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December 16, 2025

VIA EMAIL: wendy.walberg@toronto.ca

URGENT – TIME SENSITIVE

Wendy Walberg
City Solicitor
City of Toronto

Dear Wendy:

Re: Breach of Procedural Fairness, Good Faith and Reasonableness against Capital Sewers and Affiliates

I am counsel to Capital Sewer Service Inc. (“**CSS**”).

I understand that Toronto City Council will consider and decide whether to implement a five year suspension on bidding against CSS and its affiliated companies operating under the Capital Infrastructure Group (the “**CIG**”) during the City Council meeting on December 17 or 18, 2025. This proposed sanction is based on the recommendation of the City of Toronto Chief Procurement Officer and Chief Engineer and adopted without amendment by the General Government Committee (the “**Recommendation**”).

I write to advise you and to put Council on notice of serious concerns and deficiencies in the process and reasonableness of the Recommendation. In particular, there has been an alarming lack of procedural fairness in the investigation and preparation of the Recommendation by the Chief Procurement Officer and Chief Engineer, such that implementing the five year suspension would lead to an injustice and be contrary to law. Further, such a penalty would be fundamentally unreasonable and unduly punitive, contrary to the City’s Supplier Suspension Procedure (“**SSP**”) and Municipal Code.

Adopting the Recommendation will have a profound impact on CSS and its affiliates. It risks the loss of hundreds of jobs, including for unionized workers, from a group of companies who have demonstrated their commitment as good corporate citizens by cooperating with the City and going above and beyond to fully and responsibly remediate the concerns raised by the Chief Procurement Officer and Chief Engineer. Those steps include undertaking a much more comprehensive and expansive independent forensic expert investigation than that carried out by the City, and transparently sharing the results with the City, which confirmed misconduct by a sole former employee of which CSS was also a victim – none of which was even referred to in the Recommendation. The absence of regard to all of the relevant facts not only breaches the City’s obligations of procedural fairness but signals to the public that no amount of cooperation or mitigation is relevant to the City’s consideration of a fair and consistent sanction.

Further, imposing the maximum permitted sanction of a five year suspension will have a significant negative financial impact on the City, contrary to what is represented in the Recommendation.

This letter outlines critical facts that have been markedly absent from the information presented by staff thus far to City Council, and provides an overview of the lack of procedural fairness and unreasonableness of the Recommendation. While this letter alone cannot rectify these failings, it is imperative that each member of City Council read this letter, and the accompanying brief of documents, before considering the Recommendation.

We therefore request that you bring the full contents of this letter, and the brief of documents, to the attention of the Council before they consider the Recommendation. We urge you to brief Council on the serious concerns raised within, and remind Council of their obligations to exercise their discretion “consistently and fairly,” and that such discretion “shall not be exercised for the purpose of punishing a Supplier.” Should the Toronto City Council proceed with the Recommendation, CSS and its affiliates reserve all of their legal rights.

A. Factual Background

i. CSS

CSS is a Canadian owned and operated family business which employs 600 highly skilled professionals in Ontario, including the Toronto area. Approximately 50% of its business comes from contracts with the City of Toronto. For more than two decades, CSS has provided reliable and cost-effective infrastructure solutions to the City of Toronto, including over 100 major sewer and water projects. CSS has completed 30 major projects in the past five years alone.

Throughout its decades long history with the City of Toronto, CSS has been a valued partner without issue. It consistently received positive project performance audits and testimonials from City staff overseeing infrastructure contracts. When minor issues were identified, CSS took steps to rectify them to the City’s satisfaction. In 2024, CSS met or exceeded all performance reviews. Attached at **Tab 1** are copies of CSS’ performance reviews for 2024.

ii. The City receives a complaint alleging overbilling at CSS in March of 2024, but the City does not advise CSS for over a year

In March 2024, Engineering & Construction Services (“**ECS**”) received a complaint through the City of Toronto Auditor General’s Fraud and Waste Hotline regarding CSS. CSS was not notified about this complaint.

Nine months later, on December 10, 2024, ECS first wrote to CSS regarding the Dufferin Project and advised that it was “undertaking a review of certain records that have been provided by the Contractor over the course of this Project.” As such, the City advised that it was exercising its right under Section 2.6.3 of the Construction Agreement to “inspect and audit the Contractor Records outlined in this Notice.” This letter, attached as **Tab 2**, proceeded to list a series of records, including records relating to various change orders, including quotes, invoices, and time summaries that it required by December 23, 2024.

