

Proposed Settlement of M.J. Dixon Construction Ltd. Claim for Delay and Cost Escalation Compensation - Mount Dennis Net Zero Early Learning and Child Care Centre

Date: May 15, 2024

To: General Government Committee

From: City Solicitor and Executive Director, Corporate Real Estate Management

Wards: 5 - York South-Weston

REASON FOR CONFIDENTIAL INFORMATION

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

The purpose of this report is to obtain instructions regarding a proposed settlement of the claim by M.J. Dixon Construction Ltd. against the City of Toronto, for compensation arising out of delay and delay-related cost escalation claims for work associated with the Mount Dennis Net Zero Early Learning and Child Care Centre at 1234 Weston Road.

The Mount Dennis Net Zero Early Learning and Child Care Centre is located in the York South-Weston neighbourhood and represents the City's first net zero energy child care facility, and largest City-owned child care centre in Toronto. Construction of the new facility will result in a 98 space child care center that will serve the ward and future population growth, and advances the City's target of serving 50 percent of children aged zero to six by 2026, as identified in Toronto's 2017-2026 Licensed Child Care Growth Strategy.

RECOMMENDATIONS

The City Solicitor and Executive Director, Corporate Real Estate Management recommend that:

1. City Council adopt the confidential instructions set out in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment, 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.

FINANCIAL IMPACT

The financial impact of the proposed settlement is detailed in the Confidential Attachment 1 to this report.

DECISION HISTORY

At its meeting of September 23, 2020, Executive Committee, City Council adopted EX16.24 "Children's Services Capital Budget Adjustment for Child Care Centres Projects at Mount Dennis, St. Barnabas Catholic School, St. Bartholomew Catholic School, and St. Roch", and approved the 2020 Capital Budget and 2021 – 2023 Capital Plan for Children's Services which increased the project cost for the Mount Dennis Child Care Centre (CCS035-01) by \$1,830,000, increasing the project cost from \$18,000,000 to \$19,830,000, funded with cash flows of \$2,557,000 in 2020; \$10,580,000 in 2021; \$3,410,000 in 2022; and \$202,000 in 2023 through the Child Care Capital Reserve Fund (XR1103), to support the consolidation of the Trimbee Early Learning Centre; and to support the addition of 26 child care spaces to the planned Mount Dennis location.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.EX16.24>

At its meeting of April 1, 2020, Bid Award Panel, the Bid Award Panel adopted BA74.2 "Award of Ariba Doc No. 2190370119 to M.J. Dixon Construction Ltd. for the Construction of a Net- Zero Energy Childcare Facility located at 1234 Weston Rd", and granted authority to award RFP 290370119 (297-2019) to MJ Dixon Construction Ltd., in accordance with the contract details set out in BA74.2 from the Chief Purchasing Officer for a value of \$15,694,445 net of Harmonized Sales Tax recoveries.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.BA74.2>

At its meeting of July 19, 2019, City Council adopted EX7.23 "Children's Services - Amendments to the 2019-2021 Cash Flows for Mount Dennis Child Care Centre and St. Barnabas Catholic School Child Care Centre Projects for Children's Services".

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX7.2>

At its meeting of April 26, 2017, City Council adopted GM19.8 "Expropriation of the Property Known as 1230-1234 Weston Road for a New Mount Dennis Early Learning and Child Care Centre".

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM19.8>

On June 7, 2016, City Council approved the creation of a capital project of \$9.0 million named Mount Dennis Early Learning and Child Care Centre for the permanent replacement of the Hollis Early Learning and Child Care Centre.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.1>

COMMENTS

Background

In 2018, the City acquired the property at 1234 Weston Road for the purposes of constructing and developing a new replacement child care centre, the Mount Dennis Net Zero Early Learning and Child Care Centre. The new facility replaces the former Hollis Early Learning and Child Care Centre, located at 1 Hollis Street, which was sold by the City to Metrolinx as part of the Master Agreement for their expansion of the Eglinton Crosstown Light Rapid Transit project.

The York South-Weston neighbourhood has been identified as a high priority ward for child care expansion. Currently, there is a total of 1,275 licensed infant, toddler and preschool spaces. Construction of the new facility will result in 98 space child care centre (26 additional spaces and 72 replacement spaces), which will help serve existing families in the area and future population growth. The new child care centre also advances the City's target of serving 50 percent of children aged zero to six by 2026, as identified in Toronto's 2017-2026 Licensed Child Care Growth Strategy.

The new building is two-storeys and 19,000 square foot in size, representing the City's first net zero energy child care facility, and largest City-owned child care centre in Toronto. An airtight building envelop minimizes the infiltration and exfiltration of air, reducing energy use. The building also utilizes mass timber, a leading-edge sustainable building material that is strong, flexible and low carbon. A number of other sustainable devices such as roof top solar panels and battery energy storage are used to generate and store renewable energy on-site.

Construction of the New Child Care Centre and Proposed Settlement

In April 2020, M.J. Dixon Construction Ltd. ("MJD") was awarded the contract to construct the Mount Dennis Net Zero Early Learning and Child Care Centre (the "Project"). The value of the contract was \$15,694,445 net of Harmonized Sales Tax recoveries.

The Project was delivered during the peak of the COVID-19 pandemic, with construction commencing in June 2020, and was subject to a number of legal claims from the general contractor, MJD, for delay and delay-related increases in the cost to complete the Project. MJD attributes its legal claims to pandemic restrictions and supply chain impacts. While the City of Toronto and MJD agree that the Project was delivered significantly behind schedule, the source of these delays and the assignment of

responsibility in respect of the delay and the management of any delay-related cost escalations in the context of the construction contract is disputed between the parties.

The City and MJD entered into negotiations regarding delay-related costs as the Project approached completion. As a result of these negotiations, a settlement in principle has been agreed upon by MJD and City staff. Approval of the settlement terms and amount are being sought through this report, the particulars of which are detailed in Confidential Attachment 1.

CONTACT

Lisa Barroso, Director, Project Management Office, Corporate Real Estate Management, 416-338-0237, Lisa.Barroso@toronto.ca

Mark Siboni, Solicitor, Litigation Section, Legal Services, 416-392-9786, Mark.Siboni@toronto.ca

Shanley McNamee, General Manager, Children's Services, 416-392-8134, Shanley.McNamee@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff and Financial Information