

## **Update on Additional Costs Associated with Extraction of the Micro-Tunneling Boring Machine on Contract 20ECS-LU-01FP**

**Date:** November 20, 2023  
**To:** General Government Committee  
**From:** City Solicitor  
**Wards:** 4 - Parkdale - High Park

### **REASON FOR CONFIDENTIAL INFORMATION**

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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.

### **SUMMARY**

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This report provides an update to members of the General Government Committee on their request for the City Solicitor, in consultation with the Chief Engineer and Executive Director, Engineering and Construction Services, to report back on options to recover costs related to the emergency non-competitive contract associated with the rescue of the micro-tunneling boring machine used on Contract 20ECS-LU-01FP in the vicinity of Old Mill Drive.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, at the discretion of the City Solicitor, but that the remainder of Confidential Attachment 1 remain confidential as it contains advice which

is subject to solicitor-client privilege and relates to litigation or potential litigation by the City.

## **FINANCIAL IMPACT**

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The financial implications are discussed in Confidential Attachment 1.

## **DECISION HISTORY**

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At its meeting on March 3, 2023, the General Government Committee adopted Item GG2.14, as amended, requesting that the City Solicitor, in consultation with the Interim Chief Engineer and Executive Director, Engineering and Construction Services, review the circumstances arising from the rescue of the Micro-Tunneling Boring Machine on Old Mill Drive and to report back to the April 20, 2023 meeting of the General Government Committee on options available to recover the costs incurred by the City. The Council adopted item and the corresponding staff reports can be found at: <https://secure.toronto.ca/council/agenda-item.do?item=2023.GG2.14>.

At its meeting on April 20, 2023, the General Government Committee adopted Item GG3.19 where the City Solicitor advised that she would report back to this committee later in 2023 as her review was ongoing. The General Government Committee adopted item and the corresponding staff reports can be found at: <https://secure.toronto.ca/council/agenda-item.do?item=2023.GG3.19>.

## **COMMENTS**

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As a part of the City of Toronto's Basement Flooding Protection Program Phase 4 Contract 20ECS-LU-01FP, Clearway Construction Limited (the Contractor), was required to install a 900 millimetre diameter storm sewer on Old Mill Drive. The proposed scope of work included crossing the Toronto Transit Commission's Line 2 subway. The Contractor retained subcontractors to complete the micro-tunnelling work, including tunnel entrance and exit shafts.

On March 9, 2022, the Contractor commenced the micro-tunnelling utilizing a specialized micro-tunnel boring machine (MTBM), consisting of a cutting wheel head and a tail can section.

While performing the micro-tunneling work, the MTBM cutting wheel became ensnared in an existing steel tieback, which then prevented the micro-tunneling from proceeding any further. This has led to increased costs, including the stabilization of the ground around the MTBM, removal of the MTBM from the ground, and completion of the balance of the storm sewer installation.

