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Report of the Independent Fairness Commissioner

City of Winnipeg

Report on Compliance – Proposed Lease Agreement of 1 Portage Avenue East

March 25, 2020

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INDEPENDENT ASSURANCE REPORT ON COMPLIANCE WITH FRAMEWORK
City of Winnipeg
Proposed Lease Agreement of 1 Portage Avenue East

To: City Council

Scope

We have undertaken a reasonable assurance engagement of the proposed real estate transaction described in Section 1 of this report (the "Transaction") to determine whether the Transaction was undertaken by the City of Winnipeg's Planning, Property and Development Department ("PP&D") in compliance with version 1.05 of the framework referenced in Section 1 of this report (hereinafter referred to as the "Compliance Framework").

Management's responsibility

The Compliance Framework as well as compliance of the Transaction with the Compliance Framework are the responsibility of PP&D's Management. Management is also responsible for such internal controls as it determines necessary to enable City of Winnipeg's compliance with the specified requirements.

Our responsibility

Our responsibility is to express a reasonable assurance opinion on the City of Winnipeg's compliance based on the evidence we have obtained. We conducted our reasonable assurance engagement in accordance with Canadian Standard on Assurance Engagements 3531, Direct Engagements to Report on Compliance. This standard requires that we plan and perform this engagement to obtain reasonable assurance about whether the entity complied with the specified requirements, in all significant respects.

Reasonable assurance is a high level of assurance, but is not a guarantee that an engagement conducted in accordance with this standard will always detect a significant instance of non-compliance with specified requirements when it exists. Instances of non-compliance can arise from fraud or error and are considered significant if, individually or in the aggregate, they could reasonably be expected to influence the decisions of users of our report. A reasonable assurance compliance reporting engagement involves performing procedures to obtain evidence about the entity's compliance with the specified requirements. The nature, timing and extent of procedures selected depends on our professional judgment, including an assessment of the risks of significant non-compliance, whether due to fraud or error.

Our reasonable assurance engagement included examining, on a test basis, evidence supporting compliance with the applicable criteria of the Compliance Framework and included: 1) performing corroborative interviews with City of Winnipeg employees and representatives who were responsible for conducting the Transaction; 2) examining documentation provided by City of Winnipeg employees; and 3) reperforming transaction specific calculations, where applicable. We performed our audit procedures based on discussions with PP&D Management and information available as at March 23, 2020. We believe the evidence we obtained is sufficient and appropriate to provide a basis for our opinion.

Our independence and quality control

We have complied with the relevant rules of professional conduct/code of ethics applicable to the practice of public accounting and related to assurance engagements, issued by various professional accounting bodies, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. The firm applies Canadian Standard on Quality Control 1, Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance Engagements and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Opinion

In our opinion, except for the compliance exceptions noted in Section 2, PP&D is in compliance, with the individual criteria of the Compliance Framework (version 1.05) for the Transaction noted above in all significant respects. We do not provide a legal opinion on City of Winnipeg's compliance with the specified requirements.

Restriction on use

This report was prepared for the City of Winnipeg and City Council for the purpose of City Council's ultimate determinations related to the above noted transaction, and although it may be made publically available, readers are cautioned that this report is not suitable for any other purpose.

Deloitte LLP

Chartered Professional Accountants
Winnipeg, Manitoba
March 25, 2020

Section 1 – Compliance Framework, the Transaction, and Management's responsibility

Compliance Framework
City Council ("Council") created the role of the Independent Fairness Commissioner ("IFC") for the purpose of ensuring that real estate transactions and management services ("Transactions") are performed in a fair, transparent and open manner. Under the direction of Council, the City Auditor has engaged Deloitte LLP ("Deloitte") to provide certain services as part of the IFC role through the performance of compliance audits in accordance with the assurance standards of the Chartered Professional Accountants of Canada ("CPA Canada"). To ensure Council's objectives for the IFC are addressed, a Compliance Framework was developed under the oversight of PP&D (also referred to as "Management") through consideration of applicable City of Winnipeg by-laws, policies and procedures including PP&D's internal Real Estate Transaction Management Framework ("RETMF"). The Compliance Framework is to be used as the basis for the performance of compliance audits of selected Transactions, and can be subject to revision by PP&D based on evolving requirements. Further background information regarding the Compliance Framework is in Appendix 1.

