Agenda – Council – December 17, 2020

Report – Executive Policy Committee – December 9, 2020

Item No. 19 Changes to execution requirements to expedite processing of agreements

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 9, 2020, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That amendments to the Execution of Documents By-law No. 78/2015 (draft amending by-law attached) be enacted to allow:

    A. The execution of all templated agreements and other documents approved by the Director of Legal Services and City Solicitor, so long as the template is followed; and

    B. The execution by electronically-reproduced signatures of documents that need to be executed by the City.

2. That grants of $10,000 or less, to be issued by a letter setting out the terms and conditions of the grant from the Chief Financial Officer or delegate, without the need for a legally certified and formally executed agreement, be authorized.

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

Agenda – Council – December 17, 2020

Report – Executive Policy Committee – December 9, 2020

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 9, 2020, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: Changes to execution requirements to expedite processing of agreements

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
H. Dick	D. Brown	P. Olafson, Interim CFO	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

This report proposes simplifying and expediting the execution of agreements in three ways. First, it proposes broadening the current authorization for execution of standard form (templated) agreements that have been legally certified. Second, it proposes allowing electronically-reproduced signatures for agreements and other documents that require execution by the City. Third, it proposes that grants of $10,000 or less (currently $5,000 or less) be issued on the basis of a letter, which will create an informal but binding agreement with the grant recipient, without the need for legal review.

Approval of this report will allow many agreements to be finalized more efficiently and quickly.

RECOMMENDATIONS

1. That Council enact amendments to the Execution of Documents By-law (draft amending by-law attached) to allow:
   A. the execution of all templated agreements and other documents approved by the City Solicitor so long as the template is followed; and
   B. the execution by electronically-reproduced signatures of documents that need to be executed by the City.

2. That Council authorize grants of $10,000 or less to be issued by a letter setting out the terms and conditions of the grant from the Chief Financial Officer or delegate, without the need for a legally certified and formally executed agreement.

3. That the proper officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Recommendation 1 requires a by-law amendment, which only Council can enact.

Recommendation 2 is a change to Council direction set out in Recommendation Y of the 2020 Operating Budget (approved on March 20, 2020) and therefore requires Council approval.

IMPLICATIONS OF THE RECOMMENDATIONS

The recommendations of this report will result in a more efficient and speedier process for the approval and execution process of dozens of standard form agreements and dozens of grants of $10,000 or less. In addition, the use of electronically-reproduced signatures by the City will expedite the execution process for dozens and perhaps hundreds of agreements and other documents, bringing the City in line with widespread commercial practices.

HISTORY/DISCUSSION

The current process for approval and execution of many agreements is unduly cumbersome and unwieldy. Many standard agreements that have been templated by Legal Services so that they simply need names and dates filled in still must be individually reviewed and approved by Legal Services. Even small grant agreements must be legally reviewed and certified and must go through the formal process of execution. Despite the fact that electronic signatures have been widely used in the commercial world for years, they have not been formally approved for signing by City representatives. The proposed by-law amendment will allow City representatives to use electronically-reproduced signatures to facilitate the execution of agreements and other documents.

The current process has resulted in complaints and frustrations about undue delays from many grant recipients, participants in grant and partnership programs and other parties involved in contracts with the City. It also results in inefficiencies in the work of the Public Service.

Recommendation 1(A): Currently, the Execution of Documents By-law allows for execution of standard form (templated) agreements so long as the templates have been certified by Legal Services and only the “fill-in-the-blank” spaces have been altered. However, the current authorization applies only to templated agreements under the Materials Management Policy. This Report proposes extending that authorization to other standard form agreements by amending the Execution of Documents By-law. The templates would still need to be legally certified and only the blank spaces for things like dates and dollar amounts could be altered. The City Solicitor would be authorized to determine when a templated agreement would be appropriate. See the attached draft amending by-law for more details.

Recommendation 1(B): Use of electronically-reproduced and digital signatures has been widespread in the commercial context for years. Electronic and digital signatures have been accepted by the courts as valid and binding. In Manitoba, *The Electronic Commerce and Information Act* (the “ECIA”) provides that “unless the parties agree otherwise” an electronic agreement is deemed to be valid. In other words, electronic agreements are presumptively valid. The City will be moving to allowing the use of electronic contracts after January 1, 2021.

The ECIA defines “electronic signatures” as “electronic information that a person has created or adopted in order to sign an electronic document and that is in, attached to or associated with the document”. This definition would include both electronically-reproduced signatures (for example, a pdf of a handwritten signature) and digital signatures (defined as “a means of

verifying and authenticating a document by having a computer create a unique identifier through the application of encryption or encoding."[1]).

