

## **New Design and Construction Coordination Agreement with Toronto Hydro**

**Date:** September 16, 2024

**To:** Infrastructure and Environment Committee

**From:** Chief Engineer and Executive Director, Engineering and Construction Services

**Wards:** All

### **SUMMARY**

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The purpose of this report is to seek Council's authority for the Chief Engineer and Executive Director, Engineering and Construction Services, to negotiate, finalize and execute a new Design and Construction Coordination Agreement (the "Agreement") with Toronto Hydro Electric System Limited and Toronto Hydro Energy Services Incorporated (collectively "Toronto Hydro"). This Agreement replaces a previous agreement, dated June 10, 2016, which expired on June 10, 2021. The previous agreement has been extended yearly while City and Toronto Hydro staff have negotiated the terms of the Agreement.

The purpose of the Agreement is to permit the City to relocate or replace Toronto Hydro assets that are affected by, or might act as an impediment to, City construction projects. This facilitates the initiation of City construction projects more quickly and reduces overall impacts to the public by allowing all work to be completed in a single City construction contract rather than in separate contracts administered by the City and Toronto Hydro.

The content of the Agreement is similar to the original 2016 agreement. It has been updated to clarify the application of, and respective responsibilities under, the Agreement as well as improvements to processes. These updates include a reduction in response times for the completion of various tasks, clarification of which projects are eligible to be coordinated under the Agreement, and the creation of a Joint Steering Committee of City and Toronto Hydro senior staff to monitor the performance of projects and consider possible future amendments to the Agreement as required.

## **RECOMMENDATIONS**

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The Chief Engineer and Executive Director, Engineering and Construction Services, recommends that City Council:

1. Authorize the Chief Engineer and Executive Director, Engineering and Construction Services, to negotiate and execute a Design and Construction Coordination Agreement with Toronto Hydro Electric System Limited and Toronto Hydro Energy Services Incorporated on terms similar to those outlined in this report and in a form that is acceptable to the City Solicitor;
2. Authorize the Chief Engineer and Executive Director, Engineering and Construction Services, to amend and update the Schedules to the Design and Construction Coordination Agreement from time-to-time and as necessary and agreed by the City and Toronto Hydro Joint Steering Committee which will be established under the terms of the Design and Construction Coordination Agreement; and
3. Authorize the Chief Engineer and Executive Director, Engineering and Construction Services, the General Manager, Transportation Services, and the General Manager, Toronto Water, to negotiate and execute Project Specific Agreements in a form that is acceptable to the City Solicitor.

## **FINANCIAL IMPACT**

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There is no financial impact resulting from the adoption of the recommendations of this report. The proposed Design and Construction Coordination Agreement with Toronto Hydro will improve the efficiency of completing City construction projects that require the relocation or replacement of Toronto Hydro infrastructure without altering the cost-sharing arrangements in the June 10, 2016 Construction Coordination Agreement with Toronto Hydro previously approved by Council.

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

## **DECISION HISTORY**

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On May 5, 2021, City Council adopted, without amendment, item 2021.IE21.4 titled "Extension of Existing Construction Coordination Agreement with Toronto Hydro" which authorized the Chief Engineer and Executive Director, Engineering and Construction Services, to negotiate and execute annual extensions of the Construction Coordination Agreement between the City and Toronto Hydro until a new Construction Coordination Agreement is developed and approved by City Council.

[Agenda Item History - 2021.IE21.4 \(toronto.ca\)](#)

On June 7, 2016, City Council adopted, without amendment, item 2016.PW13.7 titled "Construction Coordination Agreement with Toronto Hydro" which authorized the Deputy City Manager, Cluster B, to negotiate and execute a Construction Coordination Agreement with Toronto Hydro.

[Agenda Item History - 2016.PW13.7 \(toronto.ca\)](#)

## COMMENTS

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In 2016, the City and Toronto Hydro entered into a Construction Coordination Agreement, which permits the City to initiate, design and perform work on Toronto Hydro's assets as a component of City-sponsored capital projects, provided that it does so in accordance with Toronto Hydro's standards and using Toronto Hydro pre-qualified design consultants and contractors. The 2016 agreement allows the parties to enter into "Project Specific Agreements" that incorporate the details of the specific construction project being undertaken by the City and incorporating the design and/or construction work required to relocate Toronto Hydro infrastructure. The Project Specific Agreement also incorporates all of Toronto Hydro's requirements (set out in the main 2016 agreement) that the City must follow to perform the relocation work as part of the City's infrastructure project.

The 2016 agreement expired on June 10, 2021 but, by authority of Council, has been extended by the Chief Engineer and Executive Director, Engineering and Construction Services, in one-year increments while a working group of City and Toronto Hydro staff have applied lessons learned and negotiated appropriate revisions.