Nowhere in the letter did the City refer to a complaint or concerns, including concerns of billing discrepancies. As such, CSS understood the City to be making a routine request under the terms of the Construction Agreement between the parties, in the ordinary course. CSS reviewed the requested documentation, and provided to the City those documents it was entitled to pursuant to the Construction Agreement by the requested date. A copy of CSS' responding letter, dated December 23, 2024, is attached as **Tab 3**.

Had CSS been advised of the true basis for the City's December 10, 2024 letter, CSS would have promptly commenced its own investigation and would have further cooperated with the City to provide all necessary assistance, beyond the strict contractual rights which the City relied on, to assist in the investigation of these concerns (as it later did when the intent of the City's requests was disclosed to it).

On January 3, 2025, ECS wrote to CSS confirming receipt of documents, but advising that subcontractor contract records "were not received directly from the Subcontractors as requested." ECS noted "Pursuant to GC 2.6.2, the City requires CSS to cause the Subcontractors to directly submit the outlined Contract Records to the City by January 10, 2025." Like the prior letter, this letter did not reference any concerns, nor did it mention the complaint received. A copy of the January 3, 2025 letter is attached as **Tab 4**.

CSS had not caused the Subcontractors to provide records to the City up until such point, as it was not required to do so under GC 2.6 of the Construction Agreement. CSS provided a response to that effect on January 7, 2025, pointing to the Construction Agreement provisions and emphasizing that it had complied and provided all that was required. A copy of this response is attached as **Tab 5**. A plain reading of the Construction Agreement confirms CSS' interpretation.

Had CSS been aware of the serious concerns of the City, it would have responded differently, including by beginning its own investigation. At no time was CSS attempting to divert the City's investigation, or to act in bad faith as the City has alleged, it simply did not know that anything other than an ordinary course review of records pursuant to the Construction Agreement was underway. It was not within the reasonable contemplation of CSS to consider the possibility that the City would have concerns as serious as overbilling, and not advise CSS of those concerns.

iii. **Capital Sewer is informed of concerns of fraud on April 25, 2025**

The City did not contact CSS again regarding its request for records until April 25, 2025. In their letter of this date, the City raised concerns for the first time about discrepancies and inconsistencies with change orders in relation to the Dufferin Project. A copy of this letter is attached as **Tab 6**. CSS did not receive this letter until May 5, 2025, due to the recipient being on vacation. Upon receipt of ECS' letter, CSS now understood the gravity of the City's concerns and promptly began an internal investigation. The City gave CSS until May 15, 2025, to respond.

On May 13, 2025, the Chief Procurement Officer wrote to CSS and for the first time advised it of the March 2024 Complaint. The Chief Procurement Officer also advised that she was considering suspending CSS from being able to bid on City contracts for a period of six months. She also wrote that CSS' response thus far had not been substantive (CSS had not yet provided its substantive response due to only learning of the April 25th letter on May 5th). A copy of this letter is attached as **Tab 7**.

At the beginning of CSS' investigation, the individual in charge of the Dufferin Project, a Former CSS Vice President ("**Former VP**") provided an explanation for the discrepancies outlined by the City. This explanation was provided to the City in correspondence dated May 15 and 20, 2025 copies of which are attached at **Tab 8**. At this time, being early in the stages of CSS' investigation, CSS management had no reason to question the Former VP's integrity.

CSS was at the beginning of its investigation at this time, and was engaging with the City in good faith. CSS exchanged significant correspondence with the City as it continued its investigation. CSS attended multiple meetings with the City in June of 2025 to share information and updates. As its investigation proceeded, it became apparent to CSS that there were legitimate discrepancies that could not be explained adequately by the Former VP. At this time, CSS advised the City that it intended to retain an independent digital forensic investigator to determine the cause and nature of the discrepancies.

On June 30, 2025, the City sent CSS a letter notifying them of CSS' temporary suspension from bidding on City contracts for a period of six months. A copy of the City's letter is attached as **Tab 9**.

