



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**Proposed Settlement of Litigation by M.J. Dixon  
Construction Limited with respect to construction at the  
Jenner Jean-Marie Community Centre, Thorncliffe  
Library and Childcare**

<b>Date:</b>	March 1, 2016
<b>To:</b>	City Council
<b>From:</b>	City Solicitor and the General Manager, Parks, Forestry and Recreation
<b>Wards:</b>	26
<b>Reason for Confidential Information:</b>	This report contains advice or communications that are subject to solicitor-client privilege and pertains to litigation that affects the City.
<b>Reference Number:</b>	

**SUMMARY**

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This report seeks instructions regarding a proposed settlement of litigation against the City by its general contractor M.J. Dixon Construction Limited in connection with the construction of an addition to the Jenner Jean-Marie Community Centre, Thorncliffe Library and Childcare. In the litigation, the general contractor claims damages of \$1,409,850.75, plus taxes, interest and legal costs. The details of the proposed settlement are discussed in Confidential Attachment 1.

**RECOMMENDATIONS**

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The City Solicitor and the General Manager of Parks, Forestry and Recreation recommend that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report;
2. City Council direct that Confidential Attachment 1 remain confidential as it contains advice and information that is subject to solicitor-client privilege and

pertains to litigation that affects the City. City Council authorize the public release of all or a portion of the confidential instructions once the proposed settlement is finalized at the discretion of the City Solicitor; and

3. The appropriate City staff be authorized and directed to take the necessary action to give effect thereto.

### **Financial Impact**

The financial impacts resulting from the recommendations made in this report are disclosed in Confidential Attachment 1.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial information disclosed in Confidential Attachment 1.

### **DECISION HISTORY**

There is no prior decision in respect of this litigation.

### **ISSUE BACKGROUND**

On November 10, 2007, the City entered into a contract with M.J. Dixon Construction Limited ("the general contractor") for the construction of an addition to the Jenner Jean-Marie Community Centre, Thorncliffe Library and Childcare. The original contract price was \$8,022,000 with subsequent amendments that raised the contract price to \$8,513,000.

A certificate of substantial performance of the project was issued on November 4, 2010.

On February 4, 2011, the general contractor submitted a claim for \$1,362,169.12 for damages allegedly resulting from the following alleged delays:

1. Delays as a result of the City's labour disruption in 2009 which prevented the contractor from closing and finishing areas that required inspections by City staff who were on strike;
2. Delays over the installation of permanent power;
3. Delays in connection with the supply of structural steel;
4. Delays in connection with the dismantling of the temporary childcare portable;
5. Delays in connection with landscape work;
6. Delays in connection with demolition, concrete foundation, masonry and brick, gypsum board and acoustic ceilings and interior glazing; and

7. Delays due to weather.

There were negotiations between the general contractor and Parks, Forestry and Recreation Division ("Division") staff, which did not resolve the claim.

On November 30, 2012, the general contractor commenced a lawsuit against the City claiming damages of \$1,409,850.75, plus taxes, interest, and legal costs. The lawsuit was held in abeyance while Division staff continued to negotiate directly with the general contractor.

The City retained a third party consultant to review the general contractor's claim. Legal Services was asked by the Division to review the consultant's report and participate in negotiations with the general contractor's lawyer.

The general contractor has proposed a settlement which expires on the date of Council's earliest meeting.

## **COMMENTS**

Confidential Attachment 1 sets out and discusses the proposed settlement of the litigation.

## **CONTACT**

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## **SIGNATURE**

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Janie Romoff, General Manager,  
Parks, Forestry and Recreation

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Anna Kinastowski  
City Solicitor

## **ATTACHMENT**

Attachment 1 – Confidential Information

Staff Report on Proposed Settlement re construction at Jenner Jean-Marie Community Centre