purchase for the subject property at the agreed upon price, which would prove both parties were in agreement on the price. Prior to moving forward in this manner, discussions were held with Legal Services. The City stands behind its decision to average out the appraisals to arrive at sale price, as the City's appraisal was substantially lower than the lessee's and a third appraisal would likely have been more in line with the City's and lowered our sale price.*

EY comment: Any deviations should be documented and retained in the file as without it there could be risk to the agreement. If the value of two appraisals had been consistent, it would be reasonable to not request a third. However, as the City's appraisal was substantially lower than the property owners, a third appraisal should have been requested.

780 Marion

A limited investigation and analysis was completed by PPD dated March 14, 2006 regarding the potential land value of approximately 170 acres of "brown field" land located at 780 Marion. After the property was declared surplus by Council on March 22, 2006, on April 4, 2006, 20.4 acres were conditionally sold. An EOI was issued on May 24, 2006 for the remaining acres. An internal appraisal was conducted by a City appraiser dated June 1, 2006 for two parcels of 2.4 acres and 18 acres. No file documentation was found to support that an all-inclusive appraisal of the entire

property (170 acres) was conducted for 780 Marion Street. It is essential to the transparency and quality of the appraisal process that the appraisal addresses all aspects of the potential transaction such as the entire property being considered.

Management response: *780 Marion - Management indicated that the scope of the appraisal will outline what specific property is to be appraised.*

EY comment: No documentation to support that an all-inclusive appraisal of the entire property was conducted.

Parcel 4

An internal appraisal was completed by PPD in October 2007 and two external independent appraisals were completed for Parcel 4 initially in December 2009 and again in February2012. The appraisals concluded different values for the land. The internal appraisal conducted in October 2007, valued the property at $7.7 million. The external appraisal conducted in December 2009, valued the property, based on its highest and best use at $10 million. The second external appraisal conducted in February 2012, based on the property being a waterpark, hotel, and parkade, valued the property at $5.9 million. No file documentation explaining the reason for the different assumptions used to value Parcel 4 was provided. It is essential to the transparency and quality of the appraisal process that significant differences in the property value between various appraisals be clearly explained and documented.

Management response: *Parcel 4 - An appraisal is an opinion of value. It can vary as it depends on the scope of the work. This information is specified in the actual appraisal. At a Council seminar on April 15, 2012, the internal estimated value of the land was presented.*

EY comment: There were two external appraisals conducted on the Parcel 4 lands. One appraisal valued the property at $10 million, based on its highest and best use, but was not included in the Administrative Report presented to Council. The second appraisal, valuing the property at $5.9 million was referenced in the Administrative Report; however, this appraisal was based on the limited use of the lands being a hotel, waterpark, and parkade. The limitations of the second appraisal were not disclosed in the Administrative Report. EY maintains that for Parcel 4, the difference between the appraisals should be documented and explained including differences in assumptions or reasoning used in determining the appraised value.

North/South Transportation Corridor South of Dugald Road

The sale of the North/South Transportation Corridor South of Dugald Road was supported by a restricted appraisal that was conducted by PPD almost one year prior to SPCPD approval. There was no file documentation to support that an updated appraisal was conducted and no file documentation explaining the reason for the difference in value of the appraisal conducted and the final selling price. The final selling price was approximately 25% higher than the top end of the value range of the internally prepared

appraisal. Industry practice suggests that appraisal updates should be conducted approximately 6 months after the effective date of original report or as market conditions change in order to account for any changes in the status of the subject properties, market conditions or in any respect affecting value – this is applicable for the sale of the North/South transportation Corridor South of Dugald Road given the 2 year gap from appraisal to transaction date.

Management response: *North/south Corridor - How can the Department know why one submitted their offering price. Perhaps the Proponent is motivated. Providing the offering price is above the asking price, and their use seems to fit, the Department will usually recommend acceptance of such an offer. The Department is unaware of the industry practice cited. This may be true in only some circumstances. The Department uses its professional judgment to determine if the market may have change, the Office then may request an updated appraisal.*

EY comment: For the North/south transportation Corridor South of Dugald Road transaction, file documentation should provide an explanation for the difference in value of the appraisal and the final selling price and should include an updated appraisal or an explanation why an update is not required.

South side of Wilkes
No appraisal was completed to support the sale of the South Side of Wilkes. A City appraiser prepared a value range for the Wilkes and Paget Lands in a spreadsheet, and noted in the email communication that the value range was assembled in just a few hours on a rushed basis. The analysis included several parcels of land. Conducting a full narrative appraisal is essential to ensuring that value for money is achieved and to support that a fair and transparent decision making process has occurred. Given that the South Side of Wilkes transaction was based on an unsolicited offer, it is also City policy that the agreed price should reflect a valuation completed by an accredited appraiser.

Management response: *PPD's internal appraiser was consulted.*

EY comment: There is no file documentation to support this consultation. All key information and supporting documentation and analysis, such as an appraisal, should be retained in the file.

Sterling Lyon
An appraisal was completed by a City appraiser in September 2006 and the property was advertised for sale in March and April 2007. The selected offer was approximately 50% higher than the appraised value. SPCPD concurred with management's recommendation to approve the sale of the property in May 2007 and similarly Council concurred with the recommendation in June 2007. Prior to the transaction being completed, an additional full appraisal was completed by another City appraiser in

December 2008 valuing the property at the selling price. This second appraisal for the Sterling Lyon property was conducted almost two years after offers were reviewed and presented to SPCPD and Council. The purpose of the second appraisal was noted as required for land transfer purposes at Land Titles. There was no file documentation explaining the reason for the difference in the 2006 and 2008 appraised values and selling price. As noted, earlier, appraisal updates should be conducted approximately 6 months after the effective date of original report or as market conditions change in order to account for any changes in the status of the subject properties, market conditions or in any respect affecting value. Any difference between the appraised value and the final transaction value should be explained and documented.

Management response: *The Department is unaware of this practice. This may be true in only some circumstances. The Department uses its professional judgment to determine if the market may have changed, the Officer than may request an updated appraisal. Should the Department not try and obtain the best price providing the Proponent adheres to City by-laws? Management indicated to EY they were unsure why an appraisal was conducted after the offers were reviewed.*

EY comment: The rationale for conducting an appraisal almost two years after offers were reviewed and presented to SPCPD should be documented in the file.

St. Mary's and Avalon
A full appraisal was completed by a City appraiser in January 2007, valuing the property at $1.13 million. The property was advertised for sale in February and March 2007. The selected offer, for $1.76 million, was approximately 40% higher than the appraised value. Council approved the sale in June 2007. There was no file documentation explaining the reason for the difference in appraised value and selling price. It is essential to the transparency of the appraisal process that any difference between the appraised value and the final transaction value be explained and documented. It was noted that the City appraiser had made deduction for servicing costs which may have added to a lower appraisal.

Management response: *Should the Department not try and obtain the best price providing the Proponent adheres to City by-laws? An appraisal is an opinion of value based on approaches to value. Market value has to meet certain criteria, one being "motivation". One might be very motivated to buy so they submit an offer higher than the asking price.*

EY comment: File documentation should provide an explanation for the difference in value of the appraisal and final selling price.

Transcona Joint Venture
No file documentation to support appraisals were conducted prior to entering the Transcona joint venture, to assess whether the lands contributed by each party were of comparable value. Part of the land contributed by the City was "serviceable" land which

generally is regarded as having a higher value than land that is not serviceable. Conducting a comprehensive appraisal is essential to ensuring that value for money is achieved, and to support that the transaction has been subject to a thorough decision making process.

Management response: *Relied on Consultant[31] and others expertise, although perhaps not a formal appraisal. The City relied on its contract Development Engineer to provide analysis. His professional advice was followed. In addition, the Manager of Real Estate at the time also had previous employment experience in the land development industry.*

EY comment: An appraisal to assess the value of land contributed by both parties should have been conducted.

Winnipeg Square Parkade

External independent appraisals were conducted in January and May 2008. The appraisal in 2008 was for the Winnipeg Square Parkade structure, valuing the structure at $16 million. The May appraisal was for fee simple interest of the land, subject to lease – air rights, which valued the air rights at $8.8 million. An internal brief appraisal of Winnipeg Square land "as if vacant" was completed by a City appraiser in September 2009. The internal appraisal was similar in magnitude to the May 2008 appraisal and approximately half the value of the January 2008 appraisal. Another external independent appraisal was conducted in September 2008 that placed the value of the Parade at approximately $43 million, 2.6 times that of the January 2008 appraisal of the structure. The selling price of the Winnipeg Square Parkade was $24 million.

There was no file documentation to support that an all-inclusive appraisal of all elements of the Winnipeg Square Parkade structure, operations, and air rights was conducted within 6 months of the sale. It is essential to the transparency and quality of the appraisal process that the appraisal addresses all aspects of the potential transaction, including the value of the property, structure, and operations and this be compared to actual transaction value received. Any difference of the appraised values and final transaction value should be explained and documented.

Management response: *The external appraiser conducted the January and May 2008 and created two separate appraisals for the parkade, and using the income approach these two appraisals take into account all aspects of value in the property (parkade, air rights, etc.). Market value as defined in the scope of the appraisal is "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus".*

An appraisal is an opinion of value under certain conditions, the appraisal is used as a guideline to be considered when evaluating submissions. The final negotiated price with

[31] PPD advised EY that the consultant was a Land Development Consultant, Real Estate

the purchaser was in line with the appraisal, higher than all other submissions, and was to the purchaser most likely to pay the greatest price for the property (owning the tower above the subject). Refer to Appendix C, page 148-49 for additional management response.

EY comment: No file documentation to support that a full all-inclusive appraisal was conducted.

St. Boniface Industrial Park

For industrial park land, a selling price per acre is used. The price is determined by Real Estate and approved by SPCPD. The land is then sold on a first come first serve basis at the set price. When the price for the land was submitted to SPCPD it made reference to a Council Order from July 16th, 1990 that stated "SPCPD must approve, on an annual basis, the selling price of the City's industrial park lands."

The July 16th, 1990 Council Order does not exist. City Clerks determined that the Council Order relating to industrial park land pricing is from a Council Meeting on May 5th, 1976 and states the following:

> *That the selling price and "conditions of sale" of the City's industrial lands be reviewed twice a year – on January 1st and July 1st – and that any new prices approved as a result of said review become effective for all negotiations commenced…*

Between 2007 and 2012, the Real Estate division submitted a price update twice to SPCPD, on October 2, 2007 and September 2, 2008. This frequency does not satisfy the 1976 Council Order.

The St. Boniface Industrial Park Land valuation from September 2, 2008 states that it was prepared by the Manager of Real Estate who at the time was not an accredited appraiser. The Real Estate division believes that support would have been provided by an accredited appraiser but does not have any evidence that occurred.

City Auditor Comment: Real Estate should prepare a report for SPCPD's consideration to update the policy for the sale of industrial park land. This policy should specifically address the frequency of valuations and how transactions are dealt with that occur during a change in value.

Pine Ridge Gravel

No appraisal of Pine Ridge Gravel was performed prior to the sale. The City had previously obtained a valuation for Pine Ridge Gravel with a valuation date of August 31, 1998. However, this valuation was eight years old when the sale was approved on September 18, 2006. Due to the age of the valuation it would not be relevant at the time of sale. A business valuator was engaged to assist with the offer evaluation process. Their services included assistance with developing a discount rate, financial modeling, ranking offers, negotiations, reviewing phase 1 & 2 RFP, and the Administrative Report but did not have an appraisal conducted to determine the expected value of the asset.

Management response: *The City engaged an external valuation expert to provide the following services:*

- *Preparation of a discount rate memo, including revisions to the memo.*
- *Review and analysis of City information and correspondence including internal correspondence, Glacial's business plan, Phase 1 and 2 RFP's and expressions of interest from potential purchasers.*
- *Assistance with financial modeling – multiple revisions to net present value assumptions, quantification of monopoly risk, labour redeployment costs and impact of cash flow reinvestment.*
- *Assistance with ranking offers, including review of Phase 1 ranking system, revisions to weighting and ranking for Phase 2 and preparation of memo.*
- *Meeting with other professionals and the City of Winnipeg.*
- *Advise on term sheets/negotiations and miscellaneous.*
- *Review of City prepared Administrative report.*

8. **Procedure:** Evidence supporting how the property was advertised for sale / purchase was retained in the file

   Summary of testing results:
   - Notification that the excess property was for sale occurred for all transactions where this was applicable. An external agent was retained, EOI's were publicly issued, or advertisements were place on PPD/City website, in newspapers or signage was placed on the property. Notification was not applicable for 4 transactions:
     - The sale of South Side of Wilkes was to another government entity triggered by an unsolicited expression of interest. As per City policy, a sale to another government entity does not need to follow a public tender
     - The Transcona Joint Venture was triggered by an unsolicited expression of interest from an adjoining property owner. As per City policy, a sale to an adjoining property owner does not need to go through a public tender.
     - The lease agreement for 100 Murray Park Road required the lessee to purchase the property at the end of the lease term and therefore the sale would not follow a public tender
     - Parcel 4 was identified by the proponent for its proposed development. An addendum to EOIQ 379-2009 was issued stating that the City will consider submissions that include the purchase of City owned land. The sale of Parcel 4 did not conclude

9. **Procedure:** Evidence of Legal Services review of the draft offer

   Summary of testing results:
   - Offers received for 11 of the sales transaction were reviewed by Legal Services.

- 100 Murray Park Road was sold according to lease agreement and as such, this procedure was not applicable.
- Legal Services reviewed the draft offer subsequent to the offer being accepted for the sale of the North/South Transportation Corridor South of Dugald Road. Legal Services should review draft offers prior to acceptance.

Management response: *Evidence is not in the file.*

10. **Procedure**: Evaluation of offers

    Summary of testing results: 100 Murray Park Road was sold according to lease agreement and as such, this procedure was not applicable as there only was one purchaser, the lessee.

