



STAFF REPORT ACTION REQUIRED

Legal Proceedings re Animal Shelter located at Exhibition Place

Date:	January 22, 2007
To:	General Government Committee
From:	City Solicitor
Wards:	Ward 19 Trinity-Spadina
Reference Number:	N/A

SUMMARY

This report is to obtain ratification of the commencement of litigation against the architect/designer of an animal shelter located at Exhibition Place, and for authority to continue to pursue the action against Thomas Brown Architects Inc. (“Brown”).

In order to protect the City’s interests, the City Solicitor commenced the action against Brown by issuing a Notice of Action on July 28, 2006. The Notice of Action and Statement of Claim were subsequently served on Brown, which delivered a Statement of Defence on December 18, 2006.

RECOMMENDATIONS

The City Solicitor recommends that:

1. authority be granted to continue legal proceedings already commenced against Thomas Brown Architects Inc., to ratify any action already taken, to appeal any decision where warranted, to discontinue or settle such claim or action where it is concluded that it is reasonable to do so and to execute any documents in furtherance thereof; and
2. authority be granted to the appropriate City Officials to take the necessary action to give effect thereto.

FINANCIAL IMPACT

The recommendations will have no financial impact beyond what has already been approved in the current year's budget.

ISSUE BACKGROUND

In 2001, the City sought to renovate a portion of the first and second floor of the Horse Palace located at Exhibition Place to provide a new animal shelter for the South District in Toronto. Animal Centre South, as this facility was to be called, is located at the north east corner of the historic Horses Palace building in the Exhibition Place. The facility is a two-storey 'building within a building'. It was to contain cat rooms, dog rooms, small animal area, reception, laundry, food preparation, washrooms and offices. The second floor was to be built on the existing concrete floor.

The City and Brown entered into a contract in late 2001, which was amended from time to time ("Consultant Contract"). Among other matters in the Consultant Contract, which are specified in the Brown's response to a Request for Proposals #9118-01-7782 (the "RFP") issued by the City, Brown agreed to perform all the professional engineering services necessary for the renovation of the Horse Palace into an Animal Shelter. These professional engineering services included the design of the facility to meet the City's requirements for its intended operation, with resulting preparation of contract drawings and specifications, and ultimately the provision of general office administration and resident services during the construction of the work.

Construction of the project was completed by May 30, 2003 and the new facility was occupied in June 2003. It soon became apparent, throughout the summer of 2003, that there were serious deficiencies in the design of the facility. Problems manifested originally as uneven or inadequate heating and cooling as well as problems with the building lighting. Throughout 2003 and into 2004, an increasing problem with water damage and drainage, accompanied by the growth of mould, manifested itself. Water, contaminated with animal feces and urine, began to leak through the drainage system of the animal kennels and down the interior walls of the building. By the summer of 2004, occupancy of the building as an animal shelter ceased as the premises were unfit for the purpose for which they had been built.

Brown made some attempts, through its subcontractor, at the demand of the City to repair the HVAC system in late December 2004 and early into 2005. These attempts were unsuccessful. The City eventually undertook the rectification of the problem.

It became apparent that the deficiencies in the design of the building were so extensive that demolition and re-design of the project by the City were the only options if the project were to be made viable. The costs of this demolition, re-design and re-construction are approximately \$1,000,000.00, which the City seeks to recover by way of litigation.

This report was prepared in consultation with Internal Services, Facilities and Real Estate.

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SIGNATURE

Anna Kinastowski
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