Agenda – Executive Policy Committee – September 21, 2016

AUDIT COMMITTEE

Item No. 5 Independent Fairness Commissioner Model

WINNIPEG PUBLIC SERVICE RECOMMENDATION:

1. That the model for the Independent Fairness Commissioner (IFC) role, for compliance review of all real estate transactions and management services prior to presentation to Standing Policy Committee and/or Council, be approved as an external award contract.

2. That the annual budget requirement of $338,800 plus inflationary increases for ongoing operations of the proposed IFC contract be referred to the 2017/18/19 Operating Budget process.

3. That the City Auditor be delegated authority to award a contract to an external agency to act as the Independent Fairness Commissioner in all capacities of the external award contract model through the Materials Management RFP process with a 1 year contract with 4, one-year options for a maximum term of 5 years.

ADMINISTRATIVE REPORT

Title: **Approval of the Independent Fairness Commissioner Model**

Critical Path: **Audit Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
K. Fox	B. Mansky City Auditor		

RECOMMENDATIONS

1. That the model for the Independent Fairness Commissioner (IFC) role, for compliance review of all real estate transactions and management services prior to presentation to Standing Policy Committee and/or Council, be approved as an external award contract.

2. That the annual budget requirement of $338,800 plus inflationary increases for ongoing operations of the proposed IFC contract be referred to the 2017/18/19 Operating Budget process.

3. That the City Auditor be delegated authority to award a contract to an external agency to act as the Independent Fairness Commissioner in all capacities of the external award contract model through the Materials Management RFP process with a 1 year contract with 4, one-year options for a maximum term of 5 years.

REASON FOR THE REPORT

The City Auditor is reporting back to Council with a revised recommendation for the proposed model for the Independent Fairness Commissioner (IFC) role.

Council approval is required to approve the mandate/model for the IFC and the financial resources required for the operation of the said Independent Fairness Commissioner.

EXECUTIVE SUMMARY

The objective of the Independent Fairness Commissioner is to ensure that real estate transactions and management services adhere to the policies and procedures of the City of Winnipeg. Additionally, the IFC should consider if the policies and procedures in place meet the goals of being open, fair and transparent.

This report identifies a recommendation for engaging an external firm to fulfill the mandate of the Independent Fairness Commissioner, as directed by Council.

IMPLICATIONS OF THE RECOMMENDATIONS

The financial implications include:

An annual financial commitment based on a 1 year contract with 4, one-year options for a maximum term of 5 years and estimated in the Financial Impact Statement to include the 2016 base amount and inflation.

HISTORY/DISCUSSION

At a special meeting of Council on July 9, 2014, Council concurred in the recommendation of the Executive Policy Committee, and that Item 1 of the Report of the Executive Policy Committee dated July 2, 2014 be amended by adding the following recommendations to the Ernst and Young "Real Estate Management Review" recommendations, namely:

19. a) That the City of Winnipeg create an Independent Fairness Commissioner (IFC), who would have the power to review all Real Estate Transactions and Management Services before they are presented to the Standing Policy Committee and/or Council, and that they would report directly to Council, via under the Office of the City Auditor;

b) That the power to review and comment on all real estate transactions by the IFC, be retroactive to all potential transactions now underway and that the said IFC be reviewed by Council in 5 years;

c) That the Auditor, in consultation with the City Solicitor, report to Council for the purpose of approving the mandate/model for the IFC and the financial resources required for the operation of the said Independent Fairness Commissioner.

At its meeting on July 15, 2015, Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. *That the Independent Fairness Commissioner report dated December 2014 be received as information.*

The report outlined three potential IFC models, the estimated costs and the implications of each model.

Of the three models, a recommendation was made to create a new term position within the Audit Department as the most cost effective option. If the Audit Department was unable to attract qualified staff for the position, then a subsequent report would be brought forward to Council to recommend another model be implemented.

The Audit Department, in coordination with human resource specialists from the Corporate Support Services Department, conducted two recruitments (January and March 2016) but did not identify a successful candidate for the IFC position. The position qualifications were unique

and required a combined professional skill set. The term of the position and resulting pay scale also posed difficulties in attracting the appropriate candidate.

This report provides an alternate recommendation to be implemented.

Independent Fairness Commissioner (IFC) Mandate/Model:

External Award Contract - Compliance Review of Significant Transactions

Description:

- To engage in an external contract for compliance review of all real estate transactions and management services which require presentation to Standing Policy Committee on Property and Development, Heritage and Downtown Development (SPCPDHDD) and/or Council.

