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Report of the Independent Fairness Commissioner

City of Winnipeg

Report on Compliance - Proposed Lease Agreement with 131 Provencher Holdings Ltd. at Unit 100 - 131 Provencher Boulevard

January 24, 2024

Deloitte.

INDEPENDENT ASSURANCE REPORT ON COMPLIANCE WITH FRAMEWORK

City of Winnipeg

Proposed Lease Agreement with 131 Provencher Holdings Ltd. at Unit 100 - 131 Provencher Boulevard

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 2.01 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 the Public Service, specifically the management of PP&D ("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 Management and information available as at January 23, 2024. 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 Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*, which requires the firm to design, implement and operate a system of quality management, including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

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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 2.01) for the Transaction 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 publicly available, readers are cautioned that this report is not suitable for any other purpose.

Deloitte LLP

Chartered Professional Accountants
Winnipeg, Manitoba
January 24, 2024

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 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 a reasonable assurance engagement (referred to as "compliance audit") 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 the Public Service, specifically the management of PP&D ("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 the lease by the City of Winnipeg of Unit 100 - 131 Provencher Boulevard (the "Transaction"). 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 "low" for the purposes of this compliance audit.

Management responsibility and assertion

Transaction documentation has been prepared by PP&D based on information available at January 23, 2024. 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 the Transaction 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 ("SPCPD") 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
The file documentation was not in compliance with certain aspects of the Compliance Framework, including: - The Property Management Checklist related to the Transaction was not fully completed, as required by Appendix C of the RETMF; - The proposed draft terms and conditions of the Transaction did not include environmental provisions to clarify environmental liability during the lease period or thereafter; - The Administrative Report did not include a representation by Management that the proposed lease represents the best value for the City, as required by Section 3.4A (i) of Council Policy, Real Estate - Leasing and Licensing Property, effective September 29, 2021 (the "Leasing and Licensing Policy"); and - While Management indicated that the Transaction is at market rates, and is a renewal of an existing lease, under Section 3.4C of the Leasing and Licensing Policy, a 'Request for Proposal or Expression of Interest', as defined in the noted policy, was not issued by the City.	1.03, 5.05, 9.15, 9.19

Unaudited Management response to exceptions noted
1.03) The Checklist has been completed, with the exception of an area that was not explicitly flagged as being "not applicable" for the purposes of the transaction. 5.05) Although the proposed terms and conditions does not explicitly include provisions addressing environmental liability, the proposed Lease Agreement contains Terms and Conditions clarifying the City's responsibility to act in accordance with the laws, direction, rules and regulations and by-laws of every governmental authority having jurisdiction, or the City's insurers. 9.15) While the report does not state verbatim that the proposed lease represents the best value for the City, it is management's belief that the results of due diligence, (e.g. market analysis, appraisal, and review of potential suitable City-owned sites) demonstrated best value, and yielded no other viable options. 9.19) The Public Service deems Library Services' requirements as pseudo site-specific in that the location needed to within the St. Boniface Ward, which is a fairly small geographic area. The site also had to meet multiple criteria including accessibility, access to public transport, etc. Given the market analysis undertaken, and the parameters of the Risk and Complexity Tool in the RETMF categorizing the transaction as "low to moderate", an RFP was not pursued.

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 2.01 dated August 24, 2023 as made available by Management. The Transaction is to be presented to the SPCPD 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 SPCPD 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 SPCPD 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 SPCPD'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 electronic 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, would be included in Section 2 of the report. Responses regarding the cause of non-compliance, where provided in Section 2, are prepared by PP&D. For transactions where no compliance exceptions are noted, Section 2 is not applicable and would not be included with the report. 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 ("EPC") recommendation that the compliance audit of transactions will occur prior to presentation to SPCPD, EPC, and/or Council. Accordingly, our review has occurred prior to the approval of the Transaction by SPCPD, EPC, and/or Council, and as such any amendments, based on these approvals, to the Transaction subsequent to the date of our audit procedures are outside the scope this report. Management remains ultimately responsible for ensuring the overall compliance of the Transaction with the RETMF 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 electronic 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 January 23, 2024. 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, including but not limited to documentation provided in electronic form, has been presented fairly, accurately and in its complete form, 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 all documentation relevant to the Transaction in a sufficient and appropriate manner, including all information related to the Transaction that could materially affect Deloitte's determination of the City's compliance with respect to the Compliance Framework;
- Deloitte has been provided access to the 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;
- Compliance of the Transaction with the RETMF, and applicable City by-laws, policies, and procedures remain the responsibility of Management;
- The complexity rating of the transaction based on the review completed by PP&D is low;
- All relevant stakeholders have been notified of the proposed Transaction, and any objections have either been resolved in accordance with Council Policy, or identified within the Administrative Report; and
- The City Department with jurisdiction over the subject city property has been consulted with through the negotiation process of the Transaction.