The Transaction
The proposed transaction is a lease agreement between the City of Winnipeg and Riverside Park Management Inc. for the City-owned property commonly known as "Shaw Park", located at 1 Portage Avenue East as identified on Misc. Plan No. 11140/11. The scope of the Compliance Audit includes only the compliance aspects of the Transaction outlined in the associated Administrative Report, and excludes any prior or ongoing Transaction related activities, where applicable. Management represents that the complexity of this transaction has been deemed to be "complex" for the purposes of this compliance audit.

Management responsibility and assertion
Transaction documentation has been prepared by PP&D based on information available at March 23, 2020. The Compliance Framework and applicable criteria is the responsibility of PP&D and has formed the basis of the compliance audit conducted by Deloitte on the Transaction. PP&D is responsible for ensuring the fairness, transparency, and openness of any proposed or completed transactions and the compliance of transactions with the Compliance Framework. Further, as discussed in Appendix 2 of this report, PP&D has made certain representations regarding the information provided to Deloitte to support the performance of the independent compliance audit. Deloitte's responsibility is to express an opinion on PP&D's compliance with the Compliance Framework based on the results of their independent audit procedures performed as outlined in Appendix 1 to the report.

Yours truly,



Planning, Property and Development Department
City of Winnipeg

Section 2 – Exceptions noted and Management's unaudited response

Exceptions noted
The criteria within the Compliance Framework was subject to audit procedures performed by Deloitte for the purposes of determining compliance to support our independent auditors' report, as discussed in Appendix 2. Included in the table below is a summary of the exceptions noted in testing the compliance of the Transaction with the Compliance Framework, the associated criteria, and the unaudited responses to these exceptions prepared by Management. The City Auditor has requested responses from PP&D for each exception noted and provided the responses to Deloitte for inclusion in the report. Management's responses are unaudited, and have been included to provide commentary by the City of Winnipeg, to the Standing Policy Committee on Property and Development, Heritage and Downtown Development ("SPCPDHDD") and/or Council.

A complete listing has been included in Appendix 2 of those criteria for which exceptions were noted, criteria that were deemed to not be subject to audit, and criteria deemed by Management to not be applicable to the Transaction.

Summary of exceptions noted		Related criteria
File documentation incomplete	The file documentation was not in compliance with several aspects of the Compliance Framework including: • Although the Administrative Report provides detailed information related to the financial impact associated with the transaction, detailed information regarding the estimated opportunity cost was not included, such as, but not limited to, the quantification of the opportunity cost annually or throughout the lease period; and • The proposed Terms and Conditions of the lease did not include environmental provisions to clarify environmental liability during the lease period or thereafter.	1.01, 7.05
Appraisal documentation incomplete	The file documentation supporting the appraisal was not in compliance with certain aspects of the Compliance Framework, including: • File documentation included evidence of review by the acting Senior Appraiser however, the appraisal report was reviewed by an individual who may not be independent of the firm that was selected to perform the appraisal given their previous employment with the appraisal firm, and documentation did not include evidence of a secondary independent review.	2.08

Unaudited Management response to exceptions noted
Management agrees with the findings of the IFC. Certain elements of the appraisal were not disclosed in the administrative report out of respect for the tenant's business operation. Should the Committee require additional appraisal information, the Public Service will provide more detail in-camera.

Appendix 1 – Scope of services requested

Introduction
As outlined in Section 1 of the report, and to address Council's objectives for the IFC, a Compliance Framework was developed under the oversight of PP&D. The Compliance Framework development process also included assistance from Deloitte and the City Auditor in the form of consultation as to the sufficiency and appropriateness of the Compliance Framework for PP&D's ultimate determinations. The version of the Compliance Framework utilized for the purposes of this compliance audit is Version 1.05 dated February 14, 2020 as made available by Management. The Transaction is to be presented to the Standing Policy Committee on Property and Development, Heritage and Downtown Development ("SPCPDHDD") and/or Council for approval. Council has adopted the Executive Policy Committee's recommendation that the compliance audit of Transactions will occur prior to presentation to SPCPDHDD and/or Council. Accordingly, Deloitte has been engaged to perform the compliance audit of Transactions while in progress, the results of which will be reported directly to SPCPDHDD through the City Auditor and Deloitte.

Scope of services requested of Deloitte by the City of Winnipeg
Deloitte has been engaged to perform an independent audit of the Transaction's compliance with the Compliance Framework noted above as follows:

a. Produce an independent auditor's report on whether the Transaction is in compliance with the relevant criteria outlined within the Compliance Framework;
b. Submit the results of the compliance audit and specific Auditor's Report to the City Auditor.
c. Report specific findings and compliance exceptions within the Auditor's Report based on the Compliance Framework where applicable.
d. Prior to performance of a specific compliance audit of a transaction,
    i. declare any conflict of interest in connection with the specific transaction; and
    ii. obtain management's representation of the complexity rating of the transaction, based on specific guidance retained by the City and in consultation with the Contract Administrator.
e. Attend the SPCPDHDD's regular meeting and/or any agreed upon special meetings in person where the independently prepared auditor's report will be tabled so as to answer questions regarding the report.