Also on June 30th, 2025, a former employee contacted CSS to inform it that the Former VP had been perpetrating a fraud against the City and CSS, by modifying subcontractor documents to overbill the City for change orders. As part of his remuneration, the Former VP received bonuses of 2.25% of the value of change orders for taking on additional administrative duties, which was presumably his motivation for perpetrating this fraud. CSS suspended the Former VP while they continued their investigation, notified police, and advised the City.

iv. CSS retains MNP to conduct a forensic investigation

On July 2, 2025, CSS retained MNP LLP to conduct a forensic digital and accounting investigation into the Dufferin Project as well as a second project, the Maple Project, as the Former VP was also in charge of that project. CSS also requested that MNP investigate 21 other projects undertaken in the past five years once the Dufferin and Maple investigations were complete. A short time after, the City hired KPMG to conduct an investigation into the Dufferin Project. CSS committed to fully complying and cooperating with the KPMG Audit. Unlike the MNP investigation, the KPMG investigation was not a digital investigation and was only limited to a single project.

Throughout the fall of 2025, CSS fully complied with all aspects of the City's investigation, including the KPMG Audit. Employees of CSS were interviewed by KPMG, as well as MNP.

On October 6, 2025, after MNP's investigation confirmed that the Former VP had orchestrated an overbilling scheme, CSS terminated his employment.

On October 8, 2025, MNP delivered a report from its investigation into the Dufferin Project and the Maple Project, which was shared with the City the following day. A copy of the MNP report is attached as **Tab 10**. MNP found, *inter alia*:

- \$ 1,114,506 in excess billings in the Dufferin Project and \$15,282 in the Maple Project;
- The terminated Former VP was responsible for the overbillings, which he orchestrated by modifying subcontractor invoices. One other former employee, a project manager,

was aware of the overbillings but was not part of the scheme and at no time reported it to others;

- The CEO, Mr. Beswick, and the COO were not aware and were not involved in the fraud; and
- There was no evidence that any subcontractors or consultants were involved in the fraud.

MNP also identified some business operations control issues and presented solutions for same, which CSS and its affiliates immediately took steps to implement.

v. CSS requests that MNP investigate 21 additional projects

Contemporaneous with the completion of their first report, CSS instructed MNP to continue its investigation looking into 21 further projects carried out for the City of Toronto by CSS, and by Clean Water Works Inc and Utility Force Construction Inc (who form part of the CIG) between 2020- April 2025 to determine if there were any other overbillings. This was a step that CSS voluntarily undertook on its own – it was not requested by the City, nor the subject of KPMG’s review. As part of its investigation, MNP “collected, preserved, processed, and reviewed numerous electronic devices and accounts.”¹ The total population of files (inclusive of emails and documents) that were processed for [MNP’s] review was 3,240,369 items.”² The email accounts of the Former VP, two former Project Managers, the CEO, and the COO were focused upon.

On October 17, 2025, the Chief Procurement Officer wrote to CSS to advise that she was extending the temporary suspension to include all affiliates of CSS. No prior notice had been given to CSS that the City was considering this extension. A copy of this letter is attached as **Tab 11**.

On October 20, 2025, CSS responded, advising that this ran contrary to the SSP given the lack of required notice, and alerted the Chief Procurement Officer to other concerns about its process so far. A copy of this letter is attached as **Tab 12**. The Chief Procurement Officer responded on November 3, 2025, disagreeing with CSS’ concerns and declining to reconsider the extension. A copy of this letter is attached as **Tab 13**.

On November 7, 2025, MNP presented its findings to the Chief Procurement Officer and other city staff. A copy of MNP’s presentation deck is attached as **Tab 14**.

MNP completed its investigation into the additional projects and delivered its second report on November 14, 2025, a copy of which is attached as **Tab 15**. MNP found, *inter alia*:

- a total spread of \$538,978 from the 11 additional projects impacted by modified change orders;
- the Former VP was the individual responsible for modifying the change orders in these additional projects;

¹ The devices that MNP reviewed included over 70 devices, computers and servers.

² November 14, 2025 report at 3.4.

- while a project manager and project coordinator (both of whom are no longer employed by CSS and CIG) may have been aware of isolated circumstances including modified change orders they were not involved in the scheme; and
- there was no evidence the CEO or COO had any knowledge of the scheme.

vi. KPMG's report does not dispute the findings of MNP

KPMG released an interim report on October 31, 2025. No final report has been released in the six weeks since, despite the City's representations that they are continuing to conduct their investigation. In its interim report, KPMG noted that CSS had been fully cooperative:

MNP has completed a report dated October 9, 2025 that outlines MNP's findings in relation to two City projects ("MNP Report"). KPMG and the City are currently reviewing the MNP Report and considering its conclusions in detail in the context of KPMG's Review. However, we have outlined certain findings made by MNP in this letter for informational purposes. Readers are cautioned that MNP's interim findings have not yet been fully evaluated by KPMG as at the date of this letter.