Mandate:

- The external firm, acting as the IFC in all capacities, performs compliance reviews of each transaction that requires approval by the SPCPDHDD and/or Council.

- Criteria for evaluating compliance of the different types of real estate and management services transactions be developed and agreed to by the IFC, the Director of Planning, Property & Development Department and the City Auditor.

- A compliance review of each transaction be initiated near the completion of the transaction and be completed prior to political approval.

- The IFC produces an independent report on whether the transactions are in compliance with all applicable City of Winnipeg policies and procedures including the Real Estate Transaction Management Framework and the requirements for fairness, openness and transparency.

- The IFC submits an independent report on the compliance review of each transaction that meets the review criteria, prior to political approval and concurrently with the related administrative report seeking transaction approval from the Planning, Property & Development Department.

- A sample of other real estate and management services transactions that do not require approval by the SPCPDHDD and/or Council be performed annually along with submission of a summary report to SPCPDHDD and/or Council, as available budget dollars permit.

Transaction criteria:

- The mandate will provide for assurance on transactions not covered under the existing delegated authority, namely the “Delegation of Authority for Real Property Transactions” adopted by Council on January 28, 2009 and other transactions requiring SPCPDHDD and /or Council approval.

  The CAO has the authority to approve sale transactions in the range of $100,000–

$500,000 that meet the criteria of the delegated authority. The Manager of Real Estate has been delegated the authority to approve sale transactions in the $0–$100,000 range, acquisition of property for Council-approved projects up to $100,000, the sale of small lots, pedestrian walkways, closed lanes and similar parcels of land to an adjacent property owner for $1.00 that meet the criteria of the delegated authority. The Manager of Municipal Accommodations has been delegated the authority to approve all leases where the City is the lessee up to a gross value of $1,000,000 over the term of the lease and all leases where the City is the lessor up to a gross value of $500,000 over the term of the lease that meet the criteria of the delegated authority.

The IFC will conduct a review of the transactions with reporting requirements to SPCPDHDD and Council, including but not limited to the following transaction types:

Real Estate Transactions:

- Sale of City-owned property with a transaction price of $500,000+ [1]
- Sale at a transaction price less than 95% of the appraised value [1]
- Sale of property not through a public offering (with the exception of the sale of small lots, pedestrian walkways, closed lanes and similar parcels of land to an adjacent property owner) [1]
- Sale at a transaction price of $1.00 or at a non-market rate [2]
- Sale to a non-profit organization at less than market value [2]
- Sale of any City-owned property designated/zoned or under the jurisdiction as park land that require approval by a 2/3 vote of Council [2]
- Land exchange at any transaction price [2]
- Acquisition of property with a transaction price of $100,000+ for property identified under a Council approved project [1]
- Acquisition of property that is not part of a Council approved program or project, or where the project has not yet been adopted by Council [1]
- Acquisition by way of property donation to the City [2]
- Expropriation or acquisition settlements involving land exchange and a negotiated transaction price [2]
- Granting of a significant easement, option to purchase, or granting of any rights over, under and upon City property [2,3]

Management Services Transactions:

- Lease where the City is the Lessee and the term is more than 10 years with a gross value of $1,000,000+ [1]
- Lease where the City is the Lessor and the gross value of the lease is $500,000+ [1]
- Lease where the City is the Lessor where the lease is not based on current market value or is based on a term of 5+ years [1]
- Granting of significant encroachment and license agreements [2,3]

- The IFC will not review the transaction types covered under the existing delegated authority, with the exception of a small sample of transactions to be identified annually

[1] Transaction type identified in relation to the delegated authority.

[2] Other transaction types not covered under the delegated authority, provided to SPCPDHDD or Council for approval.

[3] The criteria to identify a significant transaction would be defined by the IFC, the Director of Planning, Property & Development Department and the City Auditor.

as available budget dollars permit. This provision is intended to allow the IFC to perform a compliance review on any transaction type.

- A preliminary listing of transaction review criteria is attached as Appendix A. Additional criteria may be added upon finalization of the Real Estate Transaction Management Framework and upon discussion between the IFC, the Director of Planning, Property & Development and the City Auditor.