Deloitte's audit procedures to determine compliance with the stated criteria within the Compliance Framework included testing on a sample basis of the evidence supporting compliance with the applicable criteria of the Compliance Framework and included: 1) examining documentation provided by City of Winnipeg employees; 2) reperforming transaction specific calculations, where applicable; and 3) performing corroborative interviews with City of Winnipeg employees and representatives who were responsible for carrying out the Transaction.

For criteria identified to not be in compliance and related exceptions noted, the report provides these findings and, where applicable, management comments related to the compliance exceptions. Any identified instances of non-compliance in relation to the Transaction are detailed in Appendix 2 of this report. Management's unaudited responses to the compliance exceptions, if any, are included in Section 2 of the report. Responses regarding the cause of non-compliance, where provided, are prepared by PP&D. Observations regarding the impact on the fairness, transparency, and openness of the Transaction, where provided, would be prepared by PP&D and/or the City Auditor.

As noted above, Council has adopted the Executive Policy Committee's recommendation that the compliance audit of Transactions will occur prior to presentation to SPCPDHDD and/or Council, which would include the required approvals based on delegations of authority in accordance with the RETMF and City by-laws, policies, and procedures. Accordingly, management has directed that these subsequent approvals, which are outlined in Criteria 4.01 of the Compliance Framework, are not subject to audit as at the time of issuance of this report, and are therefore out of scope for the report. Management remains ultimately responsible for ensuring that ultimate compliance of the Transaction with Criteria 4.01 based on RETMF requirements and City by-laws, policies, and procedures.

Appendix 2 – Findings and compliance exceptions noted

Background information provided by the Independent Auditor

The Compliance Framework referenced in Appendix 1 above forms the basis of the criteria for Deloitte's independent audit of the Transaction. The Compliance Framework is presented in two components as follows:

Objectives	Summarized objectives of the IFC and RETMF as considered and defined in the applicable by-laws, policies, procedures, and the RETMF.
Criteria	Specific requirements that a real estate transaction is expected to comply with in order to be considered fair, transparent and open. Criteria were developed in consideration of specific statements or requirements within by-laws, policies, procedures, and the RETMF. Management's ultimate determination of applicable criteria is based on the nature of the transaction, property type, and transacting party.

Our audit procedures to determine compliance with the stated Criteria within the Compliance Framework included testing on a sample basis of the evidence supporting compliance with the applicable Criteria of the Compliance Framework and included: 1) examining documentation provided by City of Winnipeg employees; 2) reperforming transaction specific calculations, where applicable; and 3) performing corroborative interviews with City of Winnipeg employees and representatives who were responsible for carrying out the Transaction. We performed our procedures based on discussions with Management and information available as at March 23, 2020. Any compliance exceptions pertaining to individual Criteria noted by Deloitte during the performance of our audit procedures are identified below.

Management's representations provided to the Independent Auditor
As discussed in Section 1 of this report, Management has represented that to the best of their knowledge and belief, the following:

- All information presented to Deloitte has been presented fairly and accurately, and in a manner that would not create judgements requiring interpretation that could result in a change in conclusion as to the compliance of the Transaction with the Compliance Framework;
- All documents prepared and provided to Deloitte for review were prepared in the course of conducting the Transaction;
- Deloitte has been provided access to all relevant documents, information, and City employees or representatives who possess information related to the Transaction, and within the stated period to meet the City's requirements to determine compliance;
- Criteria deemed as not applicable to the Transaction are identified in sub-section C of this appendix;
- Transaction compliance with the RETMF and applicable City by-laws, policies, and procedures, including but not limited to ultimate compliance with the Transaction approvals required under Criteria 4.01 of the Compliance Framework, remain the responsibility of Management; and
- The complexity rating of the transaction based on the review completed by PP&D is complex.