Capital has cooperated to date with KPMG's Review by providing information and documentation and have indicated a willingness to continue to fully cooperate with the Review by KPMG and the City going forward.

KPMG further noted that its investigation was ongoing. Throughout its report, KPMG does not dispute or otherwise call into question any of MNP's findings, including that the CEO and COO were not aware of the overbilling scheme, or that the Former VP was the individual who perpetrated the scheme.

As no further reports have been released by KPMG, CSS can only presume that KPMG has not uncovered any information in the six weeks since its interim report was released that contradicts the findings of MNP.

vii. CSS and CIG have implemented organizational changes to prevent reoccurrence and terminated the responsible Former VP

While the Former VP is no longer employed at CSS, CSS (and CIG) have nonetheless recognized and taken steps to overhaul internal controls and implement new protocols and governance standards that meet and exceed industry best practices. These efforts include implementation of:

- A Code of Conduct;
- A Whistleblower Policy;
- A Change Order Process for Subcontractor Quoting and Review and Approval;
- Subcontractor Purchase Orders Process (Post City Approval); and
- Subcontractor Invoice and Payment Process (Post City Approval).

MNP reviewed the above efforts and noted:

CSS is in the process of continuously improving their existing controls to enhance the following key areas: Segregation of Duties, Mandatory Documentation Retention, Cost Validation, System Based Controls, Audit Trail and Logging, Delegation of Authority and Checklists for Verification and Attestation.³

viii. The City has been repaid overbilled amounts and the costs to date of its investigation

Beginning in August of 2025, the City notified CSS that it would exercise its right of set-off on amounts owing in restitution of the overbillings. CSS was entirely cooperative, and to date, the City has recovered \$2,067,061.20 from CSS by way of set-off. This is well above the overbillings identified, and the costs of the City's retainer for KPMG. A copy of the documents demonstrating the set-off are attached as **Tab 16**.

CSS has been unwavering in its commitment to full restitution.

ix. The City has continued to work with CSS under existing contracts throughout the six-month suspension

On multiple occasions throughout the temporary suspension, City work has arisen that only CSS has been able to complete. As an example, urgent 24/7 work was required to repair a sewer on Queen Street at the end of November, 2025. CSS agreed to complete the work, and pulled together resources on an expedited basis to do so. This evidences the strong performance and level of service offered by CSS. A copy of the related email correspondence is attached as **Tab 17**.

Further, the six-month suspension has already resulted in the City incurring increased costs by having to accept higher bids. For example, CSS submitted a bid of \$12,099,542.00 in February of 2025 for trenchless rehabilitation project. Only one other company submitted a bid, and it was for \$13,386,227.00. Without disclosure of a reason, the award decision was deferred until August of 2025, and the project was awarded to the other bidder, costing the City **\$1,286,685** on this project alone. A copy of the bid spread is attached as **Tab 18**.

Simply put, CSS is able to provide specialized, cost-effective work to the City of Toronto, that the City is unable to get elsewhere, and certainly not for the prices that CSS can competitively provide. In instances like in this example, where the number of qualified bidders is limited, the impact to competition is significant – here in the absence of CSS' participation there would be no competitive bids, the work would essentially be sole-sourced.

x. The Chief Procurement Officer and Chief Engineer recommend a five-year suspension on CSS and all affiliates

Despite the above facts, including the significant record evidencing CSS' full cooperation and its actions in undertaking a comprehensive digital and accounting investigation which demonstrated the misconduct was perpetrated by a sole former VP, its steps taken to put in place controls and safeguards in response, and recognizing that KPMG's investigation was incomplete, the Chief Procurement Officer and Chief Engineer nonetheless recommended the maximum five-year total suspension for CSS and all affiliates to the General Government

³ Presented of MNP dated November 7, 2025, at p. 22.

Committee on November 26, 2025. The General Government Committee endorsed the Recommendation on December 8, 2025, without modification.