The rationale for the 2016 agreement remains valid and is briefly summarized as follows:

- City construction projects in municipal rights-of-way often conflict with Toronto Hydro infrastructure, requiring that infrastructure to be relocated or replaced.
- The Public Service Works on Highways Act (PSWHA) allows a municipality, acting in the capacity of a road authority, to require a utility to relocate or replace conflicting infrastructure, and provides guidance on cost sharing of the work.
- Toronto Hydro is not always able to complete relocations in a timely way, causing delays to City projects, especially if a project requires multiple stages of relocation.
- By allowing Toronto Hydro infrastructure modifications to be implemented under City projects, work can be completed more efficiently and impacts on the public are reduced.

The principles of the new Design and Construction Coordination Agreement are similar to those in the 2016 agreement. The revisions negotiated by City and Toronto Hydro staff for inclusion in the new Agreement are intended to clarify and improve processes as well as provide a forum for monitoring performance and developing future process improvements. Many minor revisions have been made to the language in various clauses of the 2016 agreement, including adding additional defined terms for clarity, and

updating certain terms to reflect changes to technology and business practices. The significant revisions are described in the following sections.

## **Project Development and Approval Procedure**

A new schedule under the Agreement has been developed that sets out the steps for City and Toronto Hydro staff to notify each other of, and obtain approval for, the inclusion of Toronto Hydro work in City construction projects. City staff must notify Toronto Hydro of any potential relocations of Toronto Hydro infrastructure a minimum of 12 months prior to the planned start of a City construction project. Following the notification, all further steps for getting approval in the form of a Project Specific Agreement are identified including a maximum duration for the completion of each step. Similarly, Toronto Hydro staff may notify and obtain approval from City staff for the inclusion of Toronto Hydro work in a City construction project if there is a conflict in time and space between a Toronto Hydro project and a City project that cannot be resolved. This process also includes a number of steps with maximum durations to obtain approvals.

This new schedule goes on to describe both City and Toronto Hydro responsibilities during the design and construction of the Toronto Hydro infrastructure, noting required submissions and activities along with deadlines for completion. As much as possible, City and Toronto Hydro staff looked for opportunities to reduce the overall duration of the process and limit the risk of construction delays and associated claims. For example, the timeframe for Toronto Hydro to review and respond to proposed construction change orders has been reduced from 15 to 7 business days.

To supplement the new schedule describing the project development and approval procedure, a process map will be provided depicting the process steps, order of activities and associated timelines in an easy-to-follow flow chart.

The new schedule is, in part, comprised of clauses from the main body of the 2016 agreement. Documenting this process in a schedule to the Agreement allows for faster implementation of process improvements in future through a new Joint Steering Committee described below.

## **Joint Steering Committee**

The 2016 agreement did not include a specific governance process to oversee the implementation of the agreement, to assess its performance, or to address disputes on individual projects. As a result, performance improvements were not identified and implemented in a timely manner and problems were often only dealt with by project delivery staff and resulted in project delays.

The new Agreement includes, as a schedule, a charter for a Joint Steering Committee comprised of senior staff from the City and Toronto Hydro. The charter documents the committee purpose, primary functions, membership and operating procedures. Operating on consensus, the committee will monitor the implementation and success of the Agreement against mutually developed key performance indicators, review and

approve potential revisions to schedules of the Agreement and review any disputes on matters arising from the Agreement.

The Joint Steering Committee will be co-chaired by senior City and Toronto Hydro staff and will meet on a quarterly basis. Additional meetings may be called at the discretion of the co-chairs.

## **Clarification of Eligible Projects**

Like the 2016 agreement, the new Agreement is between the City of Toronto and Toronto Hydro. Toronto Hydro asked for, and the parties agreed on, clarifying language in the Agreement stating that only projects of the City will be eligible to use the relocation process set out in the Agreement, to avoid confusion. Other entities requiring relocation of Toronto Hydro infrastructure for their projects may still request relocations from Toronto Hydro but will not be able to undertake the relocation work themselves without agreeing to this with Toronto Hydro separately from the Agreement and process set out in this report.

## **Cost Sharing Clarifications**

The 2016 agreement provided that where a project of the City (a "road authority" under the Public Service Works on Highways Act) pertains to a project covered by the PSWHA (the construction or improvement of a roadway), then the parties will share the cost of the Hydro relocations required for that project in accordance with the cost-sharing formula contained in the PSWHA. That formula provides that the labour and equipment costs of any utility relocation are shared equally between the road authority and the utility company, with all other costs being borne by the utility company. The 2016 agreement included this cost sharing arrangement for City-requested relocations of Toronto Hydro infrastructure with some agreed exceptions.

This is not changing in the new Agreement, but the City sometimes requires the relocation of Toronto Hydro infrastructure for projects other than road improvements. The new Agreement clarifies that the City and Toronto Hydro can agree to allow the City to relocate Toronto Hydro infrastructure for other City projects but, where the formula in the PSWHA does not apply, the parties will negotiate an alternate cost sharing arrangement. The Agreement also provides that where there is disagreement on cost sharing for specific projects, the parties may refer this issue to the Joint Steering Committee to attempt to resolve the dispute in a fair and consistent manner.

## **CONTACT**

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**SIGNATURE**

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