



REPORT FOR ACTION

George Street Revitalization: Phase Two Agreement with Ontario Infrastructure and Lands Corporation

Date: July 17, 2018
To: City Council
From: Interim City Manager
Wards: All

SUMMARY

On April 24, 2018, City Council authorized the Deputy City Manager, Internal Corporate Services to negotiate and enter into an agreement with Ontario Infrastructure and Lands Corporation (“Infrastructure Ontario”) for the George Street Revitalization (GSR) Project, as Commercial Procurement Lead for Phase Two of the Alternative Financing and Procurement approach (Design-Building-Finance model). The agreement covers the alternative procurement process through to execution of the contract with the successful proponent and thereafter as a Project Oversight Partner and Advisor during construction. The agreement must be on terms and conditions satisfactory to the Deputy City Manager, Internal Corporate Services and in a form satisfactory to the City Solicitor.

After substantial negotiations between Infrastructure Ontario (IO) and the City, IO has agreed to amend the draft Agreement to indemnify the City for third party claims, and permit the City to make claims against it in the event that its actions, advice, or documents result in a loss or liability to the City up to the value of IO's insurance coverage of \$5 million. As the City does not typically agree to limitations of liability, the Interim City Manager is bringing forward this report recommending the approval of these revised terms.

RECOMMENDATIONS

The Interim City Manager recommends that:

1. City Council authorize the Deputy City Manager, Internal Corporate Services, to execute the Phase Two Agreement with Ontario Infrastructure and Lands Corporation (“Infrastructure Ontario”) for the George Street Revitalization (GSR) Project, as

previously authorized with the revised negotiated business terms with respect to the limited indemnity, that would permit the City to make claims against Infrastructure Ontario in the event that Infrastructure Ontario's actions, advice, or documents result in a loss or liability to the City up to the maximum of its insurance coverage of \$5 million.

FINANCIAL IMPACT

There are no immediate budgetary impacts associated with the adoption of this report. In the event that Infrastructure Ontario's actions, advice or documents result in loss or liability to the City, the revised business terms mitigate risk by allowing for claims against Infrastructure Ontario up to the value of their insurance coverage of \$5 million.

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

DECISION HISTORY

At its meeting of April 24, 2018, City Council adopted EX33.4 George Street Revitalization Procurement Strategy. Council authorized staff to issue the RFQ and RFP for the implementation of the GSR Project using an AFP approach. Council also authorized staff to negotiate and enter into a Phase Two Agreement with Infrastructure Ontario (IO) while continuing in three non-competitive contracts with IO, PRISM Partners, and Montgomery Sisam Architects in development of the PSOS. Council directed staff to engage CreateTO as appropriate through the Project's construction phase.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX33.4>

At its meeting of December 5, 2017, City Council adopted CD24.7 2018 Shelter Infrastructure Plan and Progress Report, whereby Council approved the 2018 Shelter Infrastructure Plan.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.CD24.7>

At its meeting of December 13 to 15, 2016, City Council adopted EX20.12 George Street Revitalization: Recommendations for Short-term Non-competitive Contracts. Council authorized staff to develop the PSOS by engaging three professional services for an 18-month duration: Infrastructure Ontario as Advisors, PRISM Partners as Owner's Representative and Montgomery Sisam Architects as Planning, Design and Compliance Consultants.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX20.12>

At its meeting of July 12 to 15, 2016, City Council adopted EX16.13 George Street Revitalization – Recommended Procurement and Delivery Strategy. Council authorized staff to proceed with an AFP model for the implementation of the Project using a DBF approach and referred the Project to the 2017 Capital Budget process. Council authorized staff to initiate negotiations towards an agreement with IO as procurement lead. Council also authorized staff to begin implementing the Seaton House transition plan.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX16.13>

COMMENTS

The GSR Project scope as approved by Council includes a men's shelter with 100 beds, a transitional living program with 130 beds, a long-term care home with 378 beds, 21 units of affordable housing and a community hub. Based on Council approvals cited in the Decision History section above, staff engaged IO and other professional services from January 1, 2017 to June 30, 2018.

As directed by Council, the Deputy City Manager, Internal Corporate Services has entered into negotiations with Ontario Infrastructure and Lands Corporation, known as Infrastructure Ontario (IO), to enter into a Phase Two Project Agreement comprising procurement and construction. The draft Agreement provided by IO contained provisions that would prohibit the City from making any claims against IO in the event that IO's actions, advice, or documents result in a loss or liability to the City. After substantial negotiation, IO has agreed to permit the City to make claims against it with the limitation of liability being the amount of its insurance coverage of \$5 million. Any claims the City might have against IO for more than a total of \$5 million would have to be borne by the City.

The implication of this limitation of liability is that if a claim is asserted by third parties as a result of IO's negligence or intentional acts, compensation is limited to \$5 million, being the insurance amount set out in the agreement. Accordingly, the City would be liable for any amount above the \$5 million covered by IO's insurance, even where the damages were not due to any fault of the City.

The loss exposure and potential associated with IO's role as a Commercial Procurement Lead is not as significant as that of the sub-advisors and contractors that will be retained, who will represent a majority of the risk on this Project. To mitigate potential damages the City will obtain indemnities agreeable to the City from any third party sub-advisors and contractors jointly retained by IO and the City to the extent that claims arise from the acts or omissions of sub-advisors. The City retains final decision-making authority related to the issuance of any contracts, ensuring that no agreement will be entered into with sub-advisors or contractors unless it meets all City requirements providing adequate insurance and indemnification clauses. This is in accordance with the project governance structure as set out through the development of

the terms of reference for the Phase Two Agreement (refer to Attachment 5 of EX33.4 George Street Revitalization Procurement Strategy).

As this is not the City's typical business terms for indemnity, the Interim City Manager is bringing forward this report to advise Council and seek approval to proceed with an agreement containing these terms.

CONTACT

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SIGNATURE

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