B. Lack of Procedural Fairness

The City's SSP and Municipal Code mandate a fair and measured process for suspending vendors. Such a suspension "shall not be exercised for the purpose of punishing a Supplier," but rather should be based on a balanced assessment of whether the supplier's conduct poses a risk to the City's business interests. Any suspension's scope and duration must be proportionate to what is necessary to protect the City's interests. Crucially, before any suspension decision takes effect, the supplier must be given notice of the reasons and an opportunity to respond in writing to those allegations. For a long-term suspension to be imposed by Council, the procedure provides for a 30-day notice period to allow the supplier to submit information or objections. The SSP also requires that any decision to suspend be supported by a detailed staff memo documenting all relevant details and confirming that the supplier was allowed to address the issues raised. In short, the City is obliged to follow a transparent, consistent, and fair process before suspending a supplier.

In CSS' case, several actions by the City run contrary to the procedural safeguards set out in the SSP and Municipal Code. They are summarized below.

i. Affiliates of CSS were not given due notice

While CSS was given some notice and a chance to meet with staff before the initial temporary suspension through correspondence from the Chief Procurement Officer, the sudden extension of the suspension to all affiliate companies was executed without prior individual notice or an advance opportunity for those entities to respond, taking immediate effect as of the October 17, 2025 letter. The SSP explicitly instructs that even actions which "indirectly operate as a suspension" must uphold the same fairness standards as a direct suspension, yet the affiliates learned of their inclusion only after the fact.

In her letter of November 3, 2025, the Chief Procurement Officer stated that this extension did not require prior notice as "this was not a new suspension" and "but for my exercise of discretion in the circumstances at the time, CIG and the Affiliates would have been temporarily suspended under the SSP as of June 30, 2025." Such an explanation defies reason, as no correspondence prior to June 30, 2025 mentioned a potential suspension of affiliates of CSS. Simply put, the affiliates were denied their procedural safeguards.

ii. City Staff have pre-emptively recommended a five-year suspension prior to consideration of the relevant facts

City staff and Council have pre-emptively recommended the maximum 5-year suspension (a "total suspension" across all procurement opportunities) prior to learning of, and considering all relevant facts in an unbiased and neutral manner. Council and City staff insistence on the maximum penalty before a full hearing is a clear prejudgment of the issues, rather than a fair consideration of the facts.

We highlight several concerning examples of this apparent prejudgment, which occurred not only before City Council's deliberation of this matter, but also prior to when the General Government Committee meeting regarding the Recommendation occurred on December 8,

2025. City staff and Council were making public statements of support of a five-year suspension before having the opportunity to hear from CSS.

First, in the October 17th Letter advising of the extended suspension to affiliates, the Chief Procurement Officer stated that “City staff have recommended” a 5-year suspension. This recommendation was provided prior to the MNP presentation to the Chief Procurement Officer and other city staff of its findings, and prior even to the KPMG preliminary report dated October 31, 2025.

Second, a Toronto Star Article dated December 2, 2025, attached at **Tab 19**, noted as follows in respect of the Recommendation, prior to the City Council meeting at which the Recommendation will be considered:

“Mayor Olivia Chow supports the suspension, according to her press secretary Braman Thillainathan. He said in an email the case represents “a serious breach of trust” and banning the company is “the responsible course of action.”

Third, at an unrelated press conference, Mayor Olivia Chow was quoted as saying “There needs to be penalties, I absolutely support [the five-year ban].”

These examples are highly concerning as they demonstrate that City staff and members of Council were making public statements of support of the maximum five-year suspension before having the opportunity to hear from CSS. Such statements not only evidence pre-judgment of the outcome of City Council’s deliberation but a reasonable apprehension of bias and improper influence of council prior to consideration on the merits.

It appears that the City made up its mind as early as October 17, 2025, that CSS and its affiliates would be suspended for five years, depriving CSS and its affiliates of due process and an unbiased consideration afforded under the SSP, in respect of a decision that will have devastating impacts on these companies.

iii. City staff have referenced motivations contrary to the SSP

The SSP clearly states that the motivations for a suspension cannot be punitive. Rather, the reasoning should be based on what is necessary to protect the City’s financial interests, as the following excerpt demonstrates:

The suspension of a Supplier shall not be exercised for the purpose of punishing a Supplier. It should be based on a balanced review of whether the Supplier's conduct presents a risk to the City's valid commercial or business interests. The scope and duration of any suspension should be consistent with what is necessary to ensure that the City's commercial interests are adequately protected. A Supplier must be notified of the reasons for the City's proposed suspension and be given an opportunity to respond in writing prior to any suspension decision taking effect.

