



*Office of the Auditor General / Bureau du vérificateur général*

**FOLLOW-UP TO THE 2006 AUDIT OF PUBLIC/PRIVATE  
PARTNERSHIP (P3) PROCESSES**

**2009**

**SUIVI DE LA VÉRIFICATION DES PROCESSUS LIÉS AUX  
INITIATIVES DE PARTENARIAT PUBLIC-PRIVÉ (PPP) DE 2006**



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## EXECUTIVE SUMMARY

### *Introduction*

The Follow-up to the 2006 Audit of Public/Private Partnership (P3) Processes was included in the Auditor General's 2009 Audit Plan.

The key findings of the original 2006 audit included:

- Overall accountability and ongoing monitoring of the City's P3 projects requires improvement.
- The audit acknowledges that there is a broad spectrum of P3 projects, each with its own unique characteristics.
- Improved business cases are needed to provide better information to Council for decision-making when these projects are brought forward for approval.
- Roles and responsibilities across the City for managing P3 projects should be clarified and collaboration among departments improved

### *Summary of the Level of Completion*

The table below outlines our assessment of the level of completion of each recommendation as of Fall 2009.

CATEGORY	% COMPLETE	RECOMMENDATIONS	NUMBER OF RECOMMENDATIONS	PERCENTAGE OF TOTAL RECOMMENDATIONS
LITTLE OR NO ACTION	0 – 24	2, 3	2	18%
ACTION INITIATED	25 – 49	5, 7, 8, 10	4	36%
PARTIALLY COMPLETE	50 – 74	1, 4, 6, 9, 11	5	46%
SUBSTANTIALLY COMPLETE	75 – 99	-	-	-
COMPLETE	100	-	-	-
TOTAL			11	100%

### *Conclusion*

Management has provided the P3 Policy, the Procedures Handbook, and the Appendices to demonstrate progress toward implementing the recommendations. These documents are intended to govern the management of P3's going forward. At the time of this follow-up, the Policy and Procedures were not yet in force.

These documents were not created until July and August 2009, and have not been brought to Council for approval. They are therefore still in draft form, and may be subject to change such that the degree to which they address the recommendations is altered. A second, more recent, version of the Policy and Procedures was provided as part of the follow-up to the 2005 Audit of Real Estate Management but the corresponding appendices, which include detailed guidance and templates, pre-

date the version provided by management for the P3 follow-up. It is therefore unclear whether the updates to the appendices were subsequently disregarded and whether direction to departments will coincide with the information that was reviewed for the purpose of this follow-up.

The Policy and Procedures do provide an effective means of providing consistent information to Council on proposed P3 initiatives. However they lack in ensuring P3 risks and monitoring of P3 projects are addressed completely and consistently. The procedures and templates were written to be general and flexible in order to address the varying needs of different types of P3 projects. Because of this, they are less effective in addressing the need to formalize the monitoring of agreements and results, and capturing the cost of P3 support services and accountabilities throughout the life of the P3 initiatives. Without specified requirements of key areas to address, the risk of incomplete or inconsistent assessments and monitoring remains.

The responsibility of monitoring the P3 contracts is housed with the operating departments. No one person is charged with overseeing the monitoring performed by each department. As such, there is a risk that the quality of the monitoring performed may not be consistent.

Finally, plans to mitigate the risks that remain due to incomplete implementation of the recommendations should be considered with respect to the partnership agreement to redevelop Lansdowne Park.

### **MANAGEMENT'S SUMMARY RESPONSE**

With the recent reorganization of the City in the spring of 2009, the Real Estate Partnerships and Development Office (REPDO) was created and assumed broad responsibility for the implementation of sustainable property solutions appropriate to the needs of the Corporation and its principal business units.

In particular, the former Real Estate Services Division was incorporated with elements of the former Comprehensive Asset Management Division and the Public-Private-Partnerships Office. As a result of this effort, REPDO established two primary business units; specifically, the Realty Services Branch and the Realty Initiatives and Development Branch, both operating under the auspices of a single Director.

While the more traditional Real Estate functions were aligned with the Realty Services Branch, the strategic functions associated with real estate development, development based initiatives and the establishment of potential "partnership" based solutions were integrated within the Realty Initiatives and Development Branch.

The new organizational structure provides improved synergy in the delivery of strategic projects, given that the City's real estate and development experts have

been designated to assume the lead following the 2009 corporate realignment. Before initiating any strategic project, Realty Initiatives and Development Branch will undertake a thorough assessment on a whole-life cost basis to determine whether the project can be delivered as proposed. The assessment will first determine if a traditional delivery approach is feasible by identifying whether there is a real need, real budget, and real time frame-project feasibility including operating and life-cycle requirements as set out in the capital budget or the Long Range Financial Plan. Once it is established that the project has merit, and can be delivered successfully through the traditional delivery method, REPDO can then assess whether significant additional value and efficiencies can be achieved, and/or risk reduced by using other delivery methods / partnership opportunities.

REPDO is suggesting that the initial examination of delivery options should first consider a more rigorous evaluation of the project from a real estate and whole life costing perspective and then evaluate whether a P3 solution is the preferred delivery option based on the degree of added value, efficiencies and reduced risk that may be achieved over the traditional delivery base case and the relative ability to achieve Council's stated objectives (social, cultural, environmental and financial) for the specific strategic initiative. This will establish a transparent benchmark/roadmap for initiating and resourcing a strategic initiative project. In the past, strategic initiative projects were initially screened by the P3 office for the purpose of identifying projects for which a P3 outcome was the objective. There is now a fundamental difference in terms of the initiation point between the REPDO mandate and that of the former P3 office.

REPDO believes that it would be premature to respond to Recommendations 1, 2, 4, 5, 9, 10 and 11 at this time. These recommendations pertain to the mandate and approach of the former P3 office as opposed to the mandate and approach described above for REPDO. The P3 Policy and Procedures Handbook need to be revised to account for the REPDO mandate and approach in order to appropriately address the above-mentioned audit recommendations.

Based on the changing circumstances described above, REPDO will be proceeding as follows:

- REPDO is engaging its subject matter experts in order to complete a "self audit" looking at current P3 agreements, with the objective of improving project oversight and compliance and then adequately resourcing and improving performance monitoring and reporting.
- With respect to future P3 agreements, REPDO intends to review and revise as necessary the draft Policy and Procedures document developed by the former P3 Unit. Based on the results of the "self-audit" and lessons learned, Recommendations 1, 2, 4, 5, 9, 10 and 11 will be dealt with as part of a new process to be developed in Q2 2011.

- Recommendations 3, 6, 7, and 8 have been addressed in the management response to the follow-up audit to the effect that both the policy on Public-Private Partnerships and the P3 Procedures Handbook need to be further revised, based on the comments received from the Auditor and on “lessons learned” from the self-audit.
- The revised Public-Private Partnerships Policy and Procedures Handbook will be forwarded for Council approval in order to fully comply with the audit recommendations.

### ***Acknowledgement***

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

## RÉSUMÉ

### *Introduction*

Le Suivi de la Vérification des processus liés aux initiatives de partenariat public-privé (PPP) de 2006 était prévu dans le Plan de vérification du Bureau du vérificateur général de 2009.

Les constatations principales de la vérification initiale de 2006 sont les suivantes :

- L'obligation redditionnelle globale et la surveillance continue des projets PPP de la Ville doivent être améliorées.
- Il est admis dans la vérification qu'il existe une large gamme de projets PPP, chacun ayant ses propres caractéristiques.
- Des analyses de rentabilisation plus poussées sont nécessaires en vue de donner une meilleure information au Conseil aux fins de la prise de décision quand ces projets sont déposés pour approbation.
- Les rôles et les responsabilités concernant la gestion de ces projets doivent être clarifiés à l'échelle de la Ville et la collaboration entre les services doit être améliorée.