    Evaluation of the offers received for the North/South Transportation Corridor South of Dugald Road, St. Mary's and Avalon, and both St. Boniface Industrial Park transactions were documented in the file.

    The property on Southside of Wilkes was sold to a government entity and as such did not need to follow a public tender according to City policy. EY's comments on the other sales transactions follows below.

    344 Gertrude
    The property at 344 Gertrude was acquired by an expropriation and a full taking of the property occurred even though a portion of the property was required for City purposes (refer to Section 3.3 regarding the acquisition of 344 Gertrude). Following the acquisition of the full property, the land, building and equipment on the property not required by the City was immediately listed for sale as a going concern business at the settlement price it was acquired by the City. There was no file documentation to support the reason for the difference in the price the City listed the property for and the selling price, which was more than half of the listing price. By not explaining and documenting the significant difference in the listed sales value and ultimate sales prices, there is increased reputational risk to the City, particularly given the short time frame between when the property was acquired by expropriation and when the excess portion was sold.

    Management response: *The property was marketed for sale at the same all inclusive settlement price which the City acquired the property for. The property sold at the highest offer the City was able to secure on the open market. This is outlined in correspondence on file, and in the report approved by SPCPD at its meeting held on May 4, 2010.*

    EY comment: The difference between the listing price and the final selling price should be explained and documented in the transaction file.

780 Marion

In April 2006, a 20.4 acre portion of the lands at 780 Marion was conditionally sold subject to financing. An EOI was issued in May 2006 for the remainder of the lands. The evaluation of the proposals submitted in response to the EOI was deferred until October 2006, the close date of the conditional sale. The sale of the 20.4 acre portion was not completed and the proponent responding to the EOI with the best financial and strategic option for the City was selected to acquire the entire property at 780 Marion. The information presented to SPCPD on April 3, 2007 noted that 20.4 acres was originally conditionally sold to a party however, no file documentation was noted that the amount of the original conditional sale was presented to SPCPD. The selling price originally negotiated with the party for 20.4 acres is key information that may influence decision makers when approving the sale of a transaction. Such information should be presented to SPCPD and/or Council.

Management response: *Selling price for the 20.4 acres negotiated with the party was outlined in the report submitted to approve the sale of this 20.4 acre. The sale price negotiated for this portion is not considered relevant information when considering the sale [of the entire property] to a subsequent entity. Sale to the original party was for a smaller parcel of fully serviced land, and did not happen, so would not be considered comparable or relevant to decisions being made on results of EOI 362-2006. All submissions for the EOI were outlined in detail, in the report submitted to SPCPD, this would be considered the relevant information required to make a decision relating to EOI 362-2006.*

On April 4, 2006, the Standing Policy Committee on Property and Development approved the sale of approximately 20.4 acres of land at the Public Markets site. The sale was made conditional upon approval, among other things, of financing within six months of the Date of Approval. On October 5, 2006, the City informed the proponent that they had not met this condition, and therefore the sale of the lands to the proponent was terminated. To state in the report that the "transaction did not close at the City's request" is incorrect.

This conditional sale at $2.03 million was for a fully serviced site (i.e., the City was going to service the entire 170 acres and create a new Industrial Park) and market fully serviced buildable lots similar to St. Boniface Industrial Park. Instead, the City chose to unconditionally sell the entire un-serviced site for $1million which was approved by the SPCPD.

EY comment: The sale of the 20.4 acre portion was terminated (as conditions on the sale were not met by the deadline) and the entire lands at 780 Marion ultimately sold to another proponent which included the 20.4 acres. As such, this is valuable information for decision makers and more fulsome disclosure is required. Upon receipt of Management's response, the report was amended to remove the reference to "transaction did not close at the City's request".

Parcel 4
A proponent, responding to EOIQ 379-2009, identified the Parcel 4 land in their submission. Upon considering the sale of Parcel 4 to the proponent as part of their proposed development of the land in response to the EOIQ, there were numerous comments, questions, and clarifications that were raised by the City in the evaluation report. There was no file documentation prepared by PPD outlining the responses received by the proponents to address the City's comments and questions, nor were these comments and questions included in the Administrative Report presented to Council. To support a fair and transparent decision making process, the criteria used to assess offers should be retained in the transaction file as well as responses to City questions and concerns to support the City's selection.

Management response: *There was only one offer received for Parcel 4.*

EY comment: Clear and measurable evaluation criteria should be developed in advance and used to assess offers received in order to ensure that the evaluation process is done in an adequate, fair and transparent manner. Given that the proponent was the only party that identified Parcel 4 in response to EOIQ 379-2009, the transaction, if concluded as recommended, would not have been sold through an open competitive process.

Sterling Lyon
There was no file documentation outlining the evaluation criteria used to assess the offers received. To support a fair and transparent decision making process, the criteria used to assess all offers received should be retained in the transaction file to support the City's selections.

Management response: *Not usual practice. The Department has the expertise to recommend an offer.*

EY comment: Clear and measurable evaluation criteria should be developed in advance and responses to questions and concerns should be documented and retained in order to ensure that the evaluation process is done in an adequate, fair and transparent manner.

Transcona Joint Venture
There was no file documentation to support that a financial analysis comparing the expected cash flows from the Joint Venture to other alternatives was included in the file. When a transaction involves the sale or exchange of a significant amount of City land, a financial analysis should be performed and retained in the file. No file documentation to support formalized and standardized policies and processes governing transactions where the City is considering entering into a Joint Venture agreement with an external developer.

Management response: *The City usually looks at the pro-forma submitted. Professional consultants are hired by the City to make that determination.*

EY comment: As part of the City's initial due diligence process when entering into the joint venture agreement, financial analysis should be conducted and retained in the file. Establishing policies and procedures for the Joint Venture process will ensure that important steps in the joint venture process are consistently applied. Having defined processes will help ensure that individuals driving the JV process are aware of the important steps to be taken, including when to involve experts, and that critical knowledge of how to manage a joint venture arrangement does not rest with one individual.

Winnipeg Square Parkade
There was reference in the file to previous offers received by the City in 2008 for the purchase of the Winnipeg Square Parkade. No file documentation outlining the details of these offers were retained in the file. All important information, including offers received, analysis performed, etc., should be retained in the file and included with the information provide to decision makers. This practice helps ensure that relevant information is considered by the City, resulting in the greatest value for money.

Management response: *EOI 145-2009 was performed by Materials Management. Proposals were submitted to, and analysis of proposals performed by Materials Management. On our files we kept submissions to the EOI as well as the evaluation matrix used. Relevant information was available for consideration by the City prior to making any decisions.*

EY comment: Details of previous offers received, particularly recently received offers are considered key information and should be communicated to City decision makers.

11. **Procedure**: All offers received were retained in the file

Summary of testing results: Offers received for seven transactions were retained in the files reviewed. All offers received were not retained in the files for 780 Marion, Sterling Lyon Parkway, and St. Mary's & Avalon transactions. As noted earlier, the sale of South side of Wilkes and the Transcona Joint Venture did not follow a public tender as City policy allows given South side of Wilkes was sold to a government entity and the Transcona Joint Venture involved an adjacent property owner. Similarly, the sale of 100 Murray Park Road did not follow a public tender as the purchase by the lessee was a requirement of the lease agreement.

Management response:
- *Management concurred that offers for Sterling Lyon and St. Mary's & Avalon should have been in the files and indicated that the offers maybe are located elsewhere*
- *780 Marion - Proposals submitted to EOI's (such as EOI 362-2006 for the subject property), and information relating to these proposals is kept on record by Materials*

Management who conducts the EOI. As outlined in the approval of the sale at the April 3, 2007, SPC meeting, an EOI evaluation methodology is used to ensure consistency and transparency in the EOI review process. Detailed information relating to submissions was included in the report to SPCPD

EY comment: All key information which supports the decision making process undertaken by the Real Estate division should be retained in the file.

12. **Procedure**: Evidence supporting the rationale for the offer that was accepted was retained in the file

    Summary of testing results: Rationale for accepting the offer received was retained in all but one transaction file, Parcel 4. This procedure was not applicable for 100 Murray Park Road as it was sold according to the lease agreement terms. The South side of Wilkes did not follow a public tender as it was sold to a government entity.

    To support a thorough and robust decision making process, all key information and supporting documentation and analysis should be retained in the transaction file.

13. **Procedure:** Response from Ward Councillor retained in the file

    Summary of testing results:
    - There was no documentation in the files that the transactions received response from the Ward Councillor
    - Ward Councillor consultation was not required for the South Side of Wilkes lands as the ward seat was vacant.
    - The sale of 100 Murray Park Road was a requirement according to the lease agreement and as such, Ward Councillor response was not required
    - Ward Councillor consultation was not required for the St. Boniface lands, as these properties were declared surplus to the needs of the City when the industrial park was established which was before the scope of this review
    - Ward Councillor consultation was not required for Pine Ridge Gravel as this property is located outside of the City limits

    Management response*: The City agrees that consultation with Ward Councillor is important. In mid-2010 it became a practice of the Real Estate Division to provide written correspondence with Ward Councillor on all transactions. The Real Estate Division is in the process of developing a formal checklist for transactions, including verification of Councillor consultation. Management indicated that even if the Ward Councillor has not responded, on these major transactions, the matter would be going before Council and the Ward Councillor would have an opportunity to provide input*.

    EY comment: consultations with Ward Councillors should be documented in the file

14. **Procedure:** Appropriate offer approval received based on delegation of authority

    Summary of testing results: Where applicable, all sales transactions reviewed received appropriate approvals based on the delegation of authority. Parcel 4 transaction did not proceed and 100 Murray Park Road was sold according to the lease agreement terms.

15. **Procedure:** Notice from Legal Services to Geomatics (requesting preparation of land transfer) was retained in the file

    Summary of testing results: Notice from Legal services to Geomatics was retained in the file for all transactions except three. The sale of Parcel 4 did not proceed and as such this step is not applicable. Notice from Legal Services to Geomatics requesting preparation of land transfer was not noted in the file for the South side of Wilkes transaction and for the Winnipeg Square Parkade transaction.

    For all transactions, Legal Services should notify Geomatics to prepare the land transfer. Documentation of such requests should be retained in the file.

    Management response: *Real Estate Staff are currently instructed to copy appropriate City Departments on the acceptance letter of an offer to purchase. This practice will be incorporated into the standard procedures being put into place. For the Winnipeg Square Parkade, management indicated the City engaged external legal counsel and as such the request for transfer of land did not go from Legal Services Division to Geomatics*.

    EY comment: EY agrees with the Real Estate division's initiative to implement a standard practice of informing appropriate City departments and/or individuals that a real estate transaction is complete. EY maintains that a copy of key information should be retained in the City files, including where external legal counsel is involved.

16. **Procedure:** Official land transfer retained in the file

    Summary of testing results: Evidence of the official land transfer was noted for all the transactions where applicable. The sale of Parcel 4 did not proceed and this procedure is therefore not applicable.

17. **Procedure:** Revised Statement of Adjustment retained in the file

    Summary of testing results: Where applicable, the revised Statement of Adjustment was retained in the files. This procedure was not applicable for the sale of 100 Murray Park Road as part of the lease agreement. The sale of Parcel 4 did not proceed and this procedure is therefore not applicable. The Transcona Joint Venture is ongoing.

18. **Procedure:** Closure letter issued retained in the file

Summary of testing results: The closure letter is designed to notify the Real Estate division that all conditions of the transaction have been satisfied. As such, it is a critical document that should be retained in the file. Evidence of the closure letter was noted in all the files except three. The sale of Parcel 4 did not proceed as therefore this procedure is not applicable. Closure letters were not observed for the South side of Wilkes transaction and two parcels transferred to the Transcona Joint Venture.

Management response: *Transcona Joint Venture – As part of the arrangements of the Joint Venture, the managing partner of the Joint Venture (which is the adjacent property owner) is responsible for all aspects of the Joint Venture and as such, PP&D does not retain the closure letters in its files. Management concurred that the closure letter for the South side of Wilkes transaction should have been retained in the file.*

EY comment: Critical information such as a closure letter should be retained in the Real Estate file.

19. **Procedure:** Commission paid to external broker

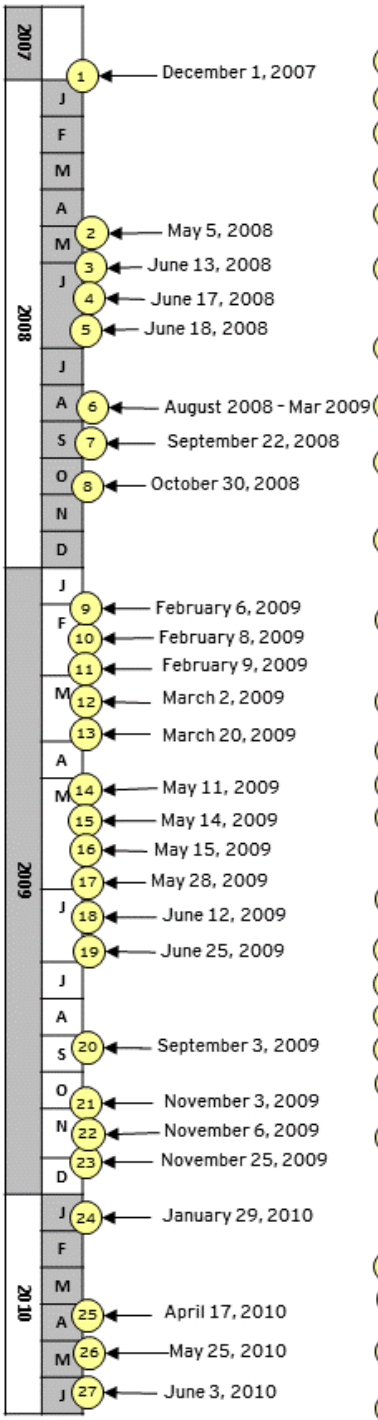
    Summary of testing results: External brokers were involved in the sales transactions for 344 Gertrude, Portion of North/South Transportation Corridor South of Dugald Road, St. Mary's & Avalon and Winnipeg Square Parkade. EY's observations on engagement of external brokers and commissions are provided on Section 3.1.