Despite this, members of City Council and staff have referred to rationales that include penalty, or deterrence, when discussing the Recommendation. This demonstrates that impermissible reasons running contrary to the SSP have clouded the City’s preparation and consideration of the Recommendation.

For instance, during the General Government Committee meeting on December 8, 2025, Councillor Cheng stated, “I feel that this is a very serious decision and would like to explore other ways of penalizing this company, financial penalties, independent monitoring of their controls...” Councillor Cheng’s reference to penalties demonstrates that Council was considering what was the appropriate punishment for CSS, rather than what was needed to protect the City’s financial and commercial interests.

Further, the Recommendation states “The City strives to uphold accountability and protect the integrity of public funds by enforcing the Supplier Code of Conduct and detering similar misconduct by other suppliers”. Deterrence is not a rationale available under the SSP. Additionally, in this context where the evidence demonstrates that a single perpetrator orchestrated a fraud – including against CSS – and has been fired, and remediation and restitution have occurred, deterrence has no place except as an indirect means to punish CSS.

When one considers what is actually necessary to ensure that the City’s commercial and financial interests are adequately protected, it becomes clear that the Recommendation is inconsistent with the SSP and unduly punitive.

iv. Incomplete reporting by the Chief Procurement Officer and Chief Engineer

There are strict documentation requirements set out under the SSP, which are meant to ensure a fair process. Section 4 of the SSP notes the following:

- (1) The length of the suspension period should be proportional to the reasons for the suspension and the full five year suspension should only be applied to the most serious Supplier risk profile; and
- (2) Any decision to suspend a Supplier must be supported by a memo that contains all details connected with the analysis using factors set out in Section 3.

In this case, there are clear indications that the City did not adhere to documentation requirements. First, no supporting memo setting out the detailed reasons and evidence for suspension was ever produced to CSS’s representatives despite requests. Failing to share the internal analysis undermines transparency and deprives the supplier of a fair chance to rebut the City’s case. Second, the Recommendation leaves out many of the highly relevant facts outlined in this letter, and paints an inaccurate one-sided account of CSS that contradicts the principles of transparency and fairness espoused in the SSP. Some glaring omissions in the recommendation include:

- It does not mention that the City did not advise CSS of its concerns until 13 months after it received the March 2024 Complaint, but rather framed its document requests as a review of records pursuant to the Construction Agreement;
- It does not mention that CSS retained MNP, an independent forensic investigator who conducted a much more extensive investigation than KMPG, completed such investigation, and found no evidence that anyone other than the Former VP was perpetrating the fraud;
- Further, it does not mention that MNP found no evidence that the CEO or COO had any knowledge of the fraud;

- It does not mention that MNP presented its findings to the Chief Procurement Officer;
- While it does mention that CSS “claims to have strengthened internal controls” it does not mention that CSS, and MNP, have provided clear and tangible evidence to demonstrate that it has implemented improvements to its controls, including by instating a formal code of conduct, change order specific procedures and a whistleblower policy;
- It does not mention that KPMG had made no findings to date that contradict the findings of MNP;
- It does not mention that CSS was entirely cooperative with KPMG, but instead paints a picture of CSS being uncooperative with the City’s investigation;
- Incorrectly states there are no financial conditions when the City has already been financially harmed during CSS’ suspension by having to award contracts to higher bidders, as shown above.

For the reasons outlined above, the Recommendation is far from fair, and does not comply with the SSP’s direction to provide “all details connected with the analysis”.

v. A five-year suspension for CSS and CIG is unreasonable based on the Record, including the MNP Report

The evidence underlying the Recommendation raises additional fairness concerns. The City’s justification rests largely on the result of the KPMG audit, despite the fact that the MNP audit was more extensive and complete as of November 14, 2025 and the KPMG interim report in no way contradicts those findings. Notably, KPMG’s investigation is apparently ongoing, despite the City’s reliance on it for the Recommendation.

The evidence available based on the complete MNP report (which is not contradicted in any way by KPMG’s interim report) and the facts summarized in this letter, provide clear and cogent evidence that the Recommendation is unreasonable. As such, a final decision rejecting the Recommendation is appropriate.