Findings and compliance exceptions noted
The findings and compliance exceptions noted through the performance of Deloitte's audit procedures have been presented in the following categories:

A.	**Exceptions noted**	The table outlines only those Criteria defined in the Compliance Framework that are applicable to the Transaction and for which we have noted exceptions in compliance. The exceptions have been organized in the table by the Objective reference number, and included in the second column are those Criteria where instances of non-compliance have been identified. The third column contains a description of the exception noted.
B.	**Criteria not subjected to audit**	The table outlines those Criteria that could not be subjected to audit on the basis of Management's representation that the related activities have not been performed based on the rationale provided.
C.	**Criteria not applicable to the Transaction**	During the course of our test procedures performed, Management has represented and confirmed that the Criteria referenced in this table are not applicable to the Transaction, and have therefore not been included in the scope of our audit.

It should be noted that Criteria for which no compliance exceptions were noted are not included in the tables below. The Compliance Framework should be referenced for a complete listing and description of all applicable Criteria included within the Compliance Framework as at the date specified above.

A. Exceptions noted

1. Information reported to Council or delegate with respect to the transaction was complete

	Criteria	Exceptions noted
1.01	Reporting to Council or the Chief Administrative Officer ("CAO") has been prepared in the form of an Administrative Report or Briefing Note as required by Appendix B of the RETMF, and includes: a recommendation(s); reason for the Report or Note presented; implications of the recommendations; history of the Report or Note presented; financial impact of the transaction; and summary of consultations, in accordance with Appendix B of the RETMF.	Although the Administrative Report provides detailed information related to the financial impact associated with the transaction, detailed information regarding the estimated opportunity cost was not included, such as, but not limited to, the quantification of the opportunity cost annually or throughout the lease period.

2. An appraisal of the property has been performed by a qualified individual, in an acceptable format, as needed

	Criteria	Exceptions noted
2.08	Prior to finalizing the appraisal report and within six weeks of the delivery of the appraisal report, the draft appraisal (both internally and externally prepared) has been reviewed by a designated member of the Appraisal Institute of Canada. This review has been documented by either a narrative review or review memo signed off by the Senior Appraiser, and includes the preparer's consideration of the "Reasonable Appraiser" test as defined by Canadian Uniform Standards of Professional Appraisal Practice.	File documentation included evidence of review by the acting Senior Appraiser however, the appraisal report was reviewed by an individual who may not be independent of the firm that was selected to perform the appraisal given their previous employment with the appraisal firm, and documentation did not include evidence of a secondary independent review.

7. An Environmental Site Assessment ("ESA") was completed as required

	Criteria	Exceptions noted
7.05	For any lease transaction, the lease documentation includes environmental provisions to clarify environmental liability.	The proposed Terms and Conditions of the lease did not include environmental provisions to clarify environmental liability during the lease period or thereafter.

B. Criteria not subjected to audit

No criteria were identified by Management.

C. Criteria not applicable to the Transaction

Objective		Criteria not applicable
2.	An appraisal of the property has been performed by a qualified individual, in an acceptable format, as needed.	2.03, 2.12
5.	All land has either been declared surplus or is planned to be declared surplus concurrently with the approval of sale by the Chief Administrative Officer and/or Council, based on the applicable Delegation of Authority.	5.01
6.	PP&D has been authorized to commence negotiations for the acquisition or disposal of land, and completed site inspections as appropriate.	6.01, 6.02, 6.03
7.	An Environmental Site Assessment ("ESA") was completed as required.	7.01, 7.02, 7.03, 7.04, 7.06
8.	A competitive procurement process was conducted when prescribed by the RETMF.	8.02, 8.03, 8.04, 8.05
10.	Alternative properties and procurement methods were considered in selecting the property.	10.01
11.	Where land is to be expropriated, compliance with the Expropriation Act has been considered and verified by City Legal Services.	11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 11.08
12.	Unsolicited offers for the purchase of City owned property have been pursued only when the conditions established by Council have been met.	12.01
13.	Any offer for the purchase of City-owned property was only acted on by PP&D if it was provided in the form of a formal written offer.	13.01
14.	Acquisitions of privately owned property containing dilapidated structures are accompanied by a program of rehabilitation, redevelopment, or improvement.	14.01, 14.02
15.	Specific policies relating to transactions involving property under the purview of the Parks & Recreation division have been observed.	15.01, 15.02
16.	Where land declared surplus had previously been transferred by a Developer to the City, that land has first been offered back to that Developer.	16.01
17.	Other policies related to the general process for the sale of land have been adhered to.	17.01, 17.02
18.	The policies pertaining to acquisitions and dispositions of specific types of property have been adhered to.	18.01, 18.02, 18.03, 18.04, 18.05, 18.06, 18.07, 18.08, 18.09, 18.10
19.	The policies pertaining to specific types of transaction have been adhered to.	19.01, 19.02, 19.03, 19.04