Expanded Detailed Review for Selected Transactions

As noted in Sections 1 and 2 of the report, EY undertook an expanded detailed review on several transactions. They were identified and selected based on a number of factors – the size of the transactions; potential areas of non-compliance with City policies, processes, and procedures; potentially contradictory information; limited documentation in the transaction file; or information obtained during interviews with City Councillors, internal City stakeholders, and others. All such transactions that resulted in a sale of City property are discussed below.

Winnipeg Square Parkade ("Parkade")

Summary Chronology



1. Externally prepared appraisal
2. Externally prepared appraisal
3. Real Estate division notifies WPA that the City is in the process of declaring the property as surplus
4. WPA expresses its concerns about the impact of the sale on the WPA
5. Report issued to SPCDD requesting approval to market the property and declare it as surplus
6. Real estate broker acting in an advisory role representing City's interest in negotiations with buyers who identified themselves to City. No file documentation exists to support how the broker was retained
7. Real estate broker prepares valuation of Parkade, which valued the market price (including air rights) as $43.6 million
8. Former CAO informs real estate broker - "I have informed that you will represent the City in any negotiations and/or listing"
9. External party inquiry if real estate broker has exclusive listing for Parkade. Former CAO responds - "Yes, they are representing our interests in negotiations"
10. Real estate broker indicates they have been talking to logical candidates for the purchase and had it on their website. They were instructed to hold off on marketing until instructions from Council committee
11. Current Real Estate division Manager suggests to former Real Estate division Manager & current acting CAO that the City should use one of the other four pre-qualified brokers identified in the submissions to RFQ 472-2008
12. SPCPD concurred with recommendation to prepare an EOI for the sale of the property
13. EOI 145-2009 issued for the sale of the property
14. Deadline for submissions to EOI
15. Letter from real estate broker to City advising that if their proponent client is successful in its bid to acquire the Parkade, they will waive fees for services provided to the City
16. Letter from proponent to Materials Management confirming that the City real estate broker is advising the proponent in the submission of the EOI
17. Initiate evaluation of offers and selection of purchaser
18. Externally prepared appraisal
19. Title search performed
20. Appraisal conducted internally by PPD
21. Letter from Downtown Biz to Mayor and Council expressing concerns over the sale of the property
22. SPCDD directed the Public Service to further negotiate with proponent who submitted highest ranked submission. The offer evaluation summary indicates that one party submitted an offer that was 10% higher than the selected offer. However, the offer was discounted during the evaluation process, resulting in it becoming 6.5% lower than the selected offer
23. Property declared a surplus by Council
24. Agreement of Purchase and Sale is signed and dated. Final sale amount is $24,000,000
25. Real estate broker sends invoice to City for commission payable for acting on behalf of the purchaser
26. Cheque issued to real estate broker for amount of invoice
27. Land title was issued; closure letter issued

Detailed findings and observations

In late 2007, early 2008, the WPA examined the potential value of the Winnipeg Square Parkade and engaged an external advisor to analyze if it was more beneficial to sell the property or retain it. Following the analysis which included an externally prepared valuation, PPD determined that there was no internal civic need for the Parkade and recommended the property be declared surplus and sold. In June 2008 a report was issued to SPCPD requesting approval to market the property and declare it surplus. During the latter part of 2008 and early 2009, discussions occurred with one purchaser interested in the Parkade who had identified themselves to the City (Initial Purchaser). PPD was later instructed by Council committee to issue an EOI for the purchase of the Parkade. EOI 145-2009 was issued on March 20, 2009 with a deadline for submissions of May 11, 2009. Following receipt and analysis of three offers received in response to the EOI (including one from the Initial Purchaser), the offer from the Initial Purchaser was accepted. The offer submitted by the Initial Purchaser was $21 million which was revised following negotiations to $24 million and accepted. The property was declared surplus by Council on November 25, 2009 and the transaction was executed on January 29, 2010.

Additional background information

As part of the analysis to determine whether it was more beneficial to sell or retain ownership of the Parkade, an external appraiser was engaged to provide an opinion of value. An opinion of value of the parking structure was provided in January 2008, effective December 1, 2007. The scope of the external appraisal was expanded to consider the potential value of the air rights associated with the parking structure and a combined value comprised of these components was estimated. The parking structure was valued at $16 million and the air rights at $8.8 million.

On June 13, 2008, PPD advised the COO of the WPA that the Real Estate division was in the process of declaring the Parkade as surplus. On June 17, 2008, the COO of the WPA, expressed concerns over the sale of the Parkade and its impact on the WPA.

The report to SPCPD on June 18, 2008 recommended the Parkade be declared as surplus and sold. The report did not reference the concerns raised by the WPA.

The Initial Purchaser identified themselves to the City and discussions between the Initial Purchaser and PPD occurred through late 2008 into early 2009.

Role of real estate broker in advisory capacity

PPD had a real estate broker in an advisory capacity (Broker) provide advice on the Winnipeg Square Parkade throughout the period from August 2008 to the end of March 2009. The role was not documented, there was no written agreement in place and a confidentiality agreement was not signed by the Broker.

Management response*: the role of the Broker was advisory and there was no written agreement between the City and the Broker. Roles and fees for services were not documented. A confidentiality agreement was not signed by the Broker.*

In August 2008 the Broker advised on the retention of a commercial appraiser and in September 2008 the Broker prepared a report on market value of the Parkade. The report was provided to the former CAO and he acknowledged receipt of the report and indicated "don't forget to send us an invoice". The Broker replied that they would like the mandate to sell the Parkade.

The value of the Parkade provided by the Broker was $43.6 million which was close to 75% higher than the externally prepared combined value of the parking structure and air rights effective December 1, 2007. This higher market value was shared with the Initial Purchaser and the Initial Purchaser was asked to call the Broker to discuss the valuation.

Management response*: the role of the real estate broker continued to be advisory during this time.*

On October 30, 2008, the former CAO communicated to the Broker that he has informed the Initial Purchaser that the Broker "will represent the City in any negotiations and/or listing".

On February 6, 2009, PPD was contacted by external parties inquiring whether the Broker had an exclusive listing on the Parkade as the listing was posted on the real estate broker's website. Clarification was sought from other PPD managers and the current Acting CAO, with a response from the former CAO that "yes, they are representing our interest in negotiations with a buyer who has identified themselves."

Management response*: the response sent by PPD manager was inaccurate in that they were representing the City's interest in negotiations with a buyer who had identified themselves, not the exclusive listing.*

The Initial Purchaser questioned the sales process. In an email dated February 6, 2009 to the Broker, the Initial Purchaser congratulated the Broker on the listing and stated that they "have been in discussions with your office as well as the City on this matter. For a variety of reasons, we were under the impression that the City would be negotiating with us, with a view of selling at the appraised market value." The Initial Purchaser requested the Broker's "version of the sales process". This email was forwarded to the former CAO on February 8, 2009.

On February 8, 2009, the Broker referenced discussions with the current PPD Director, in his role as Manager Economic Development at the time, and that the Broker had informed that "we were talking to logical candidates for the purchase and had it on our web site and he asked us to hold off on the marketing until he can check out the council committee

instructions."

Management response*: the Broker was acting in an advisory role*.

On March 20, 2009, EOI 145-2009 was issued by the City regarding the sale of the Parkade. The Broker's advice continues to be sought by the City. In late March 2009 advice was sought from the Broker by the City whether a property condition report on the Parkade should be provided to the Initial Purchaser. Management indicated that the Broker continued to have an advisory role supporting the City.

In May 2009, the Broker communicates it is representing the Initial Purchaser and the Initial Purchaser also confirms this role. In a letter dated May 14, 2009 to the current Acting CAO, PPD Director at that time, the Broker advises that if their client, the Initial Purchaser, "is successful in its bid to acquire the Winnipeg Square Parkade, resulting in payment of the selling commission to [Broker], we will waive all fees for the services provided to the city for the evaluation of the city's freehold interest." Further, in a letter from the Initial Purchaser to Materials Management, dated May 15, 2009, the Initial Purchaser states that the Broker "is advising us as broker in the valuation and submission of the EOI. We also understand that the City of Winnipeg will pay the broker fees for the successful purchaser of the Property."

Management response*: The role changed in that a relationship was built between the [Broker] and the [*Initial Purchaser*] prior to the release of the EOI. When the City moved forward with the EOI, the [*Initial Purchaser*] wished to continue its relationship with the [Broker] and acted on their behalf with regard to the submission.*

The Initial Purchaser's submitted offer was $21 million which was, following negotiations, revised to $24 million and accepted. The Broker received commission for acting on behalf of the purchaser in the amount of $400,000 plus GST. This was calculated according to the Broker's submission to RFQ 472-2008 regarding real estate services and fees (refer to Section 3.1).

EOI 145-2009 did not reference broker fees or commissions. The Initial Purchaser's submission did not outline how real estate commissions would be determined. The transaction value of the sale of the Winnipeg Square Parkade was $24 million which far exceeded the highest transaction value provided by the proponents responding to RFQ 472-2008. As such, the commission rate should be negotiated rather than apply the commission rate set out for a much lower transaction value which may have resulted in a lower rate.

Management response*: no other fees were paid regarding the advisory services that were provided to the City. It is not known what the fees for the advisory services provided to the City may have been.*

There could be increased risk of a conflict of interest when the same external advisor has roles representing the City's interests with the purchaser and then acting as the broker for the purchaser after it was determined Materials Management would proceed with an EOI. The role of the Broker was not clear, it was not documented and there was no written agreement in place. The Broker did not sign a confidentiality agreement. Email communications within the PPD department also indicates there was confusion about the Broker's role internally within the City. Roles need to be clearly identified and documented to avoid any potential conflicts of interest, especially when involving a significant, high value asset such as the Parkade. There were no disclosures in the reports to Council or committee of Council regarding the advisory role of the Broker. The Broker was included in discussions regarding the Parkade well in advance of the EOI. Information was shared and advice sought on representing the City's interests. In late March 2009, advice was sought from the Broker by the City, whether a property condition report on the Parkade should be provided to the Initial Purchaser. There was agreement that the Initial Purchaser should "get their own report." By having the Broker later move to represent the Initial Purchaser's interests, the City exposes itself to the risk that the City's interests may not be well served.

Information shared with decision makers
EY did not observe a copy of the valuation report prepared by the Broker in the transaction file. This information was not referenced in subsequent reports when assessing the responses to the EOI or in reports to Council or committees of Council. The reports disclosed the three EOI submissions received, that the City engaged the services of a consultant to support staff in the preparation of the City's financial analysis by providing research and information regarding discount rates and methodology, and the external appraisal dated May 5, 2008. Management indicated that once it became known, during due diligence, that there was significant deferred maintenance costs the valuation became inaccurate and would not have provided useful information. The COO of the WPA had an external property condition report commissioned in August 2008 which recommended a repair budget of $12 million. This was shared with the former CAO, in his role as Director PPD at the time. The COO of the WPA questioned the magnitude of the repairs and felt it was well overstated. A second report was prepared by an external advisor in May 2009 with recommended repairs estimated at $2.5 million.

Management response*:*
The City commissioned [external advisors] (accredited Appraisers) on May 5, 2008 to determine the combined value of air rights and parkade at $24.8M

The Broker was engaged initially to provide a Real Estate Opinion of Value to the Director of PPD however the Broker was not providing this information as an accredited appraiser or certified business evaluator (CBE) The Value provided to the City September 2008, was $43,635,500 and it was based on the following:

- *Projected net operating results for 2009 based on increased rates for the year and years after as well.*

- *Verbal assurances from the City Parking Authority that the life safety and structural elements of the parkade were well maintained on an annual basis and there was no deferred maintenance to be done.*
- *A Capitalization Rate of 6%.*

The City's operator of the Parkade cautioned the City that an increase in rates would result in a loss of income causing the city not to follow through with increasing the rates. In July 2009, the City engaged [external advisors] as professional advisers to provide valuation assistance related to discount rate research for Off-Street Parking Facilities for the potential divestiture of the Winnipeg Square Parking Facility which concluded an appropriate Capitalization Rate at 11.85%. It was determined that the estimated value of the parkade was approximately $21M. Three offers were received for the EOI and the highest offer at $24M was selected by Council.

All relevant information should be shared in the decision making process and differences, such as new information on deferred maintenance costs explained rather than not shared.

Evaluation of EOI responses

As noted, there were 3 responses to EOI 145-2009 – the Initial Purchaser's offer of $21 million, a second offer from a proponent for $20 million, and a third offer which was considerably lower. EOI 145-2009 outlined the evaluation process which noted "the City will only negotiate with a short list of the proponents submitting, in the City's opinion, the most advantageous proposals; after completion of the evaluation of all EOI submissions, will short list those that are of the most interest to the City and then contact short listed proponents and enter into negotiations with proponents having EOI submissions that are considered to have the most merit and benefits for the City". There was indication that the proponent offering $20 million may have been prepared to increase their proposed purchase price. PPD communicated to Corporate Finance by email that the sense was the proponent was prepared to significantly increase their proposed purchase price. The proponent indicated in an email dated May 22, 2009 to PPD that their offer did not account for increases in air rights lease amounts in future years and this will likely have a significant upside movement on the pricing submitted in their offer.

The evaluation summary of the offers received for the Winnipeg Square Parkade was provided to the evaluation team on May 28, 2009 from Corporate Finance. The evaluation summary adjusted the proponent's offer based on assumptions made by the City. The footnote on the evaluation summary stated that the party has since indicated its proposal did not account for future adjustments to the air rights lease. With this anticipated adjustment, the offer was revised in the evaluation summary to $23.8 million, 10% higher than the Initial Purchaser's submitted offer. The evaluation summary identified advantages of the Initial Purchaser's offer and that the other proponent's offer was conditional on reaching acceptable agreement with the holder of leased air rights permitting their contemplated development as outlined in their submission. The recommendation of the evaluation committee was to enter into negotiations with the

Initial Purchaser and to obtain a sale price of $23.8 million at minimum.