If the City is not prepared to rely on the independent findings of MNP and instead requires that KPMG’s investigation be completed to satisfy itself that MNP’s findings are correct, then the Recommendation is premature and a further example of a lack of procedural fairness. The City making the final decision to impose a five-year suspension (the most severe suspension available) in these circumstances, i.e. based on incomplete information is patently unreasonable.

C. A Five-Year Suspension is Unreasonable

Not only has CSS and its affiliates been deprived of the procedural fairness they are owed, the recommendation itself is unreasonable and runs contrary to the SSP.

While KPMG’s audit is apparently ongoing, its interim report provides no evidence that contradicts or undermines the findings of MNP. MNP’s findings, along with the other facts outlined in this letter, do not support a five-year suspension. In particular, a five-year suspension is unnecessary to protect the financial and commercial interests of Toronto given that:

- CSS employs 600 people and has worked with the City without any performance issues or litigation for 25 years;
- A single employee of 600 orchestrated a fraud;
- CSS fired that employee when his conduct was discovered;
- CSS is committed to full restitution and to date, has paid back \$2,067,061.20 through set-off;
- CSS has implemented MNP's recommendations to improve its controls and has presented tangible evidence of this to the City;
- CSS cooperated fully with KPMG, as recognized in KPMG's interim report;
- The City has continued to rely on CSS to complete urgent and essential sewer repairs during the six-month suspension, demonstrating the City both needs and is confident in CSS' work; and
- The City has incurred further significant costs by having to accept higher bids due to CSS' six-month suspension.

Under the SSP, the City has an obligation to exercise any decision to suspend a supplier "consistently and fairly". The Recommendation runs contrary this obligation, and rather seeks to make an example, and punish, CSS and its affiliates. CSS took all steps – and went above and beyond – what would be expected of a responsible corporate citizen, and yet the recommended sanction is one intended to be reserved for the "most serious Supplier risk profile".

vi. CSS and CIG are committed to financial accountability and restitution

In addition to the steps CSS and its affiliates have already taken to address the fraud perpetrated by the Former VP, which includes terminating him, retaining MNP to conduct a forensic investigation, remediating the financial loss identified, and implementing extensive new controls and procedures to prevent reoccurrence, CSS is more than willing to take further steps to demonstrate its commitment to financial accountability. CSS and its affiliates have been, and continue to be willing to work collaboratively with the City if they have specific further measures to propose, which CSS has suggested could include continued monitoring at CSS' sole cost.

vii. The impact of the Recommendation would be devastating on CSS and its employees

Approximately 50% of CSS' revenue comes from City of Toronto contracts. As a result, the employment of 300 of its 600 highly skilled workers will in all likelihood be lost if the Recommendation is allowed to proceed. This includes highly skilled unionized workers, 60 of whom are members of Local 793 and 93 of whom are members of Labourers' International Union of North America or LIUNA. Bob Brooks, the Sector Coordinator for Local 793 wrote a letter in opposition of the Recommendation. A copy of Mr. Brooks' letter is attached as **Tab 20**. Mr. Brooks noted in his letter:

The services that Capital provides to the City of Toronto through highly skilled members of Local 793 are critical to the everyday needs of residents, businesses, and industries across the City. This includes highly specialized and unique repairs and maintenance to the City's ageing underground infrastructure through using a trenchless technology known as Cured-in-Place-Pipe.

...

As a result of Capital's unique technology and expertise, should the City of Toronto institute a 5-year ban against Capital, eighty skilled members of Local 793 will be out of work and unlikely to find equivalent employment with other signatory companies. This would be a massive blow to these sixty Operating Engineers who rely on their employment to support their families and through no fault of their own, find themselves facing employment uncertainty. Good paying Union jobs need to be preserved, and hard-working skilled tradespersons should not be penalized and lose their livelihoods.

This further emphasizes the punitive nature of the Recommendation, that if allowed to proceed, will harm many Torontonians both directly through the loss of jobs, and indirectly through the loss of skilled labour that is uniquely able to address the critical infrastructure repairs in the City.

We reiterate that moving forward with the Recommendation is impermissible given the lack of procedural fairness CSS and its affiliates have received, and the unreasonableness of the Recommendation. We trust Council will give this submission the due regard it warrants.

Yours truly,



Julie Parla
Partner | Associée

Encl. Capital Sewer Services Document Brief

ec: CitySolicitor@toronto.ca