Minute No. 534
Report – Executive Policy Committee – September 27, 2016

Item No. 2 **Settlement of Human Rights Complaint - James Derksen against Handi-Transit (the "complaint")**

COUNCIL DECISION:

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

1. That the City Solicitor / Director of Legal Services be authorized to enter into a settlement of the complaint as further outlined in the body of the report by:

   A. Reimbursing the undiscounted portion of Handi-Transit fares paid by specified categories of Handi-Transit users who were 65 or older in the 18 months preceding June of 2014.
   B. Confirming the continuation of the Handi-Transit Policy Advisory Committee and mandating that Handi-Transit representatives will meet with the Policy Sub-Committee of the City's Access Advisory Committee at least twice per year.
   C. Requiring James Derksen to sign a Release and Memorandum of Settlement in a form satisfactory to the City Solicitor.
   D. Issuing a joint media release with Mr. Derksen.

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

Report – Executive Policy Committee – September 27, 2016

DECISION MAKING HISTORY:

Moved by His Worship Mayor Bowman,

That the recommendation of the Executive Policy Committee be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 27, 2016, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Settlement of Human Rights complaint of James Derksen against Handi-Transit (the "complaint")**

Critical Path: **EPC – Council**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
John Jacobs	Krista Boryskavich	M. Ruta	D. McNeil

RECOMMENDATIONS

1. That Council authorize the City Solicitor to enter into a settlement of the complaint as further outlined in the body of the report by:
    a. Reimbursing the undiscounted portion of Handi-Transit fares paid by specified categories of Handi-Transit users who were 65 or older in the 18 months preceding June of 2014.
    b. Confirming the continuation of the Handi-Transit Policy Advisory Committee and mandating that Handi-Transit representatives will meet with the Policy Sub-Committee of the City's Access Advisory Committee at least twice per year.
    c. Requiring James Derksen to sign a Release and Memorandum of Settlement in a form satisfactory to the City Solicitor.
    d. Issuing a joint media release with Mr. Derksen.

2. That the proper officers of the City be authorized to do all things necessary to implement the foregoing.

REASON FOR THE REPORT

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

EXECUTIVE SUMMARY

- Mr. Derksen filed a complaint in August of 2012 that he and other Handi-Transit clients did not receive age-related discounts similar to users of regular Transit. With Council direction, Handi-Transit corrected the disparity in June of 2014.
- The settlement provides exact financial reimbursement for the undiscounted portion of fares paid by Handi-Transit users who were aged 65 years or more at any time in the 18 months preceding June 16, 2014. The settlement does not include the estates of users deceased prior to January 28, 2016, users owed $10.00 or less and not using fare payment from account, and users who do not reply to a letter offering financial reimbursement.

IMPLICATIONS OF THE RECOMMENDATIONS

- A settlement in principle has been negotiated but is subject to approval by City Council.
- Legal Services, with the concurrence of Transit, recommends that this settlement be approved.
- In the absence of a settlement the matter proceeds to litigation, which will involve a public hearing before a human rights adjudicator. This would occur in October 2016.
- Settlement minimizes the prospect of further complaints. Potential complainants, well aware that fare equity was achieved in June of 2014, are now time-barred (subject only to the discretion of the Human Rights Commission).

HISTORY

- In 2010, two years prior to Mr. Derksen filing the complaint, Handi-Transit received a virtually identical human rights complaint from a different complainant. Handi Transit defended on the grounds that although age-related discounts were not available to Handi-Transit users, Handi-Transit offered other benefits unavailable to users of regular Transit. The complainant withdrew her complaint and the Human Rights Commission did not opt to carry the complaint forward.
- In 2011, one year prior to Mr. Derksen filing his complaint, Council recommended fare integration with regular Transit pending the introduction of new technology (estimated early 2013).
- In August 2012 Mr. Derksen filed his complaint at the Manitoba Human Rights Commission alleging that under *The Human Rights Code* he, as a Handi-Transit user, had a right to discounted fares, and he sought reimbursement of undiscounted fares he had paid.
- In September 2012, Mr. Derksen amended his complaint so that reimbursement was sought for all affected Handi-Transit users.
- Actual fare integration between Handi-Transit and regular Transit occurred on June 16, 2014, providing fare equity on a go-forward basis.
- Failing settlement of Mr. Derksen's claim, an adjudicator has been appointed to hear the complaint in October, 2016.

DISCUSSION

- Legal Services recommends that the City settle the claim as follows.
    - Reimbursing the undiscounted portion of Handi-Transit fares paid by specified categories of Handi-Transit users who were 65 or older in the 18 months preceding June of 2014.
    - Confirming the continuation of the Handi-Transit Policy Advisory Committee and mandating that Handi-Transit representatives will meet with the Policy Sub-Committee of the City's Access Advisory Committee at least twice per year.
    - Requiring James Derksen to sign a Release and Memorandum of Settlement in a form satisfactory to the City Solicitor.
    - Issuing a joint media release with Mr. Derksen.
- The settlement provides exact financial reimbursement for the undiscounted portion of fares paid by Handi-Transit users who were aged 65 years or more at any time in the 18 months preceding June 16, 2014 (the date fare equity was achieved).
- The potential number of beneficiaries cannot be conclusively determined as beneficiaries are required to proactively elect to claim reimbursement. Transit has calculated the maximum amount (up to $310,000) that the City would be required to pay in the event that every eligible beneficiary exercised its election.
- Potential beneficiaries do not include the estates of users deceased prior to January 28, 2016, users owed $10.00 or less and not using fare payment from account, and users who do not reply to a letter offering financial reimbursement.
- Transit has advised that 50% of the settlement costs (up to $155,000) may be recovered from the Province of Manitoba pursuant to the 50/50 cost-sharing arrangement for transit operating.
- It is the view of Legal Services and Transit that this settlement is in the best interests of the City.

FINANCIAL IMPACT

Financial Impact Statement **Date:** April 29, 2016

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

Settlement of Human Rights complaint of James Derksen against Handi-Transit

	2016	2017	2018	2019	2020
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	(155,000)	-	-	-	-
Net Cost/(Benefit)	$ 155,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	155,000	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

The revenue reduction above represents the potential settlement of up to $310,000.00 less cost-sharing with the Province at 50%. This revenue reduction can be accommodated through Transit Department's operating budget.

(Original signed by R. Hodges)
Ramona Hodges
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

In preparing this report there was consultation with:

Corporate Support Services
Transit

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Legal Services Department
Prepared by: John Jacobs
Date: September 15, 2016
File No.: E.13/2012(8)