There was no documentation in the real estate transaction file to provide further insights into the adjustment of the proponent's bid to $23.8 million. A calculation in support of the adjustment was subsequently provided to EY by Corporate Finance. Management indicated that PPD worked in conjunction with Corporate Finance to analyze the offers and that the focus was on maximizing the total amount received for the asset. There was less focus on the components that may have comprised the total offer.

PPD was unable to confirm for EY whether the City entered into discussions with the proponent submitting the $20 million offer regarding their offer and/or amount of potential adjustment after their email of May 22, 2009. Corporate Finance indicated they were not aware of further discussions with the proponent to determine a potential updated offer to account for the increase in air rights leases.

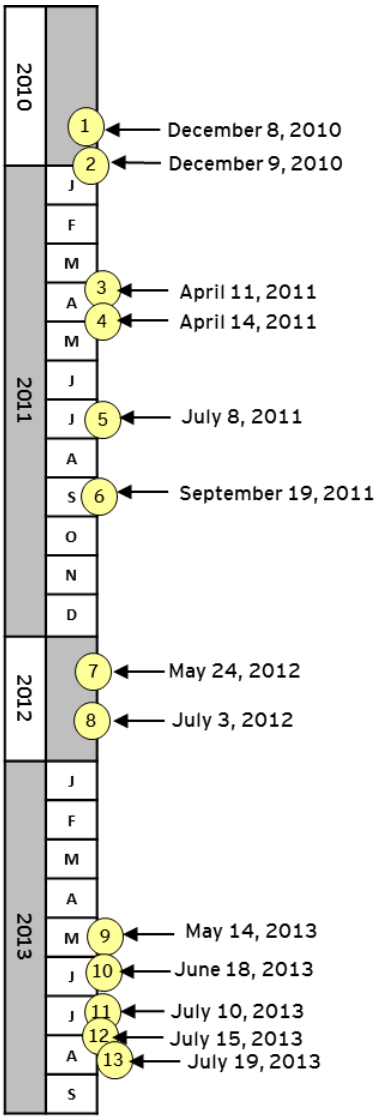
Management response: *when the city issued an invitation for an expression of interest in 2009, the offers submitted, including one from the [Broker] on behalf of their client, the offer was significantly less than expected because in due diligence, the interested proponents found there was significant deferred maintenance that would have to be looked after. Council decided not to accept any of the offers and in the process, disclosed the amounts of the offers in the media. In spite of the fact that their offer was the highest submitted, the [Broker] encouraged the purchaser to increase their offer by more than 14% and this offer was ultimately accepted by the City. Since purchasing the Parkade, it is our understanding the new owners have worked on completing repairs, the need for which was identified in their due diligence.*

The Administrative Reports to Council and committees of Council did not reference the adjustment to the offer to an assumed $23.8 million, but did note the condition of the proponent's offer. Without confirming the adjustment directly with the proponent which may have resulted in a value higher or lower than $23.8 million and without disclosure in the Administrative Report of an anticipated adjustment amount, it is unclear whether this may have impacted how the other submissions were reviewed and if this may have led to different negotiating strategies. It appears the value of $23.8 million was used as a benchmark to negotiate with the Initial Purchaser and resulted in the final adjusted offer of $24 million.

Polo Park Stadium Site

Summary chronology

In April 2011, EOI 257-2011 was issued for development of the Polo Park stadium site. Four submissions were received in response to EOI 257-2011 with one submission being considered best overall, scoring the highest in three of the four evaluation categories. The chronology of key events is shown below.



1. A proponent (who was ultimately awarded the development of the Polo Park stadium site, referred to from now on as the "Developer") requests a site plan with dimensions of the Polo Park stadium site
2. Real Estate division provides the Developer the site plan of the Polo Park stadium site
3. Former CAO provides the Developer the EOI in an email labelled "FYI and Confidential"
4. EOI for the development of the Polo Park stadium site is publicly released by Materials Management
5. Deadline for EOI submissions
6. Email from Materials Management to the CFO discussing a new inclusion of a confidentiality clause in City procurement documents after a media interview with the Developer regarding the Polo Park stadium site before the award of the development was finalized
7. Briefing note regarding the development of the Polo Park stadium site is issued. Key items – 1. Four submissions were received; 2. The Developer identified as best overall; 3. Purchase price of $30.25 million, including demolition of existing stadium
8. SPCPD approved the sale of the Winnipeg Stadium site to the Developer for $30.25 million. Offer to Purchase signed by the City.
9. City issued a proposed plan of subdivision agreement (Schedule B of Report of the ACG)
10. The Developer responds to the ACG report issued on May 14, 2013, disputing the majority of requirements and proposed costs
11. Final ACG Report is issued to the Developer
12. Email from PPD to Legal Services inquiring if an applicant can appeal any of the conditions included in a servicing agreement or if their only recourse is a request to amend if after it has been executed. Legal Services replies that under the Development Procedures By-law, a decision to approve a short-form subdivision may not be made by the Director of PPD. That decision is to be made by SPCPD.
13. PPD responds to Legal Services email on July 15, 2013 stating that the agreements will be amended to delete all references to DASSF and confirms to Legal Services that the authority for the agreement is the sale – SPCPD minutes of July 3, 2012.

Detailed findings and observations

Openness, fairness and transparency of the procurement process

On December 9, 2010, approximately four months prior to the public release of EOI 257-2011, the City provided the Developer with a site plan and dimensions of the Polo Park

stadium site. On April 11, 2011, the Developer was also provided a copy of EOI 257-2011 in advance of the EOI being publicly released. There was no file evidence to support that any other interested parties were provided the same information in advance of the public release of the EOI.

Management response: *Prior to the release of the EOI, the successful proponent did not have a role with respect to this transaction. The potential sale of the Polo Park Stadium site was publicly known given all the media attention surrounding the construction of the new facility located at the University of Manitoba. PPD is not aware of any other proponents being provided information in advance as we would not have any knowledge of who would respond to the EOI. The former CAO gave direction to provide a site plan with dimensions of the Stadium Site. It should be noted that a site plan of any property (public or private) within the Corporate boundaries of the City of Winnipeg are available to the general public at any time upon request.*

PPD, Legal Services and Materials Management were not aware that the EOI for the Polo Park Stadium site was provided in advance.

Off-site improvement costs:
Before dividing a parcel of land into two or more lots, realigning existing property lines or consolidating a number of properties into one lot, a developer must make an application with the City, referred to as a Short-Form Subdivision Application ("DASSF"). Applications may be reviewed by a committee of City officials, known as the Administrative Coordinating Group ("ACG"). ACG can recommend amendments to the plan, conditions to be set on the approval, or deny the proposal.

- ACG recommendations can be discussed with the appropriate City staff members
- The chairperson of the ACG may be required to prepare a report with recommendations, which is submitted to the applicable Community Committee for its consideration, at which time the developer may wish to appear and make a presentation. The Community Committee in turn makes its recommendations to the SPCPD, which renders the final decision in this matter
- Where no conditions are necessary other than a street or lane widening and/or ten percent cash dedication, PPD may approve the developer's application without referring it to the Community Committee and the SPCPD
- SPCPD has the authority to approve or deny any application that requires a subdivision, servicing or development agreement

In regards to the development of the Polo Park Stadium site, the following conditions were revised / removed / added from the original Servicing Agreement – Schedule B - ACG Report issued on May 14, 2013 and the final issued on July 10, 2013:

- Removed - Payment of 10% cash dedication and lot fees (equating to $842,000)
- Removed – "The Developer shall, at no expense to the City, construct and/or pay to the City, in cash, on demand the full cost of the following permanent works on St. James Street, St. Matthews Avenue, Empress Street, and Maroons Road where they intersect with any new accesses along the full length of the subject property as

determined by the Traffic Impact Study and to the satisfaction of the Director of Public Works:
    - Auxiliary lanes, transitions, median opening, channelization and all related works"
- Added – "The Developer shall, at no expense to the City, construct all private accesses and related works to access the subject property on St. James Street, St. Matthews Avenue, Empress Street, and Maroons Road, as determined by and to the satisfaction of the Director of Public Works."
- Added – "The Developer shall, at no expense to the City, pay its share of the cost of traffic control signals and all related works including, but not necessarily limited to pedestrian and vehicle actuation and interconnection with the adjacent traffic control signals and audible pedestrian signals, at any of the private accesses to serve the subject property, at any of the four streets surrounding the development, if required within 5 years of full build-out of the site, as determined by and to the satisfaction of the Director of Public Works."
- Revised:
    - Original ACG – "The Developer shall pay to the City, in cash, on demand 25% of all costs associated with the extension of St. Matthews Avenue roadway including land acquisition and roadway improvements on St. Matthews Avenue from Empress Street to Century Street"
    - Final ACG – "The Developer shall pay to the City, in cash, on demand 23.86% of all costs associated with the extension of St. Matthews Avenue roadway improvements from Empress Street to Century Street to a maximum of $3.8M. It is hereby acknowledged that the City will consider the approximately 1.7 acres provided by the developer as fair compensation for the developers 23.86% share of land acquisition costs associated with the roadway improvements on St. Matthews Avenue from Empress Street to Century Street."

In January, 1973, City Council adopted a policy requiring developers to pay cash-in-lieu of providing open space dedication and that cash is to be deposited in a fund for the acquisition and improvement of land for parks, recreation and community use. Valuations for the 10% cash dedication are calculated by PPD. The dedication applies to each additional lot created as part of the DASSF process. The final ACG issued by the City on July 10, 2013, did not include the requirement of a 10% cash dedication and lot fees (equating to $842,000). Based on the file documentation, it was not clear on whether the City or the Developer would be responsible for the cash dedication and lot fees. The Administrative Report presented to SPCPD stated that the City would be responsible for conducting all Survey Plans; however, there was no specific mention of the cash dedication fee. Subsequent internal correspondence by key individuals involved in the transaction within the City as well as correspondence between the City and the Developer implied that the Developer would be responsible for the cash dedication fee.

Management response: *The dedication was removed from the final ACG report and paid by the City (Land Dedication Reserve Account) as a cost of sale pursuant to the completion of negotiations of the Servicing Agreement. The City's payment of the Dedication Fee was*

an appropriate cost of sale. Both the report on the sale and the Purchase/Sale Agreement required the City at its sole cost and expense to create a survey plan (8 acre parcel at the northwest corner) to facilitate the site. Dedication is a requirement as part of this process.

The off-site improvement initiatives surrounding the Polo Park stadium site are currently in progress. As such, PPD is uncertain of the total off-site improvement costs incurred by the City and the Developer to date. PPD provided an explanation on the Developer's share of the estimated land acquisition and construction costs, however the file documentation did not include an analysis of projected costs to substantiate the City's estimate of the Developer's share of off-site improvement costs.

Management response:
The reduction of costs from 25% to 23.86% was based upon information included in the Traffic Study and applied using a weighted mean average of traffic counts.

During the EOI process, the City inadvertently included approximately 1.7 acres of the stadium site which was required for the widening of St. Mathews Avenue. On a straight forwarded acreage rate, approximately $2 million was paid by the Purchaser for land it did not receive. The purchase price of $30.25 million was not adjusted and it was determined through negotiations with the developer that the City would consider the approximate 1.7 acres provided by the developer as fair compensation for the developers 23.86% share of land acquisition costs associated with the roadway improvements on St. Mathews Avenue from Empress Street to Century Street. The developer is still required to pay its 23.86% share (to a maximum of $3.8 million) of the costs associated with the construction of roadway improvements on St. Mathews Avenue from Empress Street to Century Street.

The foregoing only addresses roadway improvements for the extension of St. Mathews Avenue to Century Street. The developer, pursuant to the Servicing Agreement is also responsible for 100% of costs associated to other improvement works along St. James Street including, but not limited to, traffic signalization, additional lane of pavement, etc. and has provided the City $4.54 million as security that the overall roadway improvements will be completed.

Reporting to SPCPD / Council
Between the period of July 15, 2013 – July 19, 2013, various consultations were made between PPD and Legal Services regarding the appropriate process for approving amendments to any conditions included in the Servicing Agreement. Legal Services concluded that if the agreement is being imposed as a condition of the subdivision approval, as the Agreement states, under the Development Procedures By-Law, the approving authority for the terms of the agreement would be at a minimum SPCPD. PPD replied to this response stating that the Agreements will be amended to delete all references to the Short Form Subdivision application, eliminating the requirement of SPCPD approval.

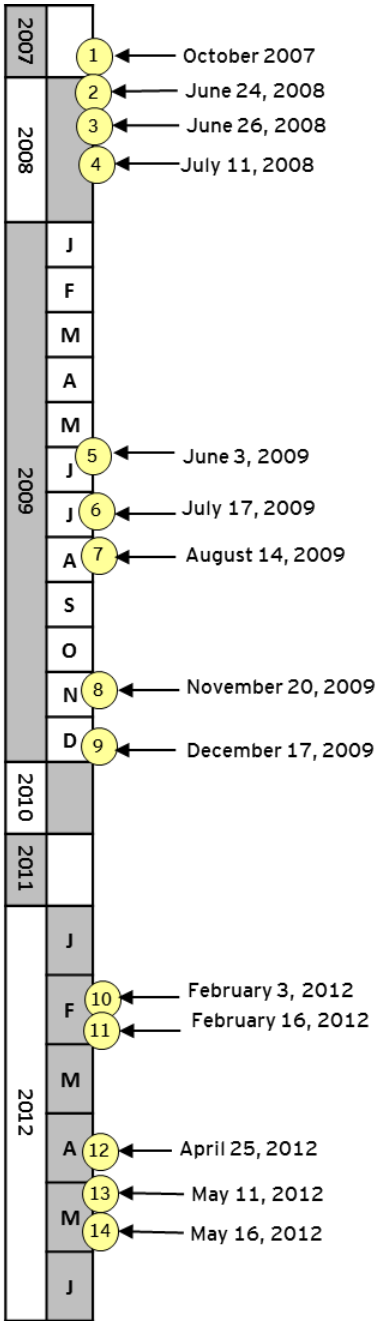
Management response: *SPCPD approval of the sale of the Polo Park Stadium site on July 3, 2012 serves as the authority for the agreement and as such, further consultation or approval from SPCPD was not obtained*.

