

## **Amendment to Purchase Order Number 6047137 with North Tunnel Constructors ULC for the Construction of the Coxwell Bypass Tunnel between Ashbridges Bay Treatment Plant and Coxwell Ravine Park**

**Date:** November 5, 2024

**To:** General Government Committee

**From:** Chief Engineer and Executive Director, Engineering and Construction Services, General Manager, Toronto Water and Chief Procurement Officer

**Wards:** Spadina-Fort York (Ward 10) University-Rosedale (Ward 11), Toronto Centre (Ward 13), Toronto-Danforth (Ward 14), Don Valley West (Ward 15)

### **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 and litigation privilege.

This report is about a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the City.

### **SUMMARY**

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The purpose of this report is to request instructions regarding a proposed settlement of claims that North Tunnel Constructors ULC is pursuing against the City of Toronto, which claims seek compensation for costs incurred arising out of and associated with the completion of the Coxwell Bypass Tunnel between Ashbridges Bay Treatment Plant and Cowell Ravine Park, pursuant to the contract awarded under Request for Tender Number 221-2017; Contract Number 17ECS-MI-04DC (the “Coxwell Bypass Tunnel Project”), and to seek authority to amend Purchase Order Number 6047137 issued to fund the proposed settlement.

These claims include claims for significant compensation in relation to the Coxwell Bypass Tunnel Project related to North Tunnel Constructors ULC’s having to negotiate

an unknown site condition during the prosecution of the Contract work underneath 550 Bayview Avenue.

A contingency allowance for any other unanticipated work, which may be identified prior to the project reaching Final Completion is also being sought as part of the within request for a Purchase Order Amendment.

The total value of the Purchase Order Amendment being requested is \$25,000,000 net of all applicable taxes and charges (\$25,440,000 net of Harmonized Sales Tax recoveries), revising the current Purchase Order value from \$397,269,000 net of all applicable taxes and charges (\$404,260,934 net of Harmonized Sales Tax recoveries) to \$422,269,000 net of all applicable taxes and charges (\$429,700,934 net of Harmonized Sales Tax recoveries).

It is noted that the POA represents an increase of 6.3% of the overall contract value.

Authority is also being requested to reallocate cashflows in Toronto Water's 2024 Capital Budget and 2025-2033 Capital Plan in the amount of \$25,440,000 to support the Purchase Order Amendment for the construction of the Coxwell Bypass Tunnel.

## **RECOMMENDATIONS**

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The Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water and the Chief Procurement Officer, Purchasing and Materials Management recommend that:

1. City Council, in accordance with section 71-11.1C of the City of Toronto Municipal Code Chapter 71 (Financial Control Bylaw), grant authority to amend Purchase Order 6047137 to fund the settlement of claims brought forth by North Tunnel Constructors ULC and to provide for additional contingency amounts for the construction services of the Coxwell Bypass Tunnel between Ashbridges Bay Treatment Plant and Coxwell Ravine Park by increasing the contract value by \$25,000,000 net of all applicable taxes and charges (\$25,440,000 net of Harmonized Sales Tax recoveries), revising the current Purchase Order value from \$397,269,000 net of all applicable taxes and charges (\$404,260,934 net of Harmonized Sales Tax recoveries) to \$422,269,000 net of all applicable taxes and charges (\$429,700,934 net of Harmonized Sales Tax recoveries).
2. City Council authorize the reallocation of cashflows within Toronto Water's 2024 Capital Budget and 2025-2033 Capital Plan for acceleration and deferral of projects, as presented in Table 2 of the Financial Impact Statement, with a zero Budget impact to support the Purchase Order Amendment for the construction of the Coxwell Bypass Tunnel.
3. City Council direct that Confidential Attachment 1 remain confidential in its entirety 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 total value of the Purchase Order Amendment identified in this report is \$25,000,000 net of all taxes and charges (\$25,440,000 net of Harmonized Sales Tax Recoveries).

**Table 1: Financial Impact Summary (Net of Harmonized Sales Tax Recoveries)**

WBS Element	Project Description	2024	2025	Total (net of Harmonized Sales Tax recoveries)
CWW480	DON and WATERFRONT TRUNK/CSO CONSTRUCTION	\$23,404,800	\$2,035,200	\$25,440,000
Total		\$23,404,800	\$2,035,200	\$25,440,000

Funding for the anticipated settlement of the claim is included in Toronto Water's 2024 Capital Budget and 2025-2033 Capital Plan in year 2025.

The approval of this report will authorize the acceleration and deferral of cashflow in Toronto Water's 2024 Capital Budget and 2025-2033 Capital Plan in the total amount of \$25,440,000 million, with a zero Budget Impact as detailed in Table 2.

The recommended adjustments will align funding in the 2024 Capital Budget and 2025-2033 Capital Plan to accommodate settlement of this claim in 2024.

