



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Settlement of Claim - Contract 09FS-70WS – 900 mm and 750 mm Watermains on Avenue Road from High Level Pumping Station to Caribou Road and 400 mm Watermain on Avenue Road from MacPherson Avenue to Poplar Plains Crescent

Date: May 29, 2017

To: Public Works and Infrastructure Committee

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

Wards: Ward 16 (Eglinton-Lawrence), Ward 22 (St. Paul's)

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City. This report also contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

The purpose of this report is to request authority to enter into a settlement with Drainstar Contracting Ltd. ("Drainstar") for claims arising from watermain work under the said Contract No. 09FS-70WS.

RECOMMENDATIONS

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

1. City Council adopt the confidential instructions to staff contained in Confidential Attachment 1.
2. City Council grant authority to enter into Minutes of Settlement and to pay any sums due thereunder, in accordance with the confidential instructions to staff contained in Confidential Attachment 1.

3. City Council authorize the appropriate City staff to execute any documentation necessary to implement the recommendations set out in the report
4. City Council direct that the confidential instructions to staff contained in Confidential Attachment 1 be made public upon concluding the recommended settlement, and that the balance of Confidential Attachment 1 remain confidential, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The funding for the proposed settlement is included in the approved Toronto Water's 2017 Capital Budget and 2018-2026 Capital Plan (project CPW040-02, JOS - Avenue Road Watermain Construction - Hi Level to Lawrence). Additional financial information is contained in the confidential attachment.

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

DECISION HISTORY

At its meeting on February 2, 2010, the Public Works and Infrastructure Committee adopted a report recommending the award of Contract 09FS-70WS, Tender Call No. 191-2009, for the construction of 900 mm and 750 mm watermain on Avenue Road from the High Level Pumping Station to Caribou Road and a 400 mm watermain on Avenue Road from MacPherson Avenue to Poplar Plains Crescent (the "Avenue Road Watermain Project") to Drainstar Contracting Ltd., in the amount of \$62,707,360.39 including all applicable taxes and charges. The decision can be found at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.PW30.3>.

ISSUE BACKGROUND

The Avenue Road Watermain Project was performed by Drainstar Contracting Ltd. ("Drainstar") pursuant to Contract No. 09FS-70WS.

Work on the Avenue Road Watermain Project was substantially completed on September 28, 2012. During the course of its work on the Project, Drainstar put forward a number of claims against the City, and in July 2013 it commenced a lawsuit against the City for claims related to its work on the Project. In its claim it sought the sum of \$10,447,889.91 plus interest and legal costs. The City retained outside counsel to defend the claim.

COMMENTS

Drainstar and the City engaged in negotiations regarding the claim and have reached a tentative settlement, subject to Council approval. Confidential Attachment 1 provides further information and legal advice on the tentative settlement that is the subject matter of this report.

CONTACT

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SIGNATURE

Michael D'Andrea, M.E.Sc., P.Eng.
Chief Engineer and Executive Director, Engineering and Construction Services

Wendy Wahlberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Information