



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Proposed Resolution of Contractor Claims for Waterproofing and Building Envelope Rehabilitation at the St. Clair Reservoir, Contract 15ECS-MI-01WA

Date: June 18, 2021

To: Infrastructure and Environment Committee

From: City Solicitor and Chief Engineer and Executive Director, Engineering and Construction Services

Wards: Ward 12

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City of Toronto.

The attachment to this report contains advice or communications that are subject to solicitor-client privilege and litigation privilege.

SUMMARY

The City contracted with Bennett Mechanical Installations (2001) Limited ("Bennett"), to provide construction and related services for the waterproofing and building envelope rehabilitation at the St. Clair Reservoir (the "Project") pursuant to Contract 15ECS-MI-01WA (the "Contract"). The Contract was awarded May 16, 2016.

The Project commenced on June 15, 2016, and was scheduled to be completed on February 6, 2019. Issues arose on the Project which caused delay. The City extended the Contract completion date to November 15, 2019. The Project was completed on November 29, 2019.

Confidential Attachment 1 contains legal advice from the City Solicitor regarding claims made by Bennett with respect to the delay in completing this Project.

Proposed Resolution of Contractor Claims for Waterproofing & Building Envelope Rehabilitation at to the St. Clair Reservoir, Contract 15ECS-MI-01WA

RECOMMENDATIONS

The City Solicitor and Chief Engineer and Executive Director, Engineering and Construction Services recommend that:

1. City Council adopt the confidential instructions to staff, in Confidential Attachment 1.
2. City Council direct that the confidential information contained in Confidential Attachment 1, remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege and pertains to litigation or potential litigation.
3. City Council authorize the reallocation of cashflows within Toronto Water's approved 2021 Capital Budget and 2022-2030 Capital Plan for acceleration and deferral of projects, as presented in Confidential Attachment 1, with a zero Budget impact.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

The City Solicitor has not previously reported on the matters discussed in this report.

The Executive Director, Engineering and Construction Services and the Director Purchasing and Materials Management Division, reported on the award of the Contract to Bennett in a report dated April 16, 2016, entitled "Contract Award - Tender Call No. 324-2015 for St. Clair Reservoir - Waterproofing and Building Envelope Rehabilitation." This report was adopted by the Public Works and Infrastructure Committee at its May 16, 2016 meeting and can be found at:

<https://www.toronto.ca/legdocs/mmis/2016/pw/bgrd/backgroundfile-92686.pdf>

COMMENTS

The St. Clair Reservoir is located under Sir Winston Churchill Park (the "Park"), at the south east corner of St. Clair Avenue West and Spadina Road. The south end of the Park connects to Nordheimer Ravine and other park lands.

The total cost of the Contract was \$28,224,010.00, for construction and related services for building envelope rehabilitation and waterproofing of the St. Clair Reservoir, and the restoration and improvement of the Park's amenities. Work on the Park's amenities included the construction of new tennis courts, rehabilitation of the tennis club building, construction of a dog off leash area, and new paths and other landscaping elements.

The Project commenced on June 15, 2016. Completion was originally planned for February 6, 2019, but the Project was completed in November 29, 2019.

Confidential legal advice is provided in Confidential Attachment 1.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

Michael D'Andrea
Chief Engineer and Executive Director, Engineering and Construction Services

ATTACHMENTS

Confidential Attachment 1 - Proposed Resolution of Contractor Claims for Waterproofing & Building Envelope Rehabilitation at the St. Clair Reservoir, Contract 15ECS-MI-01WA