Western Beaches Tunnel

<table>
<thead>
<tr>
<th>Date:</th>
<th>May 31, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>To:</td>
<td>Public Works and Infrastructure Committee</td>
</tr>
<tr>
<td>From:</td>
<td>City Solicitor</td>
</tr>
<tr>
<td>Wards:</td>
<td>Ward 19 Trinity-Spadina: Ward 14 Parkdale – High Park</td>
</tr>
<tr>
<td>Reason for Confidential Information:</td>
<td>This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions. It contains advice that is subject to solicitor-client privilege.</td>
</tr>
<tr>
<td>Reference Number:</td>
<td></td>
</tr>
</tbody>
</table>

**SUMMARY**

The City has commenced litigation regarding the Western Beaches Tunnel. The purpose of this report is to provide solicitor-client advice regarding the litigation and address the issue of funding for outside counsel.

**RECOMMENDATIONS**

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1, and

2. Council authorize the public release of Recommendation 1 in Attachment 1, if adopted by Council, and that the balance of the information contained in Confidential Attachment 1 remain confidential as it relates to litigation or potential litigation that affects the City or one of its agencies, boards, and commissions, and contains advice that is subject to solicitor-client privilege.

**Financial Impact**

The financial impacts are discussed in the Confidential Information in Attachment 1 of this report.
The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

**DECISION HISTORY**

At its meeting of October 22 and 23, 2007, City Council adopted a report from the City Solicitor entitled "Western Beaches Tunnel" (item PW 9.9) and ratified legal proceedings commenced against McNally-Frontier J.V. Inc., C & M McNally Engineering Inc., Frontier Kemper Constructors, Inc., Acres International Limited, Acres & Associated Environmental Limited, Bennett Mechanical Installation, Ltd., Bennett Mechanical Installations Ltd., and KSB Pumps Inc.

In addition, authority was given to the City Solicitor to commence legal proceedings against other parties, if deemed necessary by the City Solicitor. The City Solicitor subsequently commenced legal proceedings against CH2M Hill Canada Limited, CH2M Gore & Storrie Limited, MacViro Consultants Inc. and Genivar Ontario Inc.

In 2007, the City Solicitor retained Lerners LLP to represent the City in these legal proceedings.

**ISSUE BACKGROUND**

The former City of Toronto undertook a project known as the Western Beaches Tunnel ("WBT") which would capture and provide treatment for storm and combined sewer overflow. The City had entered a design build contract for the WBT dated February 3, 1998 with McNally-Frontier J.V. Inc., C & M McNally Engineering Inc., Frontier Kemper Constructors, Inc. The City's consultants were CH2M Gore & Storrie Limited carrying on business as CH2M Hill Canada Limited and MacViro Consultants Inc. which provided design, site supervision and general contractual administration services. In 2004, the City entered a contract for the construction of a sediment management system for the WBT with Clearway Construction Inc.
In 2005, there were shaft breakages of the pumps installed at the WBT. As a result, the City seeks recovery of its damages associated with deficiencies in the design and/or construction of the WBT in its legal actions against parties involved.

CONTACT

Katherine Hill, Solicitor, Legal Services
Tel. 416-392-8028, Fax. 416-397-1765
E-mail: khill@toronto.ca

SIGNATURE

_______________________________
Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Attachment 1 – Western Beaches Tunnel