### *Sommaire du degré d'achèvement*

Le tableau ci-dessous présente notre évaluation du degré d'achèvement de chaque recommandation à l'automne 2009 :

CATÉGORIE	POURCENTAGE COMPLÉTÉ	RECOMMANDATIONS	NOMBRE DE RECOMMANDATIONS	POURCENTAGE DU TOTAL DES RECOMMANDATIONS
PEU OU PAS DE MESURES PRISES	0 – 24	2, 3	2	18 %
ACTION AMORCÉE	25 – 49	5, 7, 8, 10	4	36 %
COMPLÉTÉE EN PARTIE	50 – 74	1, 4, 6, 9, 11	5	46 %
PRATIQUEMENT COMPLÉTÉE	75 – 99	-	-	-
COMPLÉTÉE	100	-	-	-
TOTAL			11	100 %

### *Conclusion*

La direction a fourni la politique en matière de PPP, le Manuel de procédures et les appendices afin de témoigner de ses progrès dans la mise en œuvre des recommandations. Ces documents ont pour objet de régir la gestion des PPP qui vont de l'avant. Au moment de ce suivi, la politique et les procédures n'étaient pas encore en vigueur.

Ces documents n'ont été rédigés qu'en juillet et août 2009 et n'ont pas encore été présentés au Conseil pour approbation. Ils n'existent donc que sous forme de version préliminaire et pourraient changer au point où la mesure dans laquelle ils

satisfont aux recommandations pourrait varier. Une deuxième version, plus récente, de la politique et des procédures a été fournie dans le cadre du suivi de la vérification de 2005 de la gestion des biens immobiliers mais les appendices correspondants, qui comprennent des directives détaillées et des gabarits sont antérieurs à la version fournie par la direction pour le suivi des PPP. Par conséquent, il n'est pas clair si les mises à jour des appendices n'ont pas été prises en compte ou si les directives aux services correspondront aux renseignements examinés aux fins de ce suivi.

La politique et les procédures constituent un moyen efficace de fournir des renseignements homogènes au Conseil sur les initiatives de PPP proposées. Toutefois, elles présentent des lacunes pour ce qui est d'assurer que les risques des PPP et la surveillance des projets de PPP sont traités dans leur intégralité et de façon uniforme. Les procédures et les gabarits ont été rédigés de façon à être généraux et flexibles afin de satisfaire aux besoins variés des différents types de projets PPP. C'est pourquoi ils sont moins efficaces pour ce qui est du besoin de formaliser la surveillance des accords et des résultats et de la saisie du coût des services de soutien aux PPP et des obligations redditionnelles tout au long du cycle de vie des initiatives de PPP. Sans exigences précises concernant les domaines clés devant être traités, le risque d'obtenir des évaluations et une surveillance incomplètes ou contradictoires demeure.

Il incombe aux services opérationnels de surveiller les contrats de PPP. Contrôler la surveillance exercée par chaque service ne relève de personne. Par conséquent, on court le risque que la qualité de la surveillance exercée ne soit pas uniforme.

Enfin, les plans visant à atténuer les risques qui demeurent en raison de la mise en œuvre incomplète des recommandations devraient être examinés en relation avec l'entente de partenariat en vue de réaménager le parc Lansdowne.

## **RÉPONSE SOMMAIRE DE LA DIRECTION**

À la suite de la récente restructuration de la Ville au printemps 2009, le Bureau des partenariats et du développement en immobilier (BPDI) a été créé et a assumé la responsabilité générale de la mise en œuvre de solutions viables en matière de bien-fonds adaptées aux besoins de la corporation et de ses principales unités opérationnelles.

Plus particulièrement, les activités de l'ancienne Division des services immobiliers ont été regroupées avec celles de l'ancienne Division de la gestion générale des biens et du Bureau des partenariats publics-privés. À la suite de quoi, le BPDI a établi deux unités opérationnelles primaires, plus précisément la Direction des services immobiliers et la Direction des initiatives et de la mise en valeur en immobilier, toutes deux sous les auspices d'un directeur unique.

Alors que les fonctions plus traditionnelles des biens immobiliers ont été harmonisées sous la Direction des services immobiliers, les fonctions stratégiques

liées au développement en immobilier, aux initiatives basées sur la mise en valeur et à l'établissement de solutions fondées sur des « partenariats » potentiels ont été intégrées à la Direction des initiatives et de la mise en valeur en immobilier.

La nouvelle structure organisationnelle a créé une meilleure synergie dans la prestation de projets stratégiques, puisque les experts de la Ville en biens immobiliers et en développement ont été désignés pour assurer la direction à la suite de la restructuration de 2009. Avant d'entamer tout projet stratégique, la Direction des initiatives et de la mise en valeur en immobilier entreprendra une évaluation complète fondée sur le coût global du cycle de vie afin de déterminer si le projet peut être livré tel que proposé. L'évaluation établira tout d'abord si une approche de prestation traditionnelle est faisable en définissant s'il y a un besoin réel, un budget réel et un calendrier d'exécution du projet réellement réalisable, y compris les exigences en matière d'exploitation et de cycle de vie telles qu'elles sont précisées dans le budget d'immobilisations ou le Plan financier à long terme. Une fois qu'il aura été établi que le projet a du mérite et qu'il peut être livré avec succès grâce à une méthode de prestation traditionnelle, le BPDJ pourra alors évaluer si une valeur et des économies supplémentaires substantielles peuvent être obtenues et /ou si les risques peuvent être réduits à l'aide d'autres méthodes de prestation ou de possibilités de partenariats.

Le BPDJ suggère, dans le cadre de l'examen initial des options de prestation, d'envisager d'abord une évaluation plus rigoureuse du projet sur le plan des biens immobiliers et du coût global du cycle de vie, puis d'évaluer si le PPP est l'option de prestation privilégiée en fonction du niveau de valeur ajoutée, des économies et de la réduction des risques qui peuvent être atteints par rapport à une prestation traditionnelle, et la capacité relative de réaliser les objectifs déclarés du Conseil (sociaux, culturels, environnementaux et financiers) concernant cette initiative stratégique précise, ce qui permettra d'établir une feuille de route/un point de référence pour entamer une initiative stratégique et en trouver les ressources. Par le passé, les initiatives stratégiques étaient en premier lieu examinées par le bureau des PPP afin de cerner les projets pour lesquels un PPP était souhaité. Il existe maintenant une différence fondamentale en termes de point de lancement entre le mandat du BPDJ et celui de l'ancien bureau des PPP.

Le BPDJ croit qu'il serait prématuré de répondre aux recommandations 1, 2, 4, 5, 9, 10 et 11 pour l'instant. Ces recommandations relèvent du mandat et de l'approche de l'ancien bureau des PPP par opposition au mandat et à l'approche du BPDJ décrits ci-dessus. La politique sur les PPP et le manuel de procédures doivent être révisés pour tenir compte du mandat et de l'approche du BPDJ afin de mieux répondre aux recommandations de la vérification mentionnées ci-dessus.

En se fondant sur le caractère évolutif des circonstances décrit ci-dessus, le BPDJ procédera comme suit :

- Le BPDI engage ses experts en la matière à réaliser une « auto-vérification » en étudiant les ententes de PPP actuelles dans l'objectif d'améliorer la surveillance du projet et sa conformité puis de fournir les moyens adéquats pour le contrôle et l'établissement de rapports relatifs au rendement et améliorer ces derniers.
- En ce qui a trait aux ententes de PPP à venir, le BPDI a l'intention d'examiner et de réviser, le cas échéant, la politique et les procédures provisoires élaborées par l'ancienne Unité des PPP. En fonction des résultats de « l'auto-vérification » et des leçons retenues, les recommandations 1, 2, 4, 5, 9, 10 et 11 seront abordées dans le cadre d'un nouveau processus qui sera élaboré au deuxième trimestre de 2011.
- Les recommandations 3, 6, 7 et 8 ont été traitées dans la réponse de la direction à la vérification de suivi selon laquelle la politique en matière de partenariats publics-privés et le manuel des procédures relatives aux PPP doivent faire l'objet d'une révision plus en profondeur en fonction des commentaires reçus du vérificateur et des « leçons retenues » à la suite de « l'auto-vérification ».
- La politique sur les partenariats publics-privés et le manuel des procédures révisés seront transmis aux fins d'approbation par le Conseil et en vue de se conformer intégralement aux recommandations de la vérification.