Parcel 4

On June 3, 2009, EOIQ 379-2009 was issued for the design and construction of an indoor waterpark within the City of Winnipeg limits.

One submission was received with Parcel 4 identified as the waterpark site.

Summary Chronology



1. Email reference in file of an internal appraisal performed on Parcel 4 lands. Estimate of value: $7.7 million
2. Proponent requests "survey of that forks lands for water park and hotel"
3. Former CAO replies to Proponent's request "I have it ready for you"
4. Internal communications discussing a 3rd party appraisal that was conducted in 2003 which valued the property at $5.73 million. Comments included that the appraisal does not reflect current market conditions.
5. EOIQ 379-2009 publicly released for a waterpark within City limits
6. Addendum to EOIQ 379-2009 released (the City will consider submissions that include the purchase at fair market value of City owned land)
7. EOIQ submission deadline; one submission received; The Proponent's cover letter attached to the submission states:
   - The availability of the Parcel 4 site had been confirmed prior to the release of the EOIQ
   - Land cost is included at $3 million
8. The Proponent requests a copy of the internal City appraisal; City informs the Proponent that the appraisal was for internal purposes only and initiates the process of obtaining a 3rd party appraisal
9. Appraisal on the land conducted by the 3rd party appraiser estimated the value at $10 million (based on highest and best use: vacant land available for mixed-use commercial development)
10. An alternate 3rd party appraisal was conducted. Estimated value: $5.9 million (based on highest and best use: commercial development under current zoning bylaw)
11. LOI issued from the Proponent to the City with details on the future development, including:
    - Purchase price of $6 million
    - The City agrees to contribute $7 million as follows:
      - $5.9 million credit towards the purchase price of the land
      - $1.1 million payable to the purchase on the closing date
12. Council presented with the recommendation to declare the land as surplus based on the response to EOIQ 379-2009. Council referred comments back to Administration
13. City received a letter from the Proponent stating that they will not pursue the acquisition of Parcel 4
14. Deposit included in submission to EOIQ 379-2009 returned to Proponent

Detailed findings and observations

Openness, fairness and transparency of the procurement process

EOIQ 379-2009 stated that the proposal must identify a proposed site within the City of Winnipeg and preference will be given to sites located within downtown Winnipeg. The availability of the Parcel 4 site was not made publicly available prior to or as part of EOIQ 379-2009 however the cover letter included with the submission prepared by the Proponent indicated:

- The availability of the Parcel 4 site had been confirmed with the City prior to the issue of the EOIQ
- The Proponent has been advised by City representatives that the site is available for development

Management response:

The Department is not aware where or who the Proponent received this information that Parcel 4 was available. PPD is not aware of any proponents being provided information in advance of the EOIQ. An addendum was issued stating that Proponents could include City property in their submission.

Appraisals

An internal appraisal was completed by PPD in October 2007 and two external independent appraisals were completed for Parcel 4 initially in December 2009 and again in February2012. The appraisals concluded different values for the land. The internal appraisal conducted in October 2007, valued the property at $7.7 million. An appraisal conducted by an external third party, dated December 17, 2009, valued the Parcel 4 lands at $10 million (as at December 15, 2009). This value was based on Parcel 4 lands' highest and best use which was defined as "that use which is most likely to produce the greatest benefit either in money or amenities over a given period of time". The highest and best use was determined to be a mixed-use commercial development. The preferred land uses for this site, as outlined in the appraisal included:

- Retail / service
- Restaurant
- Office
- Residential
- Recreational
- Cultural
- Institutional
- Parking structures
- Public open space

The results of this appraisal were not included in the Administrative Report presented to Council.

An appraisal conducted by an alternate third party, dated February 3, 2012, valued the Parcel 4 lands at $5.9 million (as at January 24, 2012). This value was based on the underlying contingent and limiting conditions of valuing the lands on the basis of development with a specific use, that being a hotel, water park and parkade. Based on these factors, the highest and best use was a commercial development under the current zoning bylaw.

Reporting to Council

On April 25, 2012, an Administrative Report was presented to Council. The report requested approval of:

- Land purchase price of $6 million, which is supported by an external appraisal
- Phase 1 will include development of a 50,000 square foot waterpark
- Phase 2 will include the addition of a second tower of the hotel and a parking structure
- An annual $700,000 subsidy for free public access for 25 years
- City will provide capital funding $7 million toward construction

It is essential to the transparency and quality of the decision making process that key information such as results and limitations of appraisals be presented to Council and other decision makers. The two external appraisals conducted were based on varying proposed uses of the land, resulting in differing values. The Administrative Report did not include information that an external party valued the Parcel 4 lands at $10 million, based on the lands highest and best use, nor did the Administrative Report indicate that the alternate external appraisal valuing the lands at $6 million was based on the limited use of the lands being a hotel, water park and parkade.

Management's response:

The estimated value of $7.7 million, based on the internal appraisal conducted in 2007, was verbally presented to Council at the Council Seminar on April 15, 2012.

By not sharing relevant information, such as the results of appraisal and limitations outlined in appraisals, it is uncertain what impact this may have had in the decision making process. The sale of Parcel 4 was ultimately terminated and as such there was no overall impact.

Appendix D – Land transfers

Detailed notes on the results of the testing procedures

		21 Iroquois Bay	North side of Wilkes Ave and North of Lemay Ave -Villa Maria	Parker Lands	Estella Street for Mission Street
Testing procedures					
1	Evidence of trigger retained in file	✔	✔	✘	✔
2	Land title search retained in file	✔	✔	✔	✔
3	Evidence of Circular letter issued to key City stakeholders	✔	✔	✘	✔
4	Response from Ward Councillor received (as part of declaring property as surplus)	✘	Note 4	✘	Note 4
5	SPCPD approval to declare property as surplus	✔	✔	✔	✔
6	Council approval to declare property as surplus	✔	✔	✔	✔
7	Evidence of property valuation conducted and retained in the file	✔	✔	Note 7	Note 7
8	Evidence supporting how the property was advertised for sale / purchase was retained in the file	N/A	N/A	N/A	✔
9	Evidence of Legal Services review of the draft offer	✘	✘	✔	✔
10	Evaluation of offers	✔	✔	✘	✔
11	All offers received were retained in the file	✔	✔	✔	✔
12	Evidence supporting the rationale for the offer that was accepted was retained in the file	✔	✔	✘	✔
13	Response from Ward Councillor	✘	✔	✘	✘
14	Offer approval received based on delegation of authority	✔	✔	✔	✔
15	Notice from Legal Services to Geomatics (requesting preparation of land transfer) was retained in the file	N/A*	✔	✔	✔

		21 Iroquois Bay	North side of Wilkes Ave and North of Lemay Ave -Villa Maria	Parker Lands	Estella Street for Mission Street
Testing procedures					
16	Official land transfer retained in the file	N/A*	✔	✘	✔
17	Revised Statement of Adjustment retained in the file	N/A*	✔	✔	✔
18	Closure letter issued retained in the file	N/A*	✔	✘	✔
19	Commission paid to external broker	No	No	No	No

* Transaction still in progress

Notes

1. **Procedure**: Clearly defined transaction trigger was documented in file

   Summary of testing results:
   File documentation supporting the background and rationale for the transaction was noted for two of the transactions. No file documentation supporting the background for the Parker Lands exchange was noted in the file.

   Management response: *Real Estate Division opened up dialogue with meetings and phone calls regarding the Parker Lands.*

   EY comment: All key information and supporting documentation and analysis, such as meeting minutes outlining negotiations, should be retained in the file.

2. **Procedure**: Land title search retained in file

   Summary of testing results: All four land transfer transaction files contained evidence that a land title search was conducted prior the finalization of the land transfer agreement.

3. **Procedure**: Evidence of Circular letter issued to key City stakeholders

   Summary of testing results:

   Evidence of a circular letter being issued to key City stakeholders was noted in three of the transactions. No evidence was noted of a circular letter being issued for the Parker Lands exchange.

   Management response: *A Circular letter should be in the Parker Lands file as Real Estate knew about Water and Waste's Easements and roadworks that were required.*

EY comment: A copy of the correspondence should be included in the file to evidence procedure undertaken.

4. **Procedure**: Response from Ward Councillor received (as part of identify property as surplus)

   Summary of testing results:
   File documentation for the Estella St for Mission St transaction include a letter sent to the ward Councillor, however the response, if any, was not retained in the file.

   The other three land transfer transactions reviewed did not comply with the City practice implemented in 2010 that the Ward Councillor be consulted as part of declaring the property as surplus. File documentation supporting Ward Councillor approval was received for North side of Wilkes Ave; however, it was subsequent to the property being declared as surplus.

   Management response: *The City agrees that consultation with Ward Councillor is important. In mid 2010 it became a practice of the Real Estate Division to provide written correspondence with Ward Councillor on all transactions.*
   The Real Estate Division is in the process of developing a formal checklist for transactions, including verification of Councillor consultation.

   EY comment: EY agrees with the Real Estate division's initiative to implement a formal checklist to ensure that consultation with the Ward Councillor occurs and results are retained in the file.

5. **Procedure**: SPCPD approval to declare property as surplus

   Summary of testing results: All land transfer transactions received SPCPD approval as part of declaring the City land as surplus.

6. **Procedure**: Council approval to declare property as surplus

   Summary of testing results: All land transfer transactions reviewed received Council approval as part of declaring the City land as surplus.

7. **Procedure: Evidence of property valuation conducted and retained in the file**

   Summary of testing results: An appraisal report in accordance with CUSPAP was conducted for 21 Iroquois Bay and the North side of Wilkes Ave/North of Lemay Ave -Villa Maria transactions. Short, brief internally prepared analyses were conducted on both properties involved in the Parker Lands transaction. Appraisals of the Estella Street and Mission Street properties were completed in 2002, whereas the transaction was completed in 2008.

Management response:
Parker Lands: *A City Appraiser conducted an appraisal on both [Parker Lands] properties, albeit perhaps not a full narrative appraisal. His files were likely kept electronically.*

At the time the land exchange was negotiated and presented to Council for approval in 2009, none of the Parker Lands were identified as being required for Rapid Transit pursuant to the Transportation Master Plan. In 2013, Council approved the preferred south-westerly Rapid Transit alignment which now requires a portion of the Parker Avenue lands. Furthermore, the land exchange negotiated pursuant to Council approved Policy provided the City with an opportunity to reduce its capital costs for the project. The City required land from the owner near Hugo Street in order to expand its Transit facilities. Both sites in the land exchange were equally valued at approximately $1 million. Subsequently, approximately 3.81 acres of the property acquired from the owner became surplus to the needs of the City and now is conditionally sold at a purchase price of $1.315 million.

EY comment: Given the difference in the land size of two properties and the significant dollar value of the Parker Lands transaction, a full narrative appraisal by an accredited appraiser would provide the City with detailed information on the estimated value of each property in order to ensure that value for money is achieved on the land exchange.

All key information and supporting documentation and analysis, such as an appraisal, should be retained in the file.

Management response:
Estella/Mission: *Appraisals were not updated at the time the land exchange was approved as there was no need as the parties had made an agreement in principle at the time negotiations commenced.*

City Auditor Comment: Given the time difference between the appraisals for Estella Street and Mission Street, there could have potentially been significant changes in the value of either property during that time period.

8. **Procedure**: Evidence supporting how the property was advertised for sale / purchase was retained in the file

Summary of testing results:

- 21 Iroquois - In accordance with condition 4 of Offers to Purchase City-Owned Property Policy, the Department may act on unsolicited offers for City-owned property that involves an exchange of land, where the privately owned land is required by a City Department for public use or to facilitate a Council approval land acquisition program, subject to the City land being declared surplus. As such, the City-owned property was not advertised for sale

- North side of Wilkes Ave and North of Lemay Ave -Villa Maria - According to the RIS issued on June 15, 2010, it was the intention of the Department to market the subject property on the open market, however, pursuant to further review, it was determined that any prospective purchaser would be required to install extensive services within Wilkes Avenue in order to service the property. As a result, the City determined not to market the property for sale and to entertain the option of a land transfer
- Parker Lands –The City required land located at the rear of 421 Osborne Street for Transit. These lands were owned by a party interested in lands located north of Parker Avenue. It was determined the value of these two properties was the same and that a land transfer was an appropriate option. As such, the property was not advertised for sale
- Evidence supporting how the property was advertised for sale / purchase was noted in the Estella Street and Mission Street transaction file

9. **Procedure**: Evidence of Legal Services review of the draft offer

Summary of testing results:
- 21 Iroquois - Draft terms and conditions were provided to Legal Services, however, no response from Legal Services was noted in the file
- North side of Wilkes Ave and North of Lemay Ave -Villa Maria - Evidence of Legal Services involvement in the transaction was not noted until September 2010, subsequent to the Transfer Agreement being signed and approved
- Evidence of Legal Services review was noted in the Parker Lands and Estella Street and Mission Street transaction files

Management response:
- 21 Iroquois: *Not on file*
- North side of Wilkes Ave and North of Lemay Ave -Villa Maria: *Agreement worked out between owners, then agreement provided to legal for finalization*

EY comment: Legal Services should be consulted prior to the transfer agreement being signed and approved. Results of this consultation should be retained in the file.