The amendment to the Execution of Documents By-law is broad enough to authorize any form of electronically-reproduced signatures on behalf of the City but provides that any form of electronically-reproduced signature must be approved by the CAO. This ensures that concerns about the authenticity of electronically-reproduced signatures will be addressed before they are implemented by the City. Ensuring authenticity could include ensuring an IP address can be connected to the signature, a time or date when the signature was affixed, or other such security aspects.

Recommendation 2: Until recently, the process for approving grants required approval by Legal Services of every grant agreement, no matter how small. To some extent, this represented an overly stringent response by the Public Service to the inadequate oversight over the grants process identified in the City Auditor's 2008 Grant Administration Audit. The Audit report recommended that grant agreements should be used when grants are issued. However, the report did not recommend that every individual grant agreement must be legally certified. Moreover, in response to these Audit Report recommendations, the City only undertook to implement formal agreements for "significant grants".

In the 2020 budget, Council directed that the City "enter into, execute and deliver" grant agreements of over $5,000. The implication of this direction was that grants under $5,000 were not required to be subject to a formally executed agreement with the grant recipient. This alone represents a relaxation of the previous cumbersome practice.

However, this report proposes a further relaxation, to allow that all grants of $10,000 or less be issued by way of a letter from the CFO or delegate. It is anticipated that the contents of the letter would be controlled by an Administrative Standard issued by the CAO which would specify that it include things such as the following:

- the value of the grant;
- the source and date of its authorization;
- the purpose of the grant or use to which the grant is to be put (which may be done by referencing the recipient's grant application and attaching it to the letter);
- the fact that the City retains the right to audit the recipient's records to ensure the grant is properly used, and reference to specific records that the recipient should retain for this purpose; and
- if the grant is used to fund a capital project, a reminder that the project must still comply with all rules associated with construction, including the Building Code and restrictions on construction on City property.

The City's position is that, even though such a letter has not been formally executed, when the recipient accepts the grant, the letter becomes a valid and legally-binding agreement. If the grant recipient fails to comply with the terms and conditions set out in the letter, the City would have the ability to demand – and even sue for - repayment of the grant.

The recommendations in this report are still consistent with the recommendations of, and management responses to, the 2008 Grant Administration Audit. The City Auditor has reviewed this report and is in general agreement with Recommendation 2.

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[1] Mark Lewis, "Digital Signatures: Meeting the Traditional Requirements Electronically, A Canadian Perspective," Asper Rev Int'l Bus & Trade L Vol 2 (2002) at 69 [*Lewis*].

FINANCIAL IMPACT

Financial Impact Statement **Date:** November 5, 2020

Project Name:
Execution of Standard Form (Templated) Agreements and Grant Agreements under $10,000

COMMENTS:

There are no financial implications associated with the recommendations of this report.

(Approved electronically by T. Yanchishyn)
Tanis Yanchishyn, CPA, CA
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

City Auditor

OURWINNIPEG POLICY ALIGNMENT

This report aligns with Direction 1 of Chapter 01-3, which directs that the City “Provide Efficient and Focused Civic Administration and Governance” and, in particular, that the City “[c]ontinuously pursue innovative, streamlined service delivery and decision-making options”.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

SUBMITTED BY

Department: Legal Services
Prepared by: Harold Dick, Deputy City Solicitor
Date: November 5, 2020

Attachment: Draft By-Law

THE CITY OF WINNIPEG

BY-LAW NO. /2020

A By-law of THE CITY OF WINNIPEG to amend the Execution of Documents By-law

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Execution of Documents By-law amended

1 The Execution of Documents By-law No. 78/2015 is amended by this By-law.

Subsection 5(3) replaced

2 Subsection 5(3) of the Execution of Documents By-law is replaced by the following:

5(3) *The City Solicitor may certify as to legal form a templated document that requires execution and, where he or she has done so, this certification remains valid for the purposes of clause (1)(b) so long as the document is not altered other than by filling in blank spaces in the document that have been clearly identified for this purpose.*

Section 7.1 added

3 The following section is added after section 7:

Electronically-reproduced signatures permitted

7.1(1) *Where the Chief Administrative Officer determines that a means of electronically reproducing signatures provides an adequate level of authentication, the Chief Administrative Officer may approve it for use for execution of documents on behalf of the City.*

7.1(2) *A means of electronically reproducing signatures that has been approved by the Chief Administrative Officer under subsection (1) may be used by any person who is authorized to execute a document on behalf of the City and has the same force and effect as if it had been physically signed by that person.*

DONE AND PASSED this day of , 2020.

_____
Mayor

_____
City Clerk

Legally reviewed and certified as to form:

_____
for Director of Legal Services and City Solicitor