### **Remerciements**

Nous tenons à remercier la direction pour la coopération et l'assistance accordées à l'équipe de vérification.

## 1 INTRODUCTION

The Follow-up to the 2006 Audit of Public/Private Partnership (P3) Processes was included in the Auditor General's 2009 Audit Plan.

The key findings of the original 2006 audit included:

- Overall accountability and ongoing monitoring of the City's P3 projects requires improvement.
- The audit acknowledges that there is a broad spectrum of P3 projects, each with its own unique characteristics.
- Improved business cases are needed to provide better information to Council for decision-making when these projects are brought forward for approval.
- Roles and responsibilities across the City for managing P3 projects should be clarified and collaboration among departments improved.

## 2 KEY FINDINGS OF THE ORIGINAL 2006 AUDIT OF PUBLIC/PRIVATE PARTNERSHIP (P3) PROCESSES

**Audit Objective 1: The concept of P3 projects has been adequately and clearly defined for Council.**

We found that most Councillors felt comfortable with their understanding of P3's. There appears to be a range of technical insight/expertise with regard to key differentiators between P3's and traditional procurement. There was, however, a common view that the City needs to be particularly conscious of risk in that the profit motive of private partners, while an acceptable element of these partnerships, does imply differences in objectives for the project when compared to the City's goals. There is also an opportunity for greater clarity regarding the respective roles and responsibilities of various City staff/departments through the life cycle of a P3 initiative.

In addition, there are opportunities to improve information provided by City staff. A number of Councillors identified specific opportunities to improve the effectiveness and efficiency of formal P3 reporting and thereby reduce reliance on anecdotal or other potentially unreliable information.

The overall strategic plan, or road map, for P3's was brought forward in 2002, and since that time there have been a number developments, including an increase in the City's experience regarding P3's. Refreshing the road map was considered to be a key step in ensuring that the use of P3's was aligned with an overall strategy that was endorsed by Council.

As a matter of context, our research, discussions and observations indicated that, while the City has gained experience with P3's, the use of P3's is still evolving and may be described as in the early stages of development.

**Audit Objective 2: Business cases that were prepared to receive approval for P3 projects describe the allocation of risks between partners, address the City's operational and administrative requirements, and reflect Council's input.**

Early in the audit, we identified that business cases prepared in connection with the SensPlex or the Paramedics Headquarters were less formal/structured. The business case for the ice pad facility was comprised of a formal study commissioned by Parks and Recreation which indicated a justifiable need for 2,400 hours of 'prime ice time' in either the east or west sides of Ottawa. This need formed the basis of requirements set forth in the request for proposal (RFP). For the Paramedics facility, the business case was comprised of a broadly acknowledged need for upgraded facilities and a timeframe based on impending expiry of leases for the previous facilities.

An evaluation of the merits or adequacy of either business case would require that business case criteria, including reporting formats and timing, be defined up front and agreed to by the decision makers. Until these criteria and requirements are formalized, such an evaluation is not feasible. We did, however, note that both projects made use of Public Sector Comparators (PSCs) to evaluate costs, and both projects were supported by submissions to Council Committees outlining many key terms, conditions and other details.

There are opportunities to enhance and streamline business case-related information regarding potential projects such that decision makers can quickly grasp the key decision criteria and make informed decisions. The critical components of business cases should be defined for Council and subject to its agreement.

**Audit Objective 3: Legal agreements generally reflect those principles agreed to and communicated during the preliminary phases and are monitored for compliance.**

Through our procedures, we found that legal agreements were approved by authorized individuals and reflect those principles agreed to and communicated during the preliminary phases of the project and the approved/desired allocation of risks as communicated in the business case and tender documentation. Our interviews also revealed a process, though more reactive than systematic, to monitor compliance with legal agreements. For example, legal terms and conditions were reviewed upon notification of a potential issue. Legal agreements did not specifically address training, procedural or operating standards that would prevail in the case of a traditional procurement (direct City ownership and operation).

The lack of a clear legal definition for 'prime ice time' has created unanticipated scheduling challenges since the SensPlex facility opened. The use of a cross-department steering committee or similar initiative may serve to optimize exposure to P3 arrangements among key City staff and afford a vehicle for communicating lessons learned.

**Audit Objective 4: Actual financial impact to the City reflects approved budgets and the private partner's financial results are monitored by the City.**

Financial reporting is provided by the private sector partner concerning the ongoing financial results achieved. However, monitoring of this reporting is not sufficient to ensure the City would be appropriately prepared for the eventuality that the private partner would not be in a position to fulfill its financial obligations.

During the course of our audit, the City Manager informed us that the private partner on the SensPlex initiative was facing financial difficulties. As the financial issues potentially involved a default situation, Parks and Recreation and Financial Services staff escalated the situation to the Deputy City Manager of Community and Protective Services, the Chief Corporate Services Officer and the City Manager. The City Manager assumed responsibility to take steps in response to the SensPlex situation.

There is need to enhance the process to identify and monitor deviations from the private sector partner's financial projections. This includes a clear delineation of roles and responsibilities as they relate to monitoring and oversight. This delineation should reflect the City's hierarchal structure whereby conditions warranting escalation are clearly established. There should be clearly defined and acknowledged processes and responsibilities applicable to those individuals with financial, operational and property oversight roles.

**Audit Objective 5: Current reporting mechanisms for monitoring against the agreement are adequate.**

We found that there is an informal process to monitor and report issues related to contract terms and conditions and that both contracts contained provisions for dispute resolution and remedies in the event of non-compliance. We noted that monitoring activities tended to be reactive in nature and did not appear to include a formal process to forecast various scenarios. As such, there is limited ongoing oversight in a formal sense. Also there is a need to further clarify responsibilities of various City staff under default scenarios including the required internal reporting, escalation and hierarchy of authority.

**Audit Objective 6: City's current structure and resources are adequate to support ongoing management of P3 agreements.**

There is a need to improve clarity regarding overall accountability (i.e. hierarchy of authority, division of duties among departments and internal support services, etc.) for contract management through each of the unique phases of contract negotiation, construction and operating life cycle. The City currently is unable to clearly identify and actively manage costs related to managing and administering P3 initiatives. These costs are expected to become more and more significant as the City increases the number of P3 contracts.

Finally, we identified that P3 initiatives are not integrated into the City's reporting and monitoring systems in the same way as traditional projects. This would improve transparency and quality of information available on an increasing number of P3 projects.

**Audit Objective 7: City's Request for Qualifications (RFQ) and Request for Proposals (RFP) processes were followed.**

Through our observations, we found that the City's RFQ/RFP processes for these two initiatives were generally followed. In addition the City made use of a Fairness Commissioner for the SensPlex whose mandate was to provide an independent assessment of the fairness, openness and transparency of the process to evaluate bidder's competency at RFQ and then the bid at RFP stage. We also noted that results of the bidder evaluation generally reflect the principles described in the RFP framework, as presented to Council, and are consistent with subsequent communications with Council.

### **3 STATUS OF IMPLEMENTATION OF 2006 AUDIT RECOMMENDATIONS**

#### **2006 Recommendation 1**

**That Management develop materials for Council that will address the current gaps in information in order to more clearly define and differentiate P3's from traditional procurement.**

#### **2006 Management Response**

Management agrees with this recommendation. With the assistance of staff from the Canadian Council for Public-Private Partnerships, staff will prepare as part of a P3 Policy for Council's adoption in Q2 2007 an information package on the continuum of P3 procurement options, as compared to the traditional municipal procurement approach.