10. **Procedure**: Evaluation of offers

Summary of testing results:
- 21 Iroquois: the evaluation of the 21 Iroquois Bay offer focused on qualitative factors such as environmental impact and future development of a walk-way in exchange for lands which were not of particular value to the City as they were essentially part of the resident's backyard for many years due to the City erecting a fence for the adjacent golf course.
- North side of Wilkes Ave and North of Lemay Ave -Villa Maria - the evaluation of this transaction focused on qualitative factors such as:

  - Ward Councillor was supportive
  - The City believed there would be limited interest in purchasing the City-owned property on Wilkes as the proposed purchaser would be required to install and pay for the cost of servicing the property
  - City-owned property will generate tax revenues at the closing of the proposed exchange
  - The transaction would eliminate the liability for the City associated with holding the property
  - City would acquire valuable habitat river property to be used for park purposes pending future development opportunities
- Estella St. for Mission St: File documentation contained sufficient evaluation of offers
- Parker Lands: No formal criteria used to assess the offers

11. **Procedure**: All offers received were retained in the file

    Summary of testing results: All offers received were retained in all land transfer transactions reviewed.

12. **Procedure**: Evidence supporting the rationale for the offer that was accepted was retained in the file

    Summary of testing results: Rationale for accepting the offer received was retained in three transaction files. No evidence supporting the acceptance of the Parker Lands offer was noted.

13. **Procedure**: Response from Ward Councillor

    Summary of testing results: Evidence of approval from the Ward Councillor was only noted in the North side of Wilkes Ave and North of Lemay Ave – Villa Maria transaction file.

    Management response: *Not on file*

    EY comment: Response from the Ward Councillor should be retained in the transaction file.

14. **Procedure**: Appropriate offer approval received based on delegation of authority

    Summary of testing results: All land transfer transactions reviewed received appropriate approvals based on the delegation of authority.

15. **Procedure**: Notice from Legal Services to Geomatics (requesting preparation of land transfer) was retained in the file

Summary of testing results: Notice from Legal Services to Geomatics requesting preparation of land transfer was noted in three transactions. The 21 Iroquois Bay transaction is still ongoing therefore this procedure is not applicable.

16. **Procedure**: Official land transfer retained in the file

    Summary of testing results: Evidence of the official land transfer was noted in the North side of Wilkes Ave and North of Lemay Ave -Villa Maria and Estella Street for Mission Street transaction files. No information noted in the file Parker Lands transaction file.
    The 21 Iroquois transaction is still ongoing therefore this procedure is not applicable.

    Management response: *Management concurs that the land transfer should be retained in Real Estate's transaction files.*

    EY comment: A copy of the correspondence should be included in the file.

17. **Procedure**: Revised Statement of Adjustment retained in the file

    Summary of testing results: The revised Statement of Adjustment was retained in three transaction files. The 21 Iroquois transaction is still ongoing therefore this procedure is not applicable.

18. **Procedure**: Closure letter issued retained in the file

    Summary of testing results: Evidence of the closure letter was noted in two transaction files. No closure letter was noted in the file Parker Lands transaction file. The 21 Iroquois Bay transaction is still ongoing therefore this procedure is not applicable.

    Management response: *Management concurs that the closure letter should be retained in Real Estate's transaction files.*

    EY comment: A copy of the correspondence should be included in the file.

19. **Procedure**: Commission paid to external broker

    Summary of testing results: No external brokers were involved in the land transfer transactions reviewed.

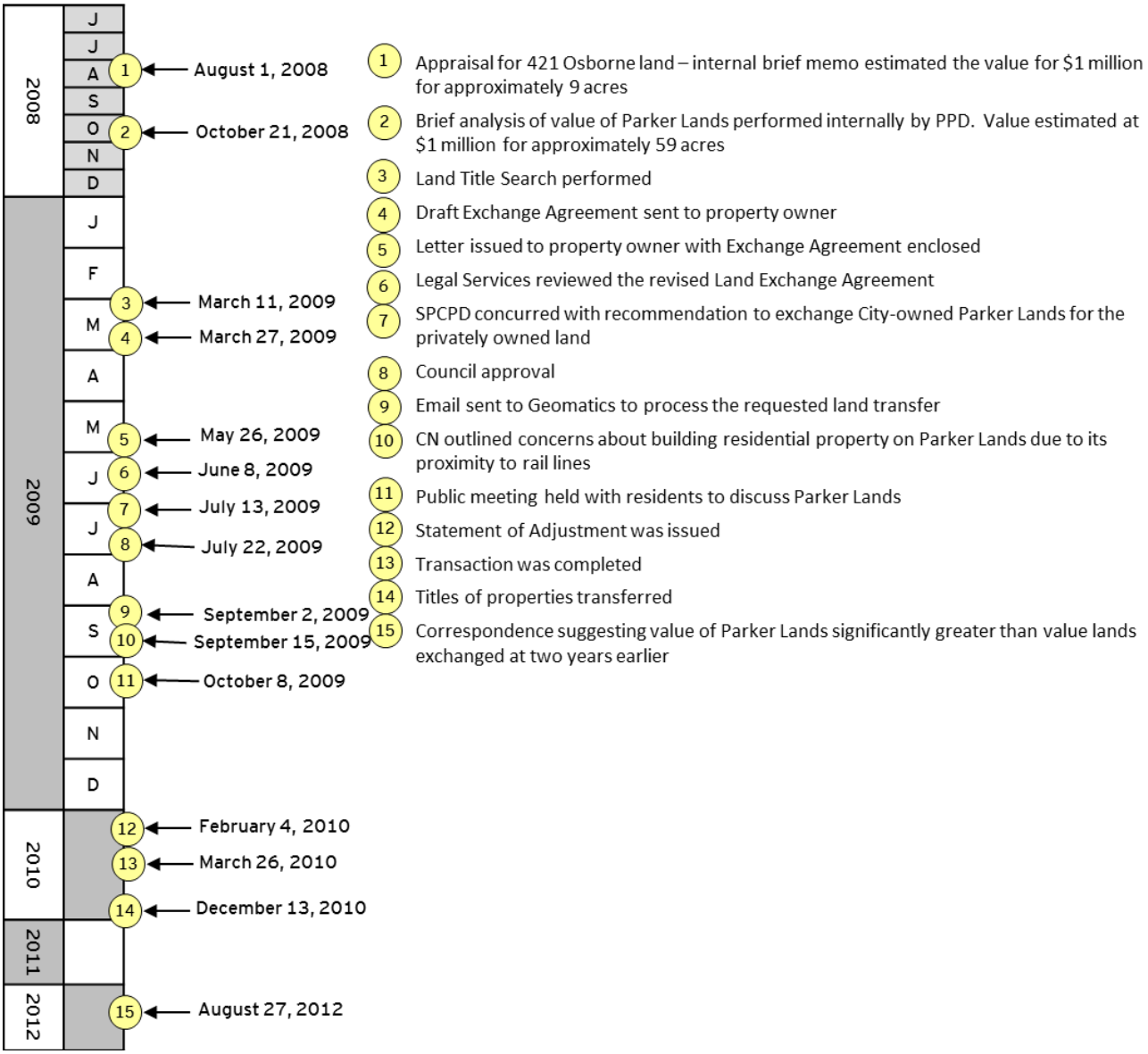
Expanded Detailed Review for Selected Transactions

As noted in Sections 1 and 2 of the report, EY undertook an expanded detailed review on several transactions. They were identified and selected based on a number of factors – the size of the transactions; potential areas of non-compliance with City policies, processes, and procedures; potentially contradictory information; limited documentation in the transaction file; or information obtained during interviews with City Councillors, internal City stakeholders, and others. All such transactions that resulted in a land transfer of City property are discussed below.

Parker Lands

The City required land located at the rear of 421 Osborne Street for Transit. The owner of these lands was interested in a parcel located north of Parker Avenue. A City appraiser prepared a short memo on value of the two parcels and determined the value to be similar. The property at 421 Osborne was approximately 9 acres and the Parker lands parcel was approximately 59 acres. PPD determined it was in the City's best interests to proceed with a land exchange of the properties as each parcel was valued at approximately the same amount.

Summary Chronology



Detailed findings and observations

Transit required adjacent lands to its facility at 421 Osborne. A City appraiser prepared a short brief memo, dated August 1, 2008, estimating the value of the required adjacent property. The appraiser reviewed the original memo dated August 1, 2008. Additional sales of rearage lands were reviewed and it was noted that when considering the lands were to be valued as part of the Transit lands, the acreage rate is higher than originally estimated. A second memo dated October 2, 2008 was prepared. The Osborne property was approximately 9 acres of land adjacent to the City's transit garage which would be serviced from the existing Transit site. The internally prepared two page memos included the following same disclaimers in each memo:

1. "There has not been a full appraisal in accordance with Canadian Uniform Standard of Professional Practice (CUSPAP) completed as time restraints were not reasonable to permit a proper investigation and analysis"
2. The employer has requested that the appraiser (the employee) complete a "rush" value range, therefore the value provided may or may not be the same under a complete, time permitted appraisal assignment in accordance with CUSPAP
3. The value was completed for internal Department purposes
4. The subject site was not inspected
5. The value provided assumes that the Planning and Land Use Division would support the future use of the subject site
6. The estimate of value is based on the lands being clean of contamination
7. A highest and best use analysis was not completed
8. Servicing related costs such as land drainage requirements for the future expansion are not known. The assumption is that there are no land drainage implications to the site"

The August value range was estimated to be $0.8 to $1 million and the October value range was changed to $1.1 to $1.6 million for the property at 421 Osborne.

As noted, the owner of the lands adjacent to 421 Osborne was interested in a parcel located north of Parker Avenue. Parker Lands were comprised of 59 acres of raw unserviced land with drainage challenges and unknown costs to service. The City appraiser prepared a short brief memo dated October 21, 2008 which stated that he "completed a brief analysis of available sales to estimate a value range of the 58+- subject City of Winnipeg parcel located north of Parker Avenue." "A future residential use would require an amendment to Plan Winnipeg." The internally prepared two page memo outlined various assumptions, including:

- "The receptiveness of CNR to either sell or grant access may depend on the development of the subject lands
- The subject site is unserviced
- There are numerous servicing issues associated with development of this parcel which would require input from other departments
- The access point to the site has not been confirmed due to the future Western Transit Corridor

- There is a major water main line that runs north/south through the subject lands
- The unserviced value is dependent on the magnitude of the servicing issues
- The subject site was not inspected
- The site is assumed to be free and clear of contaminants
- A highest and best use analysis was not completed
- Planning and servicing issues have not been investigated
- A full appraisal of the subject parcel was not completed due to time constraints"

The value range for the Parker Lands was estimated to be $1 to $1.1 million.

Based on these brief memos, the value of each parcel was estimated at approximately the same amount and PPD determined it was in the City's best interests to proceed with a land exchange of the properties. The Administrative Report presented to EPC and Council noted that each property had a market value of $1 million; however, the Administrative Report did not disclose the limitations of the brief analyses conducted to determine the estimated market value of both properties.

The land exchange transaction was completed by October 2009 with the transfer of lands.

The value of the Parker Lands was raised approximately two years after the land exchange was completed. In August 2012, as part of another development project (unrelated to Parker lands), the owner of the Parker Lands provided information to the City's Finance Department on the value of his assets to support financing arrangements for the project. The value of the Parker Lands in the submission suggested a substantially greater value of the Parker lands than the value of the land under which the land transfer was completed. PPD reviewed the appraisal that supported the owner's value of the Parker lands, but a copy of the appraisal was not retained by the City.

Management response: *The appraisal assumed the site was fully serviced, rezoned to accommodate mixed use high density residential development. As stated in email correspondence from the City's internal appraiser, the value established was in his opinion optimistic at best and issues with both land and wastewater need to be accounted.*

Without having completed full narrative appraisals prior the completion of the land transfer, and not having offered the lands for sale through a competitive process, it is uncertain whether the value of the land may have been different than the brief memos concluded. It appears the basis of the appraisal two years subsequent to the land transfer was very different than the estimate of value outlined in the brief memos prepared by the City appraiser. A direct comparison cannot therefore be made.

The City's current plans for the expansion of the transit corridor could potentially require the City to purchase some of the Parker Lands it transferred as part of the land exchange.

***Management response**: At the time the land exchange was negotiated and presented to Council for approval in 2009, none of the Parker Lands were identified as being required for Rapid Transit pursuant to the Transportation Master Plan. In 2013, Council approved the preferred south-westerly Rapid Transit alignment which now requires a portion of the Parker Avenue lands. Furthermore, the land exchange negotiated pursuant to Council approved Policy provided the City with an opportunity to reduce its capital costs for the project. The City required land from the owner near Hugo Street in order to expand its Transit facilities. Both sites in the land exchange were equally valued at approximately $1 million. Subsequently, approximately 3.81 acres of the property acquired from the owner became surplus to the needs of the City and now is conditionally sold at a purchase price of $1.315 million.*

Appendix E – Lease transactions (City as lessee)

Detailed notes on the results of the testing procedures

		395 Main	1750 Dugald	457 Main
Testing procedures				
1	Background of transaction trigger	✔	✔	✘
2	Appropriate approval exists to commence leasing process	✔	✔	✔
3	Comprehensive market analysis was conducted to determine market rates	Note 3	Note 3	Note 3
4	Comprehensive procurement process to identify potential properties	✘	✔	✘
5	Evaluation criteria used to assess options and alternatives	Note 5	✔	Note 5
6	All option details were retained in the file	✔	✘	✔
7	Evidence supporting the rationale for the option that was selected was retained in the file	✔	✔	✔
8	Negotiations to discuss lease rate, tenant inducement/ improvements, etc. are retained in the file	✔	✔	✘
9	Approval of the proposed lease of the recommended site (based on delegated authority)	✔	✔	✔
10	Comments / approval received from Legal Services	✔	✔	✘
11	Appropriate signing authority is obtained	✔	✔	✔
12	Lease agreement is consistent with approved terms	Note 12	Note 12	Note 12
13	Commission paid to external broker	No	No	No

Notes:

1. **Procedure**: Clearly defined transaction trigger was documented in file

   Summary of testing results: File documentation supporting the background and rationale for the transaction was noted for the leases tested except for the 457 Main Street transaction. The lease renegotiation of 457 Main Street was started in early 2011 and recommended for approval in December 2011 in an Administrative Report to Council. This lease did not expire until January, 2015 and it is unclear from

documentation in the Real Estate file why the renegotiation was undertaken so early; given that the renegotiated lease rate was higher than the lease rate that would have been paid under the remaining lease terms to January, 2015. The 457 lease negotiation could have been deferred until the expiry of the lease to achieve value for money savings of $1.2 million. The $1.2 million cost on 457 Main Street was not highlighted in "implications of recommendations" in the Administrative Report to Council, but the $1.5 million savings on 395 Main Street was.