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 — This table presented below, if applicable, 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 subject to audit — This table presented below, if applicable, 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. Applicability of criteria — We have summarized the applicability of the Criteria to the Transaction, with each Criteria identified as one of the following:

I. **Applicable Criteria:** Those Criteria that are applicable to the Transaction, and were subject to audit;

II. **Criteria not subject to audit:** As described above, those Criteria that were applicable to the Transaction but could not be subject to audit; and

III. **Not applicable Criteria:** During the course of our test procedures performed, Management has represented and confirmed that the Criteria referenced in the table presented below are not applicable to the Transaction, and have therefore not been included in the scope of our audit.

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
1.03	The Complete Reporting Checklist (as outlined in Appendix C of the RETMF) which corresponds to the Transaction type has been fully completed, including all attachments noted to be evidenced in file. Rationale for the notation of any particular item within the Checklist as "N/A" has been included.	The Property Management Checklist relating to the Transaction was not fully completed, as required by Appendix C of the RETMF. More specifically, the Summary of offers section of the Property Management Checklist was not completed or marked as "N/A" where appropriate.

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

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

9. The policies pertaining to the lease or licensing of a property have been adhered to.

	Criteria	Exceptions noted
9.15	The Public Service has represented that the Lease or License represents the best value for the City as determined by Council or its delegated authority, as evidenced through documentation of the Public Service's analysis or rationale within the file documentation and Administrative Report.	The Administrative Report did not include a representation by the Public Service that the proposed lease represents the best value for the City, as required by Section 3.4A (i) of the Leasing and Licensing of Property policy.
9.19	Where a City Department, utility or Special Operating Agency did not have a site-specific lease or license requirement, the City issued a Request for Proposal or Expression of Interest in accordance with identified administration standards, except for situations where a Direct Lease was recommended, as listed in Section 3.4C of the City Policy PD-028, "Real Estate – Leasing and Licensing of Property".	While Management indicated that the Transaction is at market rates, and is a renewal of an existing lease, under Section 3.4C of the Leasing and Licensing Policy, a 'Request for Proposal or Expression of Interest', as defined in the noted policy, was not issued by the City, which was required given the following: • The City Department does not have a site-specific lease requirement; • Confidentiality with respect to the Transaction is not required; and • The space required by the City, as determined by Management, is greater than 5,000 square feet.

B. Criteria not subject to audit

4. All Transactions and the negotiated terms have undergone a legal review prior to being presented to the CAO or Council, as appropriate, for approval.

	Criteria	Exceptions noted
4.01	Prior to being presented to the CAO or Council (as appropriate) for approval, Legal Services has completed a formal review of all agreements, contracts, and proposed modifications to legal documentation pertaining to the Transaction and provided approval and sign-off. This review has included ensuring compliance of the agreements with the applicable by-laws and Policies.	Management has represented that the terms and conditions for the proposed Transaction have not been finalized, and as such Criteria 4.01 could not be subject to audit.

C. Applicability of Criteria

Objective		Applicable Criteria	Criteria not subject to audit	Criteria not applicable
1.	Information reported to Council or delegate with respect to the Transaction was complete.	1.01, 1.02, 1.03, 1.04	None	None
2.	An appraisal or a market analysis of the property has been performed by a qualified individual, in an acceptable format, as needed.	2.01, 2.02, 2.04, 2.05, 2.07, 2.08, 2.09, 2.10, 2.11, 2.13	None	2.03, 2.06, 2.12, 2.14, 2.15
3.	A competitive procurement process was conducted when prescribed by the RETMF.	3.01, 3.02	None	None
4.	All Transactions and the negotiated terms have undergone a legal review prior to being presented to the CAO or Council, as appropriate, for approval.	None	4.01	None
5.	An Environmental Site Assessment ("ESA") was completed as required.	5.05	None	5.01, 5.02, 5.03, 5.04, 5.06
6.	The Transaction has been included in the Tracking Database.	6.01	None	None
7.	The policies pertaining to the declaration of surplus and sale of a property have been adhered to.	None	None	7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19
8.	The policies pertaining to the acquisition of a property have been adhered to.	None	None	8.01, 8.02, 8.03, 8.04, 8.05, 8.06
9.	The policies pertaining to the lease or licensing of a property have been adhered to.	9.15, 9.16, 9.17, 9.18, 9.19, 9.20	None	9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07, 9.08, 9.09, 9.10, 9.11, 9.12, 9.13, 9.14
10.	Where land is to be expropriated, compliance with the Expropriation Act has been considered and verified by City Legal Services.	None	None	10.01, 10.02, 10.03, 10.04, 10.05, 10.06, 10.07, 10.08