#### **Management Representation of the Status of Implementation of Recommendation 1 at December 31, 2008**

Implementation of this recommendation is 95% complete. It was staff's intention to present this Policy in Q4 2008; however, due to a heavy workload and a delay in hiring the Manager of Strategic Projects as a result of the corporate-wide hiring freeze, staff are now targeting Q2 2009 for completion.

*Management: % complete* 95%

#### **OAG's Follow-up Audit Findings regarding Recommendation 1**

Implementation of this recommendation did not begin until 2009. A P3 Policy and procedures have been drafted, but have not been approved by Council.

The draft Policy Manual was completed August 26, 2009, and the draft Procedures Handbook was completed July 28, 2009. These documents clearly define and differentiate P3s from traditional procurement.

The Policy Manual describes the difference between a P3 and contracting out services: "If the project risk is borne solely by either the public or private partner, the project is not a public private partnership". The Manual also describes the difference between a P3 and privatization. It explains that in privatization, the government has no role outside of any legislative provisions while with P3s, ultimate accountability rests with the government.

Prior to recommending the P3 approach, the risk adjusted estimated value of using the traditional procurement process is compared to that of using the P3 approach. If the P3 approach is recommended, the strategic framework is presented to Committee and Council. This value for money assessment is included in the business case that is presented to Council for approval of the P3 project.

The Procedures Handbook, along with the attached appendices address gaps in reporting noted in the 2006 audit in the areas of performance, follow up, costs, shared risks, differences from traditional procurement, risk assessment and staff responsibilities. Issues that were noted in the audit that were not addressed in the Policy and Procedures Handbook include impact on credit rating and borrowing capacity, and effect on socially oriented objectives.

*OAG: % complete*

*60%*

**Management Representation of Status of Implementation of Recommendation 1 as of Winter 2010**

Further to the Management Summary Response inserted after the Conclusion section of this report, REPDO believes that it would be premature to respond to Recommendation 1 at this time. This recommendation pertains to the mandate and approach of the former P3 Office as opposed to the newly reorganized Real Estate Partnership and Development Office. Revisions are required to the P3 Policy and Procedures Handbook to account for the revised mandate and approach in order to appropriately address the above-mentioned audit recommendation. This work will be completed by Q2 2011.

*Management: % complete*

*0%*

**2006 Recommendation 2**

**That Management refresh the overall strategic plan (or road map) for the continued use of P3s including an indication of where the City intends to operate in terms of the maturity models/continuums described above.**

**2006 Management Response**

Management agrees with this recommendation. New knowledge has been gained in developing the various P3 projects that have been completed to date. Practical lessons have been learned from the operational experiences of these projects, and the City now has a better insight into the value and consequences of risk sharing with the private sector. Staff will bring forward a report to Council refreshing the road map for the continued use of P3s, identifying procurement options and the preferred risk distribution with the private sector by the end of Q2 2007. This report will be in the form of a P3 Policy, which together with a procedural manual is currently under development.

**Management Representation of the Status of Implementation of Recommendation 2 at December 31, 2008**

Implementation of this recommendation is 95% complete. It was staff's intention to present this Policy in Q4 2008; however, due to a heavy workload and a delay in hiring the Manager of Strategic Projects as a result of the corporate-wide hiring freeze, staff are now targeting Q2 2009 for completion.

*Management: % complete* 95%

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**OAG's Follow-up Audit Findings regarding Recommendation 2**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

The draft Procedures Handbook, dated July 28, 2009 lists pre-established criteria against which to assess whether a project is a good candidate for a P3. The pre-established criteria will help to ensure that projects selected for the P3 initiative are appropriate. The draft Procedures Handbook describes the "development of a P3 road map", and indicates, "When approved, the list of potential P3 projects becomes the P3 roadmap." As such, the "road map" does not describe a long-term path to achieving the strategic objectives of the P3 program.

The following Policy Statement can be found in the draft Policy Manual:

*"P3's shall be used to facilitate the successful implementation of high priority infrastructure projects identified as part of the P3 Roadmap."*

Since the P3 roadmap is a list of projects that have been approved for implementation via a P3, the Policy Statement is circular, and thus does not provide guidance on the strategic use of P3s.

*OAG: % complete* 0%

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**Management Representation of Status of Implementation of Recommendation 2 as of Winter 2010**

Further to the Management Summary Response inserted after the Conclusion section of this report, REPDO believes that it would be premature to respond to

Recommendation 2 at this time. This recommendation pertains to the mandate and approach of the former P3 Office as opposed to the newly reorganized Real Estate Partnership and Development Office. Revisions are required to the P3 Policy and Procedures Handbook to account for the revised mandate and approach in order to appropriately address the above-mentioned audit recommendation. This work will be completed by Q2 2011.

*Management: % complete*

*0%*

### **2006 Recommendation 3**

**That management develop a monitoring and reporting mechanism that would enable it to provide Council with feedback on the status of previously approved P3 initiatives.**

#### **2006 Management Response**

Management agrees with this recommendation. A yearly report will be provided to Council explaining the financial and operating status of each P3 project. Operational and programming performance will be benchmarked against what was requested and what was received from the proponent through the City's procurement process.

#### **Management Representation of the Status of Implementation of Recommendation 3 at December 31, 2008**

Implementation of this recommendation has not yet begun. Per the City Manager's direction at the September 22, 2008 Council Audit Work Group meeting, the various P3 Project Managers in the City Operation's department will be responsible for this reporting and are to undertake this work in 2009.

*Management: % complete*

*0%*

#### **OAG's Follow-up Audit Findings regarding Recommendation 3**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

The draft Procedures Handbook requires the preparation of an Annual Report that is presented to Council. A template providing detailed guidance of what to include in the Report is included in the appendices. The Annual Report is to provide an overview of the status of the project, and capture any lessons learned that could be incorporated in future P3 agreements. As well, a post mortem considering lessons learned is to be completed within four months of the completion of construction, and provided to Council. Accountability has been assigned to the Contract Manager of the client department to monitor the deliverables against the specifications in the Project Agreements, and to take the lead in preparing the Annual Report.

Although procedures are in place to report the status of P3 projects to Council, the timing and frequency of the reporting is limited to annually, or within four months

of completion of construction. Thus, there is a gap in accountability and reporting during the construction phase of the project, which could lead to untimely awareness of deviations in costs and milestones and impact decisions made by Council. As well, responsibility has not been centralized to oversee the Contract Managers in the various departments. The quality of monitoring of the deliverables against the Agreement may therefore be inconsistent.

*OAG: % complete*

*20%*

**Management Representation of Status of Implementation of Recommendation 3 as of Winter 2010**

Management disagrees with the OAG's follow-up audit finding that little or no action has been taken to implement this recommendation. Management believes that implementation of this recommendation is partially complete.

Annual Reports for the six operational P3s have been prepared in draft form. The seventh P3 (Shenkman Arts Centre) has not yet been in operation for a year. The draft Annual Report for this P3 will be prepared in Q4 2010. Annual Reports will be finalized and are expected to come forward to Council in Q1 2011.

In the OAG's follow-up audit findings, additional concerns were raised over the reporting process during construction and at completion. The Annual Report template (Appendix H - Annual Report) and the post mortem report template at four months post-construction, (Appendix G - Post-Implementation Report Guide) were acknowledged as key milestones in the reporting process. The OAG noted that there is a gap in reporting as no reporting mechanism/process is identified during the construction phase.

Management agrees that there is a gap in accountability and reporting during the construction phase of the project. REPDO will amend Phase V - Implementation; #2- Construction of the Procedures Handbook to include a subsection called "Construction Monitoring and Reporting Schedule". The manual will recommend that reporting occur at critical points in the construction schedule, which will be determined in the contract negotiations process prior to work commencing. This will also be included in the P3 agreement. Reporting will be in the form of an Information Report to Council that assesses the project delivery status (cost, timing) as it compares to the project agreement. Within REPDO, the Realty Initiatives and Development Branch will coordinate the production of the report to ensure consistency in monitoring and reporting during the construction phase. (Refer also to Management Comments under Recommendation 7). This work will be completed by Q1 2011.