**Table 2: Budget Adjustment Reallocations due to Accelerations and Deferrals**

Program Area	Account Number	SAP DESCRIPTION	2024 Proposed Reallocation	2025 Proposed Reallocation
Wet Weather Flow	CWW480-03	DON and WATERFRONT TRUNK/CSO CONSTRUCTION	\$25,440,000	(\$25,440,000)
Watermain Replacement	CPW542-27	2022-2024 WATERMAIN REPLACEMENT	(\$25,440,000)	\$25,440,000
<b>TOTAL</b>			<b>0</b>	<b>0</b>

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

## DECISION HISTORY

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At its meeting held on March 4, 2014, the Public Works and Infrastructure Committee adopted the recommendations in the staff report from the Executive Director, Engineering and Construction Services, and the Director, Purchasing and Materials Management dated February 18, 2014, and approved item [PW29.5](#) Award of Request for Proposal Number 9117-13-7210 to Black and Veatch Canada Company to provide Professional Engineering Services for the Design and Construction Administration of the Wet Weather Flow System to Control Combined Sewer Overflow Discharges to the Don River and Central Waterfront project. A copy of the Public Works and Infrastructure Committee document can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2014.PW29.5>

At its meeting held on February 27, 2018, the Public Works and Infrastructure Committee amended the recommendations in the staff report from the Chief Engineer and Executive, Engineering and Construction Services, and the Chief Purchasing Officer and the Acting Executive Director, Corporate Finance dated February 15, 2018, and approved item [PW27.2](#) Award of Tender Call 221-2017, Contract Number 17ECS-MI-04DC to North Tunnel Constructors ULC for the Construction of the Coxwell Bypass Tunnel from Ashbridges Bay Treatment Plant to Coxwell Ravine Park. A copy of the Public Works and Infrastructure Committee document can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2018.PW27.2>

## COMMENTS

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### Background

Contract Number 17ECS-MI-04DC involves the construction of the Coxwell Bypass Tunnel, which runs from Ashbridges Bay Treatment Plant to the Coxwell Ravine Park. The Coxwell Bypass Tunnel is Stage 1 of the Don River and Central Waterfront Wet Weather Flow system which, upon full implementation, will effectively eliminate combined sewer overflows into Taylor Massey Creek, the Lower Don River, and the Inner Harbour. The Coxwell Bypass Tunnel will also act as a bypass for the Coxwell Sanitary Trunk Sewer, providing redundancy and security of operation.

In 2014, the City retained Black and Veatch Canada Company, in association with R.V. Anderson Associates to provide detailed design, tendering, construction services and commissioning of the Coxwell Bypass Tunnel and shaft system. The construction contract for the Coxwell Bypass Tunnel, Contract Number 17ECS-MI-04DC, was subsequently awarded to North Tunnel Constructors ULC on February 27, 2018. The Order to Commence was issued on August 7, 2018 and the original completion date of the contract was December 29, 2023.

During construction, a number of unforeseen site conditions were encountered which resulted in claims against the City. In addition, this led to construction delays which saw the final completion date of the project delayed by approximately one year. Substantial performance of the contract was certified on September 30, 2024 and completion is now anticipated for the end of December 2024.

A number of claims that North Tunnel Constructors ULC has pursued have been settled during construction through the issuance of various change orders and have been paid using the project's contingency allowance. However, several claims remained outstanding. The City and North Tunnel Constructors ULC entered into confidential, without prejudice negotiations to determine how to reasonably resolve these outstanding claims as the Coxwell Bypass Tunnel Project approached completion. As a result of these negotiations, a settlement in principle has been agreed upon by City staff and North Tunnel Constructors ULC. Approval of the settlement terms and the settlement amount are being sought through this report, the particulars of which are included in the Confidential Attachment. If approved, these settlement amounts will be paid through the issuance of a Purchase Order Amendment.

### **Amendment to Purchase Order 6047137**

The claims that North Tunnel Constructors ULC has advanced seeking compensation for additional work they had to complete as a result of unknown site conditions that were encountered during that work have been settled, in principle, as between the parties, subject to the considerations of this report, and securing approval of the settlement terms and amounts.

The Purchase Order Amendment is in the amount of \$25,000,000 net of all applicable taxes and charges (\$25,440,000 net of Harmonized Sales Tax recoveries).

Included in the Purchase Order Amendment is a contingency allowance for any other unanticipated work, which may be identified prior to the project reaching Final Completion.

## **CONTACT**

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## **SIGNATURE**

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Jennifer Graham Harkness, P.Eng.  
Chief Engineer and Executive Director, Engineering and Construction Services

Lou Di Gironimo  
General Manager, Toronto Water

Geneviève Sharkey  
Chief Procurement Officer

## **ATTACHMENTS**

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Confidential Attachment 1 - Amendment to Purchase Order Number 6047137 with North Tunnel Constructors ULC for Construction of the Coxwell Bypass Tunnel between Ashbridges Bay Treatment Plant and Coxwell Ravine Park and Location of Evergreen Brickworks