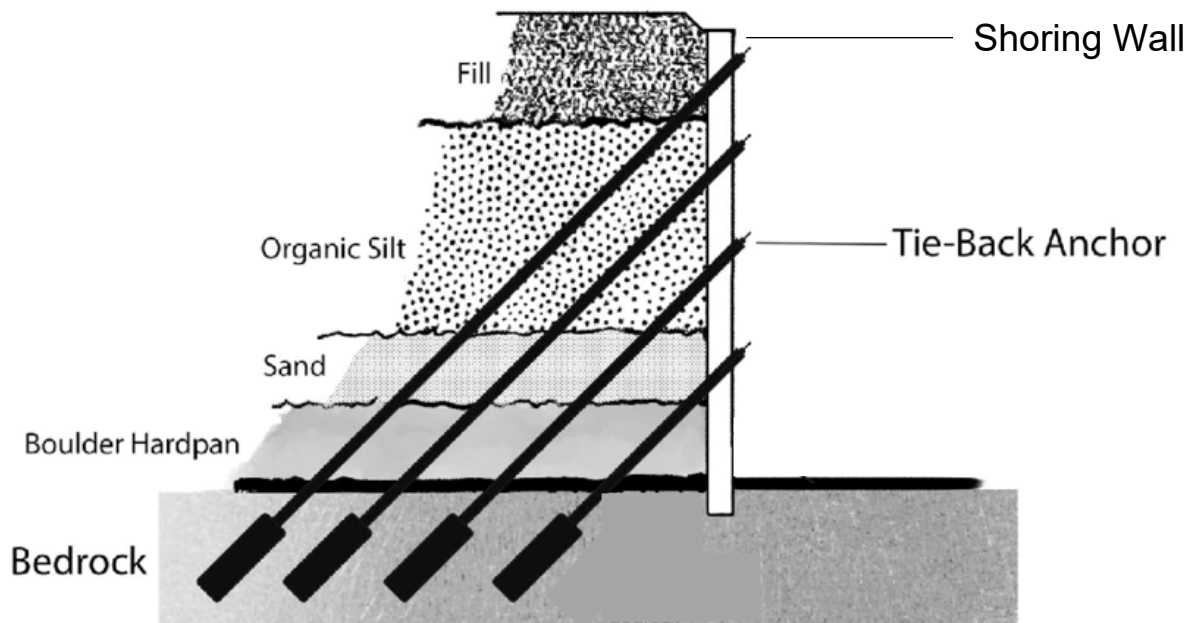
As of the date of this report, the MTBM has been removed from the ground. ECS has advised that they anticipate the contract work, including surface restoration work, to be complete by Spring, 2024.

The total cost of the emergency work is unknown at this time. However, ECS indicates that it currently remains within the existing funding previously approved by this Committee.

## General Background

### Use of Tiebacks in Construction

The use of tiebacks in the construction of high-rise buildings, such as condominiums and office towers, is common in the City of Toronto. When deep excavation is required for the foundation of new buildings, and where there are neighbouring structures, a shoring system is implemented in order to ensure that those neighbouring structures do not collapse while the new foundation is being dug. The shoring system consists of a vertical shoring wall, shoring piles, and structural anchors such as tiebacks. Tiebacks, made of large steel cables, are installed at a downward angle through the shoring wall, and brace the shoring wall.



### Tiebacks in the City's Right-of-Way

When new buildings are built very close to the property line, next to the City's right-of-way, tiebacks may need to be placed in the right-of-way itself.

Authorization to place the tiebacks (and other parts of the shoring system) in the City's right-of-way is provided by the City's Transportation Services division (TS) pursuant to

Chapter 743 of the City of Toronto Municipal Code (the Streets and Sidewalks By-law)<sup>1</sup>. Such authorization often takes the form of, at a minimum, permits issued by TS. These permits come with conditions that impose obligations on the developer in addition to those imposed by Chapter 743 itself. Such obligations could include a requirement to cut down shoring piles after construction, or the submission of as-built drawings to TS within 60 days of performing the work.

## Design and Construction Procedure in City Underground Infrastructure Projects

In many cases, the City retains an outside design consultant to design the work to be constructed. In many of those cases, where the work to be constructed is underground within the City's property, such as the City's right-of-way, the City provides the consultant with information regarding the location of City owned underground infrastructure. Design consultants are responsible for contacting third party utility companies for their underground infrastructure location.

After the design, but prior to construction work, contractors and excavators perform a search for underground infrastructure known as "requesting locates" pursuant to a statutory scheme that was established under the Ontario Underground Infrastructure Notification System Act, 2012. The locate requester (eg. the contractor) is then entitled to rely on the response provided.

## CONTACT

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## SIGNATURE

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Wendy Walberg  
City Solicitor

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<sup>1</sup> In addition, the developer must obtain a shoring permit from Toronto Building authorizing the design of the shoring system for use in the construction of the foundation of the building.

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Instructions to Staff