Estimated Volume of Transactions:

	2015	2016*	2017	2018	2019	2020
Real Estate	16	28	28	28	28	28
Management Services	7	5	5	5	5	5
Random sample		5	5	5	5	5

* Volume of transactions reviewed will be based on the actual contract awarded for 2016.

The estimated number of transactions for the IFC to review is based on:

- consultation with the Director of the Planning, Property & Development Department
- the type of transactions not authorized under the existing delegated authority or with no reporting requirement to SPCPDHDD and Council
- analysis of historic transaction volumes and a projection of future activity as defined in the assumptions below

Estimated Contract Costs:

- Assume a 1 year contract with an external firm including 4, one-year options for a maximum term of 5 years, renewable upon the agreement of both parties.

- Based on the estimated volume of transactions, the assumptions and the hourly rate listed below, the estimated cost per year for the IFC role as an external contract is $338,800 plus an inflationary increase. The actual contract cost may differ significantly from the estimate.

- 2016 transaction volumes will be pro-rated based on the timing of the RFP award contract.

- Funding for contract costs in 2016 have been included in the Audit Department's adopted Operating Budget.

Assumptions:

- An estimated rate of $400/hour for a qualified external agency to perform the IFC role.

- It is assumed that the number of land sales will remain relatively flat in comparison to 2015 actuals, as the overall portfolio of property for sale has decreased.

- It is assumed that the number of land acquisitions and expropriations in comparison to 2015 actuals will increase due to the number of capital projects requiring the acquisition of private holdings.

- It is assumed that the lease activity will decrease slightly in comparison to 2015 actuals.

- An estimate of time is based on the level of effort required to complete the compliance

review for each type of real estate or management services transaction and was established through consultation with the Director of the Planning, Property & Development Department and the professional judgment of Audit Department staff. The estimated hours also include development of a report for the appropriate governing body. The estimate of time and level of effort is based on a routine transaction; complex transactions may require additional effort and time.

- The estimated time to review a land sale or acquisition transaction is 24 hours, 15 hours for a lease transaction and 20 hours for a random sample of other transactions.

	# of transactions	# of hours	Hourly rate	Total est. cost
Real Estate	28	24	$400	$268,800
Management Services	5	15	$400	$30,000
Random Samples	5	20	$400	$40,000
				$338,800

Reporting:

- The IFC will submit a report of its findings on each transaction reported on with respect to compliance with the applicable City of Winnipeg policies, procedures and processes, openness, transparency and in conjunction with the administrative report seeking transaction approval from the Planning, Property & Development Department. The IFC will also submit a report of its findings on the random sample of transactions after year-end.

- Based on the process for review and reporting on real estate and management services transactions, the potential exists for turn-around times to be extended when seeking approval from the appropriate governing body. This may have a negative impact on the successful completion of select transactions.

Summary:

The Audit Department supports the recommendations based on:

- The appropriate governing body (approving authority) will be presented with a report prepared by the IFC on each transaction reviewed, in conjunction with the administrative report seeking approval of the transaction;

- Different experts within the firm awarded the contract could be engaged to review different types of real estate and management services transactions;

- An externally contracted firm may have additional resources available, thereby improving turnaround time when multiple transactions are being submitted for approval, in a short period of time; and

- Financial resources have been identified in the Audit Department's 2016 adopted Operating Budget for the IFC role.

FINANCIAL IMPACT

Financial Impact Statement **Date:** August 18, 2016

Project Name: **First Year of Program** **2016**

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	2016	2017	2018	2019	2020
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 28,233	$ 338,800	$ 348,964	$ 359,433	$ 370,216
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 28,233	$ 338,800	$ 348,964	$ 359,433	$ 370,216
Less: Existing Budget Amounts	28,233	338,800	348,964	359,433	370,216
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Expected start date of December 1, 2016, with direct costs of $338,800 pro-rated for 2016. Commencing in 2018, an estimated inflation factor is included. There is sufficient budget available in the Department's 2016 consultant services account. Future costs are included in the proposed 2017-2019 operating budget.

Orignal signed by R. Hodges

Ramona Hodges
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

Legal Services

Corporate Finance

Materials Management

Planning, Property & Development Department

OURWINNIPEG POLICY ALIGNMENT

n/a

SUBMITTED BY

Department: Audit Department
Prepared by: K. Fox, Executive Assistant
Date: August 16, 2016

ATTACHMENTS:

"Preliminary Review Criteria"

Appendix A.pdf