*Management: % complete*

*60%*

#### **2006 Recommendation 4**

That management clarify with Council the required components for P3 business cases and develop a template to ensure business cases adequately address all desired elements.

#### **2006 Management Response**

Management agrees with this recommendation. The components for P3 business cases and a corresponding template will be included as part of the P3 policy and procedural manual identified in the management response to Recommendation 2.

#### **Management Representation of the Status of Implementation of Recommendation 4 at December 31, 2008**

Implementation of this recommendation is 95% complete. It was staff's intention to present this Policy in Q4 2008; however, due to a heavy workload and a delay in hiring the Manager of Strategic Projects as a result of the corporate-wide hiring freeze, staff are now targeting Q2 2009 for completion.

*Management: % complete* 95%

#### **OAG's Follow-up Audit Findings regarding Recommendation 4**

Implementation of this recommendation did not begin until 2009.

The draft Procedures Handbook dated July 28, 2009 requires a business case for the P3 to be prepared and presented to Council prior to approval. Templates for preliminary, and detailed business cases are included in the appendices to the Handbook.

Although the templates demonstrate consideration of key issues such as cost-benefit analysis with more traditional approaches, public sector comparators (PSC), risk and accountability, and division of responsibilities, the required issues to consider were not devised in consultation with Council. Management explained that the intention is to present the entire Policy and Procedures Handbook to Council for approval. To date, this has not been done.

*OAG: % complete* 50%

#### **Management Representation of Status of Implementation of Recommendation 4 as of Winter 2010**

Further to the Management Summary Response inserted after the Conclusion section of this report, REPDO believes that it would be premature to respond to Recommendation 4 at this time. This recommendation pertains to the mandate and approach of the former P3 Office as opposed to the newly reorganized Real Estate Partnership and Development Office. Revisions are required to the P3 Policy and Procedures Handbook to account for the revised mandate and approach in order to appropriately address the above-mentioned audit recommendation. This work will be completed by Q2 2011.

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*Management: % complete**0%***2006 Recommendation 5**

**That management include provisions in future P3 legal agreements to address potential gaps in operating practices between the City and the private partner in areas such as training, bilingualism, public safety and community access.**

**2006 Management Response**

Management agrees with this recommendation. However while staff will ensure that future P3 legal agreements consider these issues, it is not Management's intention to automatically include these provisions.

The City of Ottawa entered into the two P3s (Ottawa Paramedic Headquarters and Bell SensPlex) with the understanding that one of the advantages of P3s is the respondent's ability to extract "value-for-money" or "best value". The definition of best value is described in reports to Committee and City Council. Inclusive within the description of best value is consideration for a degree of flexibility in the process. Some of the benefits of P3s include the potential gaps in operating practices between the City and the private partner in areas such as training, bilingualism, public safety and community access. These gaps may be components of the business case advantage that makes a project best value. Requiring the private partner to "address potential gaps in operating practices between the City and the private partner" is likely to decrease the value for money, assessment. This recommendation may also be a disincentive to prospective respondents in an RFQ/RFP process wherein the level of prescription could become prohibitive to a business' ability to earn a reasonable profit. Our experience shows that through negotiations these issues become important in establishing the risk and cost profile of the project for the private partner. Management's recommendation is to address these issues on a project -by- project basis as required by actual needs and seek Council approval in each case.

**Management Representation of the Status of Implementation of Recommendation 5 at December 31, 2008**

Implementation of this recommendation is 100% complete.

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*Management: % complete**100%***OAG's Follow-up Audit Findings regarding Recommendation 5**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

The Procedures touch upon the requirement to identify gaps in service standards, and to include provisions in the legal agreement. However none of the references to this regard include enough detail to adequately address this recommendation.

- The “establishing business terms” section of the draft Procedures Handbook states that clear service level standards should be ensured, specifying what will and will not be comparable to City delivered services;
- Table 1 of Appendix H is a template for a summary of service assessment to be included in the Annual Report. It lists “Required level of staff training achieved” as a performance metric for property management;
- The preliminary assessment that is required per the Policy and Procedures includes an examination of the degree to which City objectives can be met, including qualitative objectives;
- The preliminary risk assessment and the risk management matrix include pre-populated areas of risk to measure. They include, among others, financial, operating, and labour relations risks.

The instructions and/or templates for each item referenced above lack the requirement to include a minimum standard of service, or to identify key operating practices (such as bilingualism, first aid training, or the deployment of safety equipment) that should be examined and compared to those of the City.

Management explained their intention to consider gaps in operating policies between the City and the private partner on a project-by-project basis. However, the Policy and/or Procedures do not require gaps to be identified, assessed and presented to Council. Nor do they provide guidance on what types and levels of gaps in practices are acceptable, and when the associated risks need to be addressed. This recommendation and the risks it serves to mitigate should be of particular note for the partnership agreement to redevelop Lansdowne Park.

Management explained that one of the benefits of P3s is the potential gap in operating practices between the City and the Private Partner. Management did not demonstrate a consideration of the risks and liabilities to the City, or the City’s image and reputation that would result from conducting business in the spirit of this comment. A current strategy for the P3 program would help to clarify the intended benefits of the P3s (see recommendation 2).

*OAG: % complete*

*40%*

**Management Representation of Status of Implementation of Recommendation 5 as of Winter 2010**

Further to the Management Summary Response inserted after the Conclusion section of this report, REPDO believes that it would be premature to respond to Recommendation 5 at this time. This recommendation pertains to the mandate and approach of the former P3 Office as opposed to the newly reorganized Real Estate Partnership and Development Office. Revisions are required to the P3 Policy and Procedures Handbook to account for the revised mandate and approach in order to

appropriately address the above-mentioned audit recommendation. This work will be completed by Q2 2011.

*Management: % complete* *0%*

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### **2006 Recommendation 6**

**That management develop a formal process to capture lessons learned through the construction and ongoing operations of completed P3s and reflect these lessons in future legal agreements.**

#### **2006 Management Response**

Management agrees with this recommendation. In the future, a post-mortem assessment will be made within four months of construction completion of a P3 project and yearly reviews as per management response to Recommendation 3 will be used to build upon lessons learned.

Management has already begun to incorporate “lessons learned” into new P3 agreements. The Auditor General asserted that the Bell SensPlex agreement did not contain a clear legal definition of “Prime Time Ice”. Therefore using lessons learned, the definition was improved upon, in the Kinburn Partnership to remove the vagueness from the length of season and to ensure that there was a fair balance between weekday ice and weekend ice.

#### **Management Representation of the Status of Implementation of Recommendation 6 at December 31, 2008**

Implementation of this recommendation is 100% complete.

*Management: % complete* *100%*

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#### **OAG’s Follow-up Audit Findings regarding Recommendation 6**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

The draft Procedures Handbook, dated July 28, 2009 requires the preparation of a post mortem report within four months of completion of construction for each P3 project, and to submit the post mortem report to Council. Appendix G guides what to include in the post mortem, and focuses on lessons learned during each phase up to and including the implementation/construction. The Procedures and Appendix both indicate that the post mortem should be used to identify considerations to be used in future P3 projects, including legal agreements.

The Procedures also require the preparation of an Annual Report that is presented to Council. The Annual Report is to provide an overview of the status of the project, and capture any lessons learned that could be incorporated in future P3 agreements.

*OAG: % complete* *60%*

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**Management Representation of Status of Implementation of Recommendation 6 as of Winter 2010**

Management agrees with the OAG's follow-up audit finding that implementation of this recommendation is only partially complete.

Management believes that this recommendation can be adequately addressed through Appendix G – Post Implementation Report Guide of the Procedures Handbook, which covers the procurement and construction phases of the project. In addition, capturing lessons learned will be addressed through Appendix H – Annual Report of the handbook during the operational stage of the project including lifecycle.