Management response: *Negotiating two years in advance of the expiry of the term of lease is not uncommon considering the amount of time required to find alternate suitable location(s), fit-up*

2. **Procedure:** Appropriate approval exists to commence leasing process

   Summary of testing results: Appropriate approval, based on delegation of authority was obtained for prior to commencing the leasing process for all leases.

3. **Procedure:** Comprehensive market analysis was conducted to determine market rates

   Summary of testing results: File documentation supports that a market analysis was conducted to determine market rates for heritage buildings for the 395 and 457 Main leases. However, there was no file documentation evidencing that a narrative appraisal or specific building condition assessment was performed to support the financial analysis in the Administrative Report prior to approval of the 395 and 457 leases. Based on discussions with Municipal Accommodations, a non-invasive building condition assessment was performed for 457 (no building assessment report prepared for 395). Given the magnitude of the leases, the significant estimates relating to future capital costs, the age of the buildings and the City's requirement to share in capital and maintenance costs, a more comprehensive external building condition assessment report and / or a narrative appraisal should have been considered. For 1750 Dugald Road, no market analysis was performed by the City as it was the City's mandate that the new police station be located on the City-owned land within the St. Boniface Industrial Park. An RFP process was undertaken for the construction and lease of 1750 Dugald Road.

   Management response: *All factors requiring estimate were analyzed to ensure accuracy and completeness commensurate with the scope of analysis. In addition, all estimation included contingencies and/or risk quantification as warranted to ensure conservatism.*

   All factors requiring estimate were based on prior year or current incurred costs and quotes/opinions obtained from City Public Service staff professionals, external consultants, and/or external service providers based on their training and experience related to the items requiring estimate.

Technical Maintenance estimates associated with 457 Main utilized VFA reporting (a City Public Service Building Condition Assessment [BCA] database).

Audit Recommendation to obtain a comprehensive external BCA is valid for assets the City is entering into agreement to lease or purchase that (1) have not previously been under civic care and control and (2) are for a medium to long term duration. As at the date of analysis, Both 457 and 395 Main had been in the civic portfolio for approximately 20 years. As such, City Public Service staff professionals were (1) highly experienced and informed re: subject assets and (2) were in possession of, or had readily available access to, any/all technical information and studies pertaining to the assets under study. As such, external BCA was not warranted.

EY comment: The VFA report was not retained in the file to support that a comprehensive investigation into the state of the building and to support the financial estimates presented to council. Given the magnitude of these transactions, external building condition assessments should have been considered.

4. **Procedure:** Comprehensive procurement process was undertaken to identify potential properties

   Summary of testing results: File documentation supports that a comprehensive procurement process was undertaken for the 1750 Dugald Road property. There was no file documentation to support that a comprehensive procurement process was undertaken for the 395 Main Street and 457 Main Street leases, and there was no file documentation explaining why a comprehensive procurement process was not undertaken. Both of these lease agreements were renegotiations for property already occupied by the City. The renegotiations occurred prior to the expiry of the leases. The 395 Main Street was to expire December 31, 2016 and the lease for 457 Main was to expire January 15, 2015. The total committed lease payment on these two properties was for a combined amount in excess of $50 million over the term of the leases with no price escalation on the base lease rate. The 457 Main Street lease agreement also had a requirement for the City to share equally in capital expenditures for the building which was primarily comprised of building envelope and lighting upgrade costs for a total estimated capital expenditure of $4.3 million over 10 years.

   Management response: *Based on existing civic policies/procedures, RFP/EOI for asset leasing is not required.*

   Given the large amount of square footage (over 120,000 square feet), a committed revenue stream ($50 million over the 25 years), and a low risk tenant (the City), requesting an EOI or RFP from other possible landlords to assess fair value rent options (including options which may not have required a capital expenditure amount) and to introduce competition to ensure value for money was achieved,

should have been considered. Given the large amount of square footage to be rented, the City had substantial negotiation power, which may not have been leveraged. Reliance on comparison to lease rates for other heritage buildings alone for leases of this size is insufficient.

5. **Procedure:** Evaluation criteria used to assess options and alternatives

   Summary of testing results: File documentation supports that evaluation criteria were used to assess options and alternatives.

   In the 395 and 457 Main Street leases, EY noted that the Administrative Report included a detailed quantitative and qualitative analysis of alternatives; however, no documentation was noted in the file supporting the analysis or calculations. In addition, there were other observations related to the 395 Main Street and 457 Main Street analyses. The financial analysis supporting the recommendation was based on assumed lease terms. Certain final terms do not appear to have been considered in the financial analysis (i.e. management fees under 457 lease are based on a gross rent figure and also include 15% on additional services, which is not noted in the Administrative Report). Given the magnitude of the renegotiated leases and the expiry date of the existing leases, time would have permitted for the draft terms to be agreed to and used as the basis for the financial analysis included in the Administrative Report recommending the transactions.

   Management response: *Based on existing civic practices, proposed terms and conditions are attached to associated Administrative Reports. However, the CAO is often given authority to finalize terms and conditions contained in the Lease Agreement in accordance with the Administrative Report approved by Council or committee of Council.*

   The analysis was based on proposed terms and conditions conveyed by City Public Service staff professionals engaged in the negotiation process. Preparers of the financial analysis reviewed terms and conditions as well as all factors requiring estimate for reasonableness to ensure a level of assurance commensurate with the nature and scope of analysis.

   The purpose of the analysis is to provide an order of magnitude of potential cost and benefit associated with implementation as well as 25 year operation of the options presented. Specifically, this analysis presents a potential future financial requirement to the City of Winnipeg (City) which may be higher or lower than as identified herein. The inability to estimate or project a precise cost/benefit to the City results from (1) uncertainty as to Winnipeg real estate market conditions (e.g., changes in local construction industry inflation, utility rates, etc.), (2) uncertainty associated with financial market conditions, and (3) other risk factors associated with increasing the years under study in a financial analysis beyond a year. As such, a precise estimate of

total financial impact to the City cannot be determined.

The analysis was prepared as at a specified date. Delegation of authority to the CAO which permits adjustments to lease terms and conditions in accordance with the Administrative Report approved by Council or committee of Council does not render the analysis as at the specified date invalid.

The above statement implies that, because the financial analysis was not based on final terms and conditions, it was incomplete. The analysis was based on proposed terms and conditions prevailing at the time of analysis. Those same terms and conditions are included in the final lease documents. Such analysis is consistent with (a) any delegation of authority to the CAO which permits adjustments to lease terms and conditions following Council approval and (b) existing practice to prepare final legal documents after approval of the report by Council.

- Both leases were renegotiated in advance of the expiry of the existing leases. This resulted in estimated cost savings on base rent for 395 Main Street of approximately $1.5 million over the five years to the original expiry date which achieved value for money. However, base rent on the existing lease for 457 Main Street was lower for the remaining lease period, and by renegotiating early, the City incurred approximately $1.2 million of additional base rent costs. The 457 lease negotiation could have been deferred until the expiry of the lease to achieve value for money savings of $1.2 million. The $1.2 million cost on 457 Main Street was included as "additional comments" in the Financial Impact Statement in the Report and not highlighted in "Implications of Recommendations" in the Administrative Report to Council, where the $1.5 million savings on 395 Main Street were discussed. The new lease rates were effective January 1, 2012. It was not specifically noted in the Administrative Report, nor was it noted in the transaction file, why it was in the City's best interest to enter into a higher lease rate on 457 so far in advance of the lease expiration date.

- Both leases contained a 5% management fee for property management services. However, for the 395 Main Street lease this was based on a base rent amount (at $14.95 /sq. foot), and in the 457 Main Street lease this was based on a gross rent figure, resulting in a higher property management fee. This information was not disclosed in the Administrative Report. Taxes and operating costs are estimated to be an additional $7 per square foot (and will rise over the 25 years with inflation). At $7, it is estimated that an additional $24,000 in property management fees is being paid annually (or approximately $600,000 over the 25 year term), in comparison to the rate under the 395 Main Street lease.

- Based on the nature of the leases for 395 Main Street and 457 Main Street (a triple net carefree lease with a majority/single tenant), property management fees would typically be more comparable to industrial property management fees

(which range from 2% to 4%). As negotiation of rates or assessment of property management rates on similar property types was not considered in the analysis, the Real Estate files or the Administrative Report to Council, this may have negatively impacted value for money being achieved. It is unclear from the Administrative Report or the Real Estate files why both leases were presented and analyzed on a combined basis in the Administrative Report to Council at the same time as they were separate negotiations with separate landlords.

Management response: *The leases were analyzed separately and included in separate Appendices as specifically recommended by the City Auditor pertaining to preparation of the associated Administrative Report.*

The leases were additionally analyzed together to inform decision makers of the total (combined) implications of the recommendations contained in the Administrative Report.

- The 457 Main Street lease contains a clause that there is an additional 15% management fee for any additional services provided, but there is no description of what type of work would be subject to that charge and a typical rate for tenant work would be 5% to 10% for those type of services. As negotiation of rates or assessment of property management rates for additional services was not considered in the analysis, the transaction files or the Administrative Report to Council, it is uncertain if value for money was achieved.

- It is unclear from the information provided in the Administrative Report or retained in the real estate transaction files why both leases were presented and analyzed on a combined basis in the Administrative Report to Council at the same time as they were separate negotiations with separate landlords on leases that had different expiry dates well into the future. Base rent was the same, but operating costs and other aspects of the leases were quite different from one another and this was not highlighted.

- The financial analysis included in the Administrative Report to Council was based on incomplete information as the lease terms had not been finalized. Given the magnitude of these leases at the expiry date of the existing leases, time would have permitted for the draft terms to be agreed to and used as the basis for the financial analysis included in the Administrative Report recommending the transactions. Furthermore, the report contains information which appears conflicting, as the classification as an operating lease implies that there is residual value at the end of the 25 year lease, however the lease versus buy calculations implies that there is no residual value in the building at the end of the lease.

- The fair value calculations included in the operating versus capital leases analyses were completed using a market capitalization approach, but given lease rates for both properties are locked in for 25 years at the same rate; a discounted cash flow approach would be a more appropriate methodology to use.

- The fair value calculation under the buy option on both properties also assumed a cap rate applied to a cash flow stream of lease income consistent with the 25 year lease being entered into by the City. This would not be appropriate in a lease versus buy analysis where the City was the purchaser of the building. The fair value should be based on assumptions of what the purchase price would be if the property was acquired by the City; consideration would be given to future rents collected over the 25 years if the City did not renew its lease (which likely would include more vacancy, cost of a lease-up period and a multi-tenant scenario which typically requires more costs).

- For the lease versus buy analysis on the two properties, the buy option calculation included substantial maintenance costs and a financial risk cost component which were not explained in detail, and it excluded a residual value benefit of the owned property after 25 years. However, the operating versus capital lease analysis earlier in the report states "the estimated economic life of the leased assets is 40 years". Detailed working papers, calculations, and memos supporting the financial analysis in the Administrative Report were not included in the transaction file.

6. **Procedure**: All option details were retained in the file

   Summary of testing results: Option details were retained in the 395 Main Street and 457 Main Street transaction files.

   Responses received to the 1750 Dugald RFP and evaluation results were not noted in the file.

   Responses to the City issued RFP for financing, construction and lease of the new East District Police Station were not retained in the file, resulting in no evidence being readily available to support the rationale for the City's selection.

   Management response: *Real Estate staff is instructed to put all relevant information pertaining to a transaction on file. The RFP was completed by Municipal Accommodations, other than the information provided to Real Estate information would be kept on file by Municipal Accommodations or Materials Management. Real Estate is able to access information as required by working with these divisions, if required by audit we can request this information.*

EY comment: All option details should be retained in the transaction files.

7. **Procedure:** Evidence supporting the rationale for the option that was selected was retained in the file

   Summary of testing results: File documentation included the rationale for the option that was selected in all lessee transaction files.

8. **Procedure:** Negotiations to discuss lease rate, tenant inducement/ improvements, etc. are retained in the file

   Summary of results: The 395 Main Street and 1750 Dugald Road transaction files contain various correspondences between the City and the lessor negotiating lease rates and other terms.
   No correspondence relating to negotiations of lease rates, tenant inducements, etc. was retained in the 457 Main Street file. No finalized agreement was retained in the file.

   Management response: *Not on file*

   EY comment: Documentation supporting the Real Estate division's recommendation to Council should be retained in the file for the transaction.

9. **Procedure:** Approval of the proposed lease of the recommended site (based on delegated authority)

   Summary of results: Appropriate approval was obtained based on delegated authority.

10. **Procedure:** Comments / approval received from Legal Services

    Summary of results: File documentation supports Legal Services review and approval of the 395 Main Street and 1750 Dugald Road lease agreements.
    No evidence of Legal Services review was noted in the Real Estate files for the 457 Main Street lease.

    Management response: *Not on file*

    EY comment: Correspondence requesting Legal Services to review the agreement should be retained in the transaction file.

11. **Procedure:** Appropriate signing authority is obtained

Summary of results: Appropriate signing authority was noted in all lease agreements.

