Agenda – Council – May 24, 2017

Report – Standing Policy Committee on Finance – May 4, 2017

Item No. 1 Insurance Settlement of Water Damage Claim Winnipeg Police Services Headquarters

STANDING COMMITTEE RECOMMENDATION:

On May 10, 2017, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Finance and submitted the following to Council:

1. That the Public Service recommendation to settle the WPS Headquarter's insurance claim in the amount of $7,432,542.80, and the discontinuance of the Court of Queen's Bench action commenced by the City in respect of the City's insurance claim, be approved.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent to the foregoing.

Report – Standing Policy Committee on Finance – May 4, 2017

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 10, 2017, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Finance and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 4, 2017, the Standing Policy Committee on Finance concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Insurance Settlement of Water Damage Claim
Winnipeg Police Services Headquarters

Critical Path: Standing Policy Committee for Finance – Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
C. Bauer	M. Ruta	M. Ruta	D. McNeil

EXECUTIVE SUMMARY

An insurance settlement is being offered by the City's insurers, RSA Insurance and Northbridge Insurance, for the recoverable insurance claim expenses arising out of the water damage event that occurred at the Winnipeg Police Services (WPS) Headquarters at 245 Smith Street, Winnipeg, on August 21, 2014. RSA & Northbridge, share the insurance risk based on a 52% and 48% participation respectively. The insurance settlement being offered is based on the relevant percentage of each insurer's participation under the Course of Construction (COC) insurance policy in place for the WPS Headquarters Construction project at the time of the loss.

In keeping with the basis of loss settlement under the COC insurance policy, the insurers and their representatives obtained and reviewed all of the invoices submitted by the City for the remediation of the loss, along with the professional fee invoices and incremental soft cost expenses. These expenses formed the basis for the City's insurance recovery.

The initial expenses submitted to the insurers for the total cost of the completed work amounted to $8,308,128.37. However, after reevaluation of all expenses associated with the event, the costs submitted by the City were readjusted to $8,152,504.51. The deductible on the policy is set at $100,000.00 with respect to any flood, sewer back up and water damage claim per occurrence, such that the City's total claim is $8,052,504.51.

To date the insurers have paid out $6,861,260.00. The insurers have offered to pay an additional $571,282.80 to resolve the claim in its entirety, representing a total recovery under the policy of $7,432,542.80.

RECOMMENDATIONS

1. That Council approve the Public Service recommendation to settle the WPS Headquarter's insurance claim in the amount of $7,432,542.80, and approve the discontinuence of the Court of Queen's Bench action commenced by the City in respect of the City's insurance claim.

2. That the proper officers of the City be authorized to do all things necessary to implement the intent to the foregoing.

REASON FOR THE REPORT

On December 3, 2014, the Executive Policy Committee concurred with the recommendation of the Winnipeg Public Service, as amended and submitted the following to Council:

1. That as a result of water damage in August 2014, at the WPS Headquarters and the subsequent insurance claim, the Chief Administrative Office be delegated the authority to:
   (a) Approve contract over-expenditures with Caspian Projects Inc., Adjeleian Allen Rubeli Ltd., and Integrated Designs Inc., and
   (b) Negotiate and approve the terms and conditions deemed necessary by the Director of Legal Services and City solicitor to protect the interests of the City.

2. That the Winnipeg Public Service report back to the Standing Policy Committee on Finance, the complete cost of the damage once it is fully known.

3. That the Proper Officers of the City be authorized to do all things necessary to facilitate the work associated with the subject insurance claim and to implement the intent of the foregoing.

Under the City of Winnipeg Organization By-Law No. 7100/97 claims brought by the City over $250,000.00 require City Council approval.

Therefore, based on City of Winnipeg Organization By-Law No. 7100/97 authority is requested from City Council to approve the settlement of the WPS Headquarters Water Damage Claim in the amount of $7,432,542.80 with the City's Course of Construction insurers. On the basis of this approval the CFO will be able to sign the Proof of Loss and collect the final outstanding payment of $571,282.80.

IMPLICATIONS OF THE RECOMMENDATIONS

Net of $100,000 deductible, the City will recover $7,432,542.80 which represents 92.3% of the adjusted claim as set out in the attached Schedule. In discussions with the City's Insurance Broker Willis Towers Watson, average recoveries from their experience for claims of this size and complexity range from 90% to 95%. There does not appear to be other industry benchmarking to refer to in drawing this comparison but the City recovery falls within the range identified by its Insurance Broker.

The WPS headquarters claim is one of the largest claim incidents in recent City history. On November 30, 2016, the City filed a statement of claim with the Manitoba Court of Queen's Bench which has yet to be served to the Insurers. If the City decided to proceed in contesting the proposed settlement in court, it would be required to serve the statement of claim by May 31, 2017. While the City maintains that its claim is valid and recoverable under its insurance policy, a review of the claims by the insurers suggests the likelihood of recovery of a portion of

the claim is uncertain. Absent agreement to this settlement, the insurers have indicated they will not negotiate a further resolution, such that the City's only option to pursue further recovery would be through the legal proceeding. In that proceeding, the likelihood of complete recovery is uncertain, and any recovery would take, at a minimum, 3 – 5 years through the Courts (assuming no appeals). Legal proceedings would also expose the City to a cost award in favour of the insurers in the event of partial or non-recovery, and would require significant time commitment of City employees and former employees. Given the uncertainty of a future court decision, the Public Service is recommending settlement based on the values set out above.

In addition, pursuit of legal proceedings exposes the City to the potential for future increased insurance coverage costs. High value or multiple claims tend to have a negative impact on insurance rates and on an insurer's willingness to provide coverage. Currently there are seven (7) insurers participating on the City's property policy. Mergers within the insurance industry make it increasingly difficult to find insurers willing to write insurance policies for municipal governments, at competitive rates. The City's present rate per $100 of insurance is .0257 cents, and is considered a low rate by insurance industry standards taking into account the amount of mixed frame constructed buildings owned by the City. The City's current insured property values are in excess of $5.5 billion. Any increase in the property rate would significantly increase the insurance premiums and result in lasting financial effects for years to come. The City's insurance program renews May 1, 2017. The City's lead insurer – Northbridge Insurance has indicated they are willing to continue on the City's property insurance program and will offer competitive terms for the 2017 renewal.

HISTORY/DISCUSSION

The WPS Headquarters at 245 Smith Street in downtown Winnipeg accommodates 14 divisions and approximately 1,250 staff now that it is fully operational. All six floors plus two sub-grade parking levels were redeveloped and provides approximately 631,000 square feet of space.

At the time of the water loss event on August 21, 2014 the building was essentially complete and ready for occupancy, but remained under the care and control of the general contractor. It was anticipated that the building would be turned over to the City on Monday August 25, 2014.

However, the Interim Occupancy permit was not issued due to the severe rain storm on August 21, 2014.

On Thursday August 21, 2014 two separate incidents occurred which impacted the application and issuance of the Interim Occupancy permit:

a. The first incident occurred during an upgrade of the electrical systems for the Office Tower on the morning of August 21:
    i. during the