The 'self audit' process as described in the Management Summary Response will refine these appendices. Furthermore, the amendments suggested in Recommendation 3 to Phase V – Implementation; #2 -Construction of the handbook will include a subsection called "Construction Monitoring and Reporting Schedule". This will capture details on important lessons learned during the construction stage. These report templates, unique to each P3 project, will specifically address lessons learned and will document core knowledge to be incorporated into future P3 agreements. This will be completed by Q2 2011.

**Management: % complete** **60%**

**2006 Recommendation 7**

**That management enhance processes and clarify accountabilities related to the proactive identification and monitoring of deviations from financial plans and inform Council of these deviations when appropriate.**

**2006 Management Response**

Management agrees with this recommendation.

The P3 policy and procedure manual will clearly identify accountabilities related to deviations from financial plans and other elements of the agreement and Council will be informed accordingly.

Staff will develop a greater reporting system in our legal agreements and in our escalation process, which will take into account the severity, the frequency and the impact on the City.

Such a reporting system and any necessary templates can then be incorporated into the actual agreement between the City and the private partner.

**Management Representation of the Status of Implementation of Recommendation 7 at December 31, 2008**

Implementation of this recommendation is 95% complete. It was staff's intention to present this Policy in Q4 2008; however, due to a heavy workload and a delay in

hiring the Manager of Strategic Projects as a result of the corporate-wide hiring freeze, staff are now targeting Q2 2009 for completion.

*Management: % complete*

*95%*

### **OAG's Follow-up Audit Findings regarding Recommendation 7**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

Responsibility has been assigned to the Contract Manager to review deviations and to prepare the Annual Report. However, the monitoring process is not well defined, and specification of when to inform Council has not been made.

The Policy and Procedures fall short of addressing this recommendation as follows:

- a) They do not specify areas of focus in monitoring the financial plan or the extent of monitoring expected;
- b) They do not include a template to help ensure a systematic and consistent approach to financial monitoring; and,
- c) They do not define tolerance levels for variances in each key area, nor is there a description of levels of escalation to follow based on the size or type of variance.

The Accountability Matrix template requires internal and external accountabilities to be identified, along with an indication of when escalation is necessary, and whom to inform. However, rather than specifying key tasks for which accountability should be assigned, the matrix is flexible, to be populated independently for each project. By so doing, the matrix fails to ensure that pre-determined key areas of risk are considered for each project. The needed flexibility could be achieved by a combined approach of requiring key areas to be considered, while leaving room to include additional areas that speak to the unique needs of the specific project. Furthermore, the examples of areas of responsibility included in the template are all operational in nature, and do not include "monitoring the financial plan."

Management commented that the Post Mortem and Annual Reports address this recommendation. Although these reports demonstrate that procedures are in place to consider lessons learned and to report to Council, the timing and frequency of the reporting is limited to annually, or within four months of completion of construction. Thus, there is a gap in accountability and reporting during the construction phase of the project, which could lead to untimely awareness of deviations in costs and milestones, and could impact decisions made by Council. As well, these reports contain the same shortcomings as those indicated above. (I.e., Neither the Post Mortem Guide, nor the financial assessment section of the Annual Report template specify areas of focus, level of detail, the magnitude or type of variance to be considered significant, or a template to ensure consistency and

completeness of the assessments. The Post Mortem Guide does not offer a definitive list of areas to consider since “each project is unique”.)

**OAG: % complete**

**30%**

**Management Representation of Status of Implementation of Recommendation 7 as of Winter 2010**

Management disagrees with the OAG’s follow-up audit finding that little or no action has been taken to implement this recommendation. Management believes that implementation of this recommendation is partially complete.

In the 2006 and 2008 responses, management agreed with the OAG’s recommendation and noted that the Procedures Handbook would address this concern. Appendix H of the Handbook includes a template for annual reporting of operational P3 projects which includes a financial assessment section.

The OAG’s follow-up audit findings indicate that the Policy and Procedures, as identified above, fall short of addressing the core intent of the recommendation. Management agrees that more detailed financial criteria should be added to the handbook in Appendix H – Annual Report, Section 4 – Financial Assessment, based on the lessons learned through the ‘self-audit’ process. Refinements to the appendices will occur after the self-audit process which is expected to be completed by Q2 2011.

It is important to note that the financial criteria will vary depending on the P3 model. Predetermined areas of risk for each project will be identified and a financial monitoring matrix, similar to the operational monitoring matrix (Appendix H, Section 3 - Service Assessment, Table 1. Summary of Service Assessment) will be added to Section 4 of Appendix H (Annual Reporting).

The intent will be to identify the financial reporting criteria that must be provided by the P3 partner on an annual basis. The amendment to the handbook will add the following key reporting criteria:

- A certified report on the financial health of the corporate partner,
- An audited financial statement on the partnership (lifecycle management, overall financial management practices, revenues and expenses).

Financial performance will be reviewed and failure to achieve financial performance levels as set in the P3 agreement will be captured in the Annual Report to Council. The individual P3 agreement sets the financial performance requirement as well as consequent penalties and remedies for non-performance. Section 7 of Appendix H of the Procedures Handbook is the reporting mechanism. It is important to note that deviations in financial performance are risks that are typically transferred to the partner in the P3 delivery model. If deviations were to occur that would negatively impact the terms of the agreement (program/service delivery) or a Council decision or direction, staff will identify the issues and risk

and will recommend action to Council either in the annual review process, or if time is of the essence, as a special report.

Although the financial performance review and reporting has yet to be enacted, it is in practice. A recent example of this was the special report to Council (2 December 2009, Report #ACS2009-CMR-REP-0056, "Orleans (Shenkman) Arts Centre – Proposed Amendments to Partnership Agreements) with Forum Equity Partners. This report was proactive and identified the risk of non-performance and made recommendations to amend the original P3 agreement to extend delivery dates given the change in the real estate market.

*Management: % complete* *70%*

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### **2006 Recommendation 8**

That Management develop a framework for equitably and consistently addressing adjustments to proposed construction costs (either due to budget constraints or other circumstances such as unforeseen building code issues) and inform Council of these adjustments when appropriate.

### **2006 Management Response**

Management agrees with this recommendation. As per the current practice, staff will continue to provide the best information possible to Council at the approval stage. Should unforeseen requirements be identified that potentially impact the Council approved project budget, staff will establish through negotiations a change order process in future P3 agreements that will attempt to mitigate these costs through a value engineering exercise, minor scope reductions or other actions. Failing this, all variances or necessary project scope adjustments beyond the City Manager's delegated spending authority will be brought to Council for approval.

### **Management Representation of the Status of Implementation of Recommendation 8 at December 31, 2008**

Implementation of this recommendation is 100% complete.

*Management: % complete* *100%*

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### **OAG's Follow-up Audit Findings regarding Recommendation 8**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

The Procedures Handbook dated July 28, 2009 includes the activities promised in the 2006 management response, but only to the extent that they are suggested to be included in legal agreements. The "Negotiation and Execution of Legal Agreements" section of the Handbook suggests that the agreement address the terms and conditions for value engineering and change order provisions. It states that, to the extent possible, incremental costs will be mitigated through a value engineering exercise, minor scope reductions or other actions. Failing this, it

requires all variances or necessary project scope adjustments beyond the City Manager's delegated spending authority to be brought to Council for approval.

The Procedures Handbook does not include a framework that describes the value engineering process, how and when to implement scope reductions, or what other actions to take. It does not describe systematic procedures to consistently identify, assess, and report on adjustments to proposed construction costs.

A post mortem is required to be reported within four months of completion of construction in order to identify deviations from expectations. However, as indicated in Recommendation 7, this does not provide timely information on deviations.

*OAG: % complete*

*30%*

**Management Representation of Status of Implementation of Recommendation 8 as of Winter 2010**

Management agrees with the OAG's follow-up audit findings, however disagrees with the assessment of percentage complete.

The follow-up audit findings reported that the handbook lacked a framework to describe and implement a value engineering solution and identify procedures to consistently identify and report on adjustments to the proposed construction costs.