12. **Procedure:** Lease agreement is consistent with approved terms

    Summary of results: EY notes that for the 395 Main Street and 457 Main Street leases, the draft terms and conditions were not included in the Administrative Report. The leases were not finalized until well after the leases were approved. For the 457 Main Street lease, certain terms in the final agreement which may have impacted Council's decision, do not appear to be highlighted in the Administrative Report. For example, the 5% management fee for the lease is not calculated consistent with the 395 Main Street lease (it is based on a gross rent figure, after taxes and other operating costs) which was not reported. Also under the definition of operating costs the City is responsible for a number of additional costs, including but not limited to HVAC, common area costs, and the clause provides for the landlord to undertake work and charge to the tenant if the landlord believes the work (including replacement) is to the occupant's benefit, which exposes the City to risk. Given the expiry date of the existing leases, time would have permitted reporting of the proposed final lease terms (or a copy of draft lease agreements) to Council. Due to the differences noted above between the financial analysis presented and the final lease terms, bundling of the analysis of the two separate leases and differences in the lease terms between the two properties, clear, separate, complete reporting to Council was warranted.

    One difference was noted between the approved lease terms and the final lease agreement for the 1750 Dugald Road lease. The original approved lease stated a commencement date of September 1, 2008 while the final agreement stated a minor change with a commencement date of no later than Sept 16, 2008.

13. **Procedure**: Commission paid to external broker

    Summary of testing results: No external brokers were involved in the lease (City as lessee) transactions reviewed.

Appendix F – Lease transactions (City as lessor)

Detailed notes on the results of the testing procedures

		95 Arrowwood Drive	266 Graham	Bishop Grandin – SE corner of St Vital Center	Charleswood Place Baseball Facility	100 Sinclair
Testing Procedures						
1	Land title search retained in file	✔	✔	✘	✘	✘
2	An appraisal and/ or market analysis conducted	N/A	Note 2	✔	✘	✘
3	Misc. Plan and tenant original request circulated to City departments	✘	✔	✔	✔	✔
4	Response from Ward Councillor received	✘	✘	✘	✘	✘
5	Administrative fee	Note 5	✔	✔	✔	Transaction is not complete. An agreement has not been finalized
6	Rent based on appraised or market value	Note 6		✔	Note 6	
7	Cancellation clause	✔	✘	✔	✔	
8	Terms and conditions approved by tenant	✔	✔	✔	✔	
9	Evidence of Real Estate division review of agreement	✔	✔	✔	✔	
10	Evidence of approval based on delegated authority	✘	✔	✔	✔	
11	Appropriate signing authority is obtained (including Legal Services)	Note 11	✔	✔	✔	
12	Commission paid to external broker	No	Note 12	No	No	

Notes

1. **Procedure**: Land title search is retained in the file

   Summary of testing results
   Evidence of land title search being conducted in a timely manner was noted for 95 Arrowwood Drive. The City acquired 266 Graham shortly before leasing a portion of the property. Land title was noted in the acquisition file.

   No file documentation to support that land title search was performed prior to entering into the lease agreement for Bishop Grandin, Charleswood Place Baseball Facility, and 100 Sinclair.

   Management response:
   Bishop Grandin: *Real Estate Agrees with the importance of title searches and are instructed to complete title search / consult Geomatics on all transactions.*
   In case of subject property title is on file, also the agreement entered into is an encroachment agreement for right-of-way. For right-of-way such as Bishop Grandin the only possible interest which could be registered against it is a gas line, which in the case of a parking lease would not impact the City. The lessor would not be able to register interest against the property, nor would past or future owners of the property. The Real Estate Division is in the process of developing a formal check list for all transactions, including verification of title search.

   Charleswood Place Baseball Facility: *The Real Estate division agrees title review is important. Real Estate staff are instructed to research the title / consult Geomatics where title may be affected. The Real Estate Division is in the process of developing a formal check list for transactions, including verification of title search.*

   100 Sinclair: *The Real Estate division agrees title review is important. Staff are instructed to research the title / consult Geomatics where title could be affected. The Real Estate Division is in the process of developing a formal checklist for transactions, including verification of title search.*

   EY comment: EY agrees with the Real Estate division's initiative to implement a formal checklist to ensure that all key documents, such as land titles are retained in the file.

2. **Procedure:** An appraisal and/or market analysis was conducted

   Summary of testing results
   95 Arrowwood Drive: Not applicable as appraisals are not required for landscape and maintenance leases.

266 Graham: A 2011 business plan prepared by an external property manager, dated December 31, 2010, outlined current lease rates for other (non-City) tenants of the building, however, no evidence of an appraisal noted in file and no file documentation to support the basis for rent price for the City's tenant.

Bishop Grandin: File documentation supported that an appraisal / market analysis was conducted.

Charleswood Place Baseball Facility: No evidence of an appraisal noted in file.

100 Sinclair: No evidence of an appraisal noted in file.

Management response
266 Graham: *An expectation of our property manager was that they would do necessary work to determine market rates and lease our property at those rates. Since severing the management contract with the property manager the City has taken over the interim management of the property, and has used the services of an accredited appraiser to provide information regarding market rental rates.*

Charleswood Place Baseball Facility: *Lease on subject property is to a non-profit group at a rate which was approved by Council. Lease is not at market rate, appraisal/market rate analysis not required.*

100 Sinclair: *Lease on subject property is to a non-profit group at a rate which was approved by Council. Lease is not at market rate, appraisal / market rate analysis not required.*

EY comment: Results of appraisals and market analyses should be retained in the transaction files. There was no file documentation to support that an appraisal or market analysis was conducted for the Charleswood Place Baseball Facility (annual lease rate of $1) and 100 Sinclair (an annual lease rate of $13,267, which the City considers a credit in kind under the recreational programming under the Winnipeg Partnership Agreement). In accordance with Policy on the Sale / Lease of City lands to Non-Profit Organizations, the City may lease property at a rate below market rate if the tenant meets certain eligibility criteria. All subsidies or grants and corresponding revenues under this policy need to be clearly identified and reported back to Council on a yearly basis through SPCPD. A market analysis of such properties would inform decision makers of the contributions made by the City relative to the fair value of the properties.

3. **Procedure:** Misc. Plan and tenant original request circulated to City departments

   Summary of testing results
   95 Arrowwood Drive: No file documentation to support that other City departments were notified of transaction. Given the long-term leasing relationship between the City and the tenant, applicable City departments and Council should be made aware during each renewal period of the arrangements in place.

   All other lease transactions had file documentation to support that the Misc. Plan and tenant original request was circulated to various City departments.

   Management response: *The agreement entered into was done under delegated authority.*

   EY comment: EY understands that all landscape and maintenance leases are presented and discussed with Council on an annual basis. It is appropriate that Council be informed of such leases, including the market value of the properties.

4. **Procedure:** Response received from Ward Councillor

   Summary of testing results: None of the lease files reviewed contained file documentation to support a response from the Ward Councillor.

   Management response: *The City agrees that consultation with Ward Councillor is important. In mid-2010 it became a practice of the Real Estate Division to provide written correspondence with Ward Councillor on all transactions. The Real Estate Division is in the process of developing a formal checklist for transactions, including verification of Councillor consultation.*

   EY comment: EY agrees with the Real Estate division's initiative to implement a formal checklist to ensure that consultation with the Ward Councillor occurs and results are retained in the file.

5. **Procedure:** For new lease agreements, the draft terms and conditions must include an Administrative Fee of either $250 per annum for non-profits and $1.00 leases or $500 one-time fee for others.

   Summary of testing results: All four leases that were completed during the period of review complied with this City guideline. An administrative fee was not paid for 95 Arrowwood Drive as the transaction reviewed was a renegotiation.

6. **Procedure:** Rent value in the lease agreement is consistent with the results of the appraisal / market analysis

Summary of testing results
95 Arrowwood Drive: Not applicable as appraisals are not required for landscape and maintenance leases.

266 Graham: Rent value determined by property manager. No further information noted in the file.

Bishop Grandin: Annual rent value is consistent with City guideline and based on 10% of appraised value.

Charleswood Place Baseball Facility: No evidence of an appraisal noted in file, as such, EY was unable to assess whether the annual rent is consistent with the appraised value.

7. **Procedure:** Terms and conditions contain a cancellation clause

   Summary of results
   Three of the completed lease agreements contained a cancellation clause. The 266 Graham lease do not contain a cancellation clause.

   By negotiating this clause in all City lease agreements, the City will have access to the property should the property be needed for other purposes.

   Management response: *The City does not have a policy or guideline relating to cancellation clauses in lease agreements. The terms and conditions of lease agreements are negotiated on an individual basis, always taking into account the City's best interests and potential future uses of the property.*

   EY comment: To protect the City as well as the lessee, a cancellation clause should be negotiated into the lease agreement, when possible.

8. **Procedure:** Draft **t**erms and conditions are reviewed and approved by the tenant

   Summary of results: For all completed lease agreements, file documentation evidenced that the draft terms and conditions were reviewed and approved by the tenant.

9. **Procedure:** Evidence of Real Estate division review of agreement

   Summary of results
   For all completed lease agreements, file documentation evidenced that the Real Estate division reviewed the lease agreement.

10. **Procedure:** Evidence of approval based on delegated authority

Summary of results
95 Arrowwood Drive: No file documentation to support that Council approval was received. Given the long-term leasing relationship between the City and tenants, Council should be made aware during each renewal period of the arrangements in place.

All other completed lease agreements: File documentation supports Council approval was received.

Management response: *The agreement entered into was done under delegated authority. Landscape and maintenance leases are presented annually to Council as part of the budget process.*

EY comment: EY understands that all landscape and maintenance leases are presented and discussed with Council on an annual basis. It is appropriate that Council be informed of such leases, including the market value of the properties.

11. Appropriate signing authority is obtained

Summary of results
Appropriate signing authority, including Legal Services, was noted for all completed lease agreements, with the exception of 95 Arrowwood Drive. The final copy of the lease agreement noted in the transaction file did not contain the signature of Legal Services.

12. **Procedure**: Commission paid to external broker

Summary of testing results
266 Graham: The City engaged an external party as part of a Real Estate Management Agreement. Refer to Section 3.1 for further discussion.

No external brokers / parties were involved in the completed lease (City as lessor) transactions reviewed.

Appendix G – Interview listing

Department	Interviewee	Title
City Council	Sam Katz	Mayor
	Scott Fielding	City Councillor – St. James – Brooklands Ward
	Paula Havixbeck	City Councillor – Charleswood – Tuxedo Ward
	Jeff Browaty	City Councillor – North Kildonan Ward
	Ross Eadie	City Councillor – Mynarski Ward
	Jenny Gerbasi	City Councillor – Fort Rouge – East Fort Garry Ward
	Grant Nordman	Acting Deputy Mayor – St. Charles Ward
	Brian Mayes	City Councillor – St. Vital Ward
	John Orlikow	City Councillor – River Heights – Fort Garry Ward
	Mike Pagtakhan	City Councillor – Point Douglas Ward
	Devi Sharma	City Councillor – Old Kildonan Ward
	Harvey Smith	City Councillor – Daniel McIntyre Ward
	Thomas Steen	City Councillor – Elmwood – East Kildonan Ward
	Justin Swandel	Deputy Mayor – St. Norbert Ward Note> No interview conducted at the request of Councillor Swandel. Written responses were provided to specific EY enquiries.
	Dan Vandal	City Councillor – St. Boniface Ward
	Russ Wyatt	City Councillor – Transcona Ward

Department	Interviewee	Title
Chief Administrative Offices	Deepak Joshi	Acting Chief Administrative Officer
Legal Services	Michael Jack	Acting Chief Operating Officer
	James Carter	City Solicitor
	Wolfgang Tiegs	City Solicitor
Materials Management	Barb D'Avignon	Manager of Materials Management
Planning, Property and Development	Barry Thorgrimson	Director PPD
	John Zabudney	Manager of Real Estate
	Joedi Pruden	Senior Real Estate Negotiator
	Elliott Hannam	Real Estate Officer
	Karen Cann	Real Estate Negotiator
	Kelly Udell	Leasing Officer
	Sandra Caputo	Leasing Officer
	Mike McGinn	Manager of Finance
Industry stakeholder consultations	Canadian Taxpayers Federation representative Commercial Real Estate representative State of the City Research representative Urban Design Institute representatives Winnipeg Construction Association representatives	

Appendix H – Appraisal terms and definitions

Below are various appraisal terms and definitions referred to throughout the report.

Appraisal	A formal opinion of value: prepared as a result of a retainer; intended for reliance by identified parties, and for which the appraiser assumes responsibility. An expression of value is not an appraisal if it is not the result of a retainer, if it is not intended to be relied upon, and if it is one for which the appraiser would not be expected to accept responsibility.
Appraisal report	Types include: ▶ Narrative - comprehensive and detailed ▶ Short Narrative - concise and briefly descriptive ▶ Form - a standardized format combining check-off boxes and narrative comments
Highest and best use	The reasonably probable and legal use of property, that is physically possible, appropriately supported, and financially feasible, and that results in the highest value.
Limiting condition	A statement in the appraisal identifying conditions that impact the value conclusion.
Intended use	The use or uses of an appraiser's reported appraisal, consulting, or review assignment opinions and conclusions, as identified by the appraiser based on communication with the client at the time of the assignment.
Report	Any communication, written or oral, of an appraisal, review, or consulting service that is transmitted to the client upon completion of an assignment.
Scope of work	The type and extent of research and analysis in an assignment. Scope of work includes, but is not limited to, the following: ▶ The degree to which the property is inspected or identified ▶ The extent of research into physical or economic factors that could affect the property ▶ The extent of data research ▶ The type and extent of analysis applied to arrive at opinions or conclusions

Effective date	Establishes the context for the value opinion; the date of value.
Date of report	Being the date of its completion as identified on the Letter of Transmittal, indicates whether the perspective of the appraiser on the market or property uses conditions as of the effective date of the appraisal was retrospective, current or prospective. Where retrospective or prospective, the date of the report and the effective date of the appraisal must be included in tandem throughout, to provide the reader with a clear understanding of any distinction in conditions between the two dates. Compliance is required with the Standards in effect as at the date of the report.

Source: Canadian Uniform Standards of Professional Appraisal Practice

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