Management agrees with the follow-up audit comments. As indicated in management's response to Recommendation 3, the reporting of scope changes and the financial implications will be captured in the amendment proposed to Phase V – Implementation; #2- Construction, of the Procedures Handbook which will include a subsection called "Construction Monitoring and Reporting Schedule". The manual will recommend that reporting occur at critical points in the construction schedule. The critical points in the construction schedule will be determined in the contract negotiations process prior to work commencing and will be included in the P3 agreement. This work will be completed by Q2 2011.

When unforeseen requirements are identified that potentially impact the Council-approved project budget, staff will be directed through the P3 Policy and Procedures Handbook (Phase V – Implementation; #2 – Construction), to consider value engineering (i.e., a cost reduction exercise commonly utilized in Design and Construction to address cost overruns without impacting the overall design or performance of the building) or to implement minor scope reductions.

These processes are undertaken by Design and Construction staff in consultation with the client department and the P3 partner. Where staff determine that these processes too greatly compromise the ability to deliver the approved program, a report will be brought in real time to Council seeking authority to increase the project budget, or to adjust the scope of the project.

*Management: % complete*

*50%*

**2006 Recommendation 9**

That Management develop a process to periodically assess and monitor overall compliance with agreements including:

- Defining possible indicators of future issues and action plans;
- Defining roles and responsibilities, in the event of defaults or breaches under one or more agreements; and
- Informing Council of these of defaults or breaches when appropriate.

**2006 Management Response**

Management agrees with this recommendation. The P3 policy and procedure manual will incorporate a process to periodically assess and monitor overall compliance with agreements.

**Management Representation of the Status of Implementation of Recommendation 9 at December 31, 2008**

Implementation of this recommendation is 95% complete. The P3 policy includes a process for monitoring P3 projects. The policy will be presented to Committee and Council in Q2 2009. Once the policy is approved, the monitoring report is expected by Q4 2009. Per the City Manager's direction at the September 22, 2008 Council Audit Work Group meeting, the various P3 Project Managers in the City Operation's department will be responsible for this reporting and are to undertake this work in 2009.

*Management: % complete*

*95%*

**OAG's Follow-up Audit Findings regarding Recommendation 9**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

The Policy Handbook describes processes, and assigns accountability to define performance measures, to include performance expectations in the P3 agreement, to measure and assess performance against expectation, and to report on results. The Annual Report includes a table to be completed in part by the City and in part by the Partner. It includes measures, targets, trends and action plans.

Escalation and action plans in the event of defaults or breaches are only described in the Policy and Procedures to the extent that payment will be withheld by the Contract Manager, or "remedies are to be invoked". The Accountability Matrix does not specifically address this concern.

The requirement to inform Council is only referenced in the change order provisions in the legal agreement which are not detailed enough to specify the type and extent of deviations that should be reported to Council. (See recommendation 8)

A Construction Contract Manager is assigned by the Design and Construction Branch to monitor the achievement of milestones for development, sight acquisition, construction and commissioning. Responsibility for ongoing management is then to be transferred to the operating department, with REPDO stepping in to address disputes involving interpretation of the Agreement. Because the responsibility of monitoring the P3 contracts is housed in the operating departments rather than centrally, and because there is no one person charged with overseeing the monitoring performed by each department, there is a risk that the quality of the monitoring performed by the various departments is not consistent.

The minutes of the CAWG meeting referenced in management's response confirm that Parks and Recreation Department will undertake all of the monitoring for their P3s (four out of seven P3s) however the specific individual(s) responsible are not identified. The CAWG discussion did not address the responsibility of reporting to Council.

*OAG: % complete*

*50%*

**Management Representation of Status of Implementation of Recommendation 9 as of Winter 2010**

Further to the Management Summary Response inserted after the Conclusion section of this report, REPDO believes that it would be premature to respond to Recommendation 9 at this time. This recommendation pertains to the mandate and approach of the former P3 Office as opposed to the newly reorganized Real Estate Partnership and Development Office. Revisions are required to the P3 Policy and Procedures Handbook to account for the revised mandate and approach in order to appropriately address the above-mentioned audit recommendation. This work will be completed by Q2 2011.

*Management: % complete*

*0%*

**2006 Recommendation 10**

**That Management enhance the clarity of overall accountability for P3 initiatives through the various phases of the facility's life cycle, including the specific roles and authorities of the P3 Office, RPAM, and client departments.**

**2006 Management Response**

Management agrees with this recommendation. In the proposed P3 policy and procedural manual, all roles and accountabilities throughout the operational phase of the P3 initiatives will be clarified. Current P3 projects will be incorporated into RPAM's system for life cycle monitoring.

**Management Representation of the Status of Implementation of Recommendation 10 at December 31, 2008**

Implementation of this recommendation is 95% complete. It was staff's intention to present this Policy in Q4 2008; however, due to a heavy workload and a delay in hiring the Manager of Strategic Projects as a result of the corporate-wide hiring freeze, staff are now targeting Q2 2009 for completion.

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***Management: % complete*** ***95%***

**OAG's Follow-up Audit Findings regarding Recommendation 10**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

Procedures are described for each phase of the project in the Procedures Handbook, along with a summary of expected results at each phase. Accountability for P3s throughout the lifecycle of the project is not included with the procedures for each phase in the handbook. Instead, accountability matrix templates can be found in the appendices to the handbook.

The "Accountability Matrix for P3s" is to specify the area of responsibility, the organization responsible and the main contact, as well as when and who to inform for escalation. The "Internal Responsibility Matrix" is to specify the department or branch, role, contact person and responsibility.

As indicated in recommendation 7, rather than specifying key areas for which accountability should be assigned, the matrix is flexible, to be populated independently for each project. By so doing, the matrix fails to ensure that pre-determined key areas of risk are considered for each project.

The use of the accountability matrix is required in "Establishing the Business Terms". However, there is no requirement to communicate or demonstrate acceptance of assigned accountability by the parties involved (for example, the matrices are not signed or initialled).

The Procedures require the P3 matrix to be completed twice. Once for construction and commissioning phase, and again for the operating phase to reflect new responsibilities and to ensure a smooth transition. The Internal Responsibility Matrix is intended to be a living document that is updated as the project progresses.

The Policy and Procedures Handbook assigns REPDO the responsibility to take the lead to ensure Centres of Expertise, and client departments are involved and kept informed, and to ensure the spirit of the Policy are adhered to.

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***OAG: % complete*** ***30%***

**Management Representation of Status of Implementation of Recommendation 10 as of Winter 2010**

Further to the Management Summary Response inserted after the Conclusion section of this report, REPDO believes that it would be premature to respond to Recommendation 10 at this time. This recommendation pertains to the mandate and approach of the former P3 Office as opposed to the newly reorganized Real Estate Partnership and Development Office. Revisions are required to the P3 Policy and Procedures Handbook to account for the revised mandate and approach in order to appropriately address the above-mentioned audit recommendation. This work will be completed by Q2 2011.

*Management: % complete* *0%*

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**2005 Recommendation 11**

**That Management develop a means to capture the financial and related costs associated with ensuring continued management of P3s and that these costs be considered in budget/resource decisions for those participants most impacted by an increasing number of P3 projects.**

**2005 Management Response**

Management agrees with this recommendation. During the pre and post construction phases of P3 initiatives, all staff time will be captured and considered through the budget process to ensure suitable resource decisions can be made for P3 projects. This is particularly important for some Centres of Expertise like RPAM and Supply Management who play a significant role in the P3 procurement and negotiations process.

**Management Representation of the Status of Implementation of Recommendation 11 at December 31, 2008**

Implementation of this recommendation is 100% complete.

*Management: % complete* *100%*

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**OAG's Follow-up Audit Findings regarding Recommendation 11**

Implementation of this recommendation did not begin until 2009. A P3 Policy and Procedures have been drafted, but have not been approved by Council.

The Procedures require the consideration and reporting of budget pressures associated with the continued management of P3s. However, they do not include detailed guidance on what should be analysed and reported. Cost schedules have been created, and include a line item for "management and administration costs". However, clarity has not been improved as to what costs fall into this category.

The "Business Terms and Legal Agreements" section of the Procedures Handbook requires the identification of additional resources for contract management and monitoring when Council approval of the business terms is sought, including the

associated future budget pressures. City staff time devoted to managing the partners and the projects is included as an example of criteria to consider in the partnership assessment for the Annual Report. However, the Policy and Procedures do not require this criterion to be considered. As stated in recommendations 7 and 10, the flexibility in the templates limits their usefulness in ensuring key areas of risk are considered.

A value for money (VFM) exercise is to take place at the start of the P3 process to identify costs to manage and administer the P3. The VFM will be updated with the business case and RFP, which are presented to Council. However the VFM is not presented to Council at the time the recommendation to use the P3 is presented. The “Detailed Business Case Development” section of the Procedures Handbook requires both the PSC and the Shadow Bid to include appropriate administrative costs for the duration of the project term.

Management commented that ongoing management and monitoring is the responsibility of the client department, and each department will put forward its budget requirements. Council reports will identify any budget impacts during the implementation, and the annual reporting process will capture any emerging issues during the life of the project.

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*OAG: % complete* *50%*

**Management Representation of Status of Implementation of Recommendation 11 as of Winter 2010**

Further to the Management Summary Response inserted after the Conclusion section of this report, REPDO believes that it would be premature to respond to Recommendation 11 at this time. This recommendation pertains to the mandate and approach of the former P3 Office as opposed to the newly reorganized Real Estate Partnership and Development Office. Revisions are required to the P3 Policy and Procedures Handbook to account for the revised mandate and approach in order to appropriately address the above-mentioned audit recommendation. This work will be completed by Q2 2011.

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*Management: % complete* *0%*

## 4 SUMMARY OF THE LEVEL OF COMPLETION

The table below outlines our assessment of the level of completion of each recommendation as of Fall 2009.

CATEGORY	% COMPLETE	RECOMMENDATIONS	NUMBER OF RECOMMENDATIONS	PERCENTAGE OF TOTAL RECOMMENDATIONS
LITTLE OR NO ACTION	0 – 24	2, 3	2	18%
ACTION INITIATED	25 – 49	5, 7, 8, 10	4	36%
PARTIALLY COMPLETE	50 – 74	1, 4, 6, 9, 11	5	46%
SUBSTANTIALLY COMPLETE	75 – 99	-	-	-
COMPLETE	100	-	-	-
TOTAL			11	100%

## 5 CONCLUSION

Management has provided the P3 Policy, the Procedures Handbook, and the Appendices to demonstrate progress toward implementing the recommendations. These documents are intended to govern the management of P3s going forward. At the time of this follow-up, the Policy and Procedures were not yet in force.

These documents were not created until July and August 2009, and have not been brought to Council for approval. They are therefore still in draft form, and may be subject to change such that the degree to which they address the recommendations is altered. A second, more recent, version of the Policy and Procedures was provided as part of the follow-up to the 2005 Audit of Real Estate Management but the corresponding appendices, which include detailed guidance and templates, pre-date the version provided by management for the P3 follow-up. It is therefore unclear whether the updates to the appendices were subsequently disregarded and whether direction to departments will coincide with the information that was reviewed for the purpose of this follow-up.

The Policy and Procedures do provide an effective means of providing consistent information to Council on proposed P3 initiatives. However they lack in ensuring P3 risks and monitoring of P3 projects are addressed completely and consistently. The procedures and templates were written to be general and flexible in order to address the varying needs of different types of P3 projects. Because of this, they are less effective in addressing the need to formalize the monitoring of agreements and results, and capturing the cost of P3 support services and accountabilities throughout the life of the P3 initiatives. Without specified requirements of key areas to address, the risk of incomplete or inconsistent assessments and monitoring remains.

The responsibility of monitoring the P3 contracts is housed with the operating departments. No one person is charged with overseeing the monitoring performed

by each department. As such, there is a risk that the quality of the monitoring performed may not be consistent.

Finally, plans to mitigate the risks that remain due to incomplete implementation of the recommendations should be considered with respect to the partnership agreement to redevelop Lansdowne Park.

### **MANAGEMENT'S SUMMARY RESPONSE**

With the recent reorganization of the City in the spring of 2009, the Real Estate Partnerships and Development Office (REPDO) was created and assumed broad responsibility for the implementation of sustainable property solutions appropriate to the needs of the Corporation and its principal business units.

In particular, the former Real Estate Services Division was incorporated with elements of the former Comprehensive Asset Management Division and the Public-Private-Partnerships Office. As a result of this effort, REPDO established two primary business units; specifically, the Realty Services Branch and the Realty Initiatives and Development Branch, both operating under the auspices of a single Director.

While the more traditional Real Estate functions were aligned with the Realty Services Branch, the strategic functions associated with real estate development, development based initiatives and the establishment of potential "partnership" based solutions were integrated within the Realty Initiatives and Development Branch.

The new organizational structure provides improved synergy in the delivery of strategic projects, given that the City's real estate and development experts have been designated to assume the lead following the 2009 corporate realignment. Before initiating any strategic project, Realty Initiatives and Development Branch will undertake a thorough assessment on a whole-life cost basis to determine whether the project can be delivered as proposed. The assessment will first determine if a traditional delivery approach is feasible by identifying whether there is a real need, real budget, and real time frame-project feasibility including operating and life-cycle requirements as set out in the capital budget or the Long Range Financial Plan. Once it is established that the project has merit, and can be delivered successfully through the traditional delivery method, REPDO can then assess whether significant additional value and efficiencies can be achieved, and/or risk reduced by using other delivery methods / partnership opportunities.

REPDO is suggesting that the initial examination of delivery options should first consider a more rigorous evaluation of the project from a real estate and whole life costing perspective and then evaluate whether a P3 solution is the preferred delivery option based on the degree of added value, efficiencies and reduced risk that may be achieved over the traditional delivery base case and the relative ability to achieve Council's stated objectives (social, cultural, environmental and financial)

for the specific strategic initiative. This will establish a transparent benchmark/roadmap for initiating and resourcing a strategic initiative project. In the past, strategic initiative projects were initially screened by the P3 office for the purpose of identifying projects for which a P3 outcome was the objective. There is now a fundamental difference in terms of the initiation point between the REPDO mandate and that of the former P3 office.

REPDO believes that it would be premature to respond to Recommendations 1, 2, 4, 5, 9, 10 and 11 at this time. These recommendations pertain to the mandate and approach of the former P3 office as opposed to the mandate and approach described above for REPDO. The P3 Policy and Procedures Handbook need to be revised to account for the REPDO mandate and approach in order to appropriately address the above-mentioned audit recommendations.

Based on the changing circumstances described above, REPDO will be proceeding as follows:

- REPDO is engaging its subject matter experts in order to complete a “self audit” looking at current P3 agreements, with the objective of improving project oversight and compliance and then adequately resourcing and improving performance monitoring and reporting.
- With respect to future P3 agreements, REPDO intends to review and revise as necessary the draft Policy and Procedures document developed by the former P3 Unit. Based on the results of the “self-audit” and lessons learned, Recommendations 1, 2, 4, 5, 9, 10 and 11 will be dealt with as part of a new process to be developed in Q2 2011.
- Recommendations 3, 6, 7, and 8 have been addressed in the management response to the follow-up audit to the effect that both the policy on Public-Private Partnerships and the P3 Procedures Handbook need to be further revised, based on the comments received from the Auditor and on “lessons learned” from the self-audit.
- The revised Public-Private Partnerships Policy and Procedures Handbook will be forwarded for Council approval in order to fully comply with the audit recommendations.

## **6 ACKNOWLEDGEMENT**

We wish to express appreciation to the staff and management for their cooperation and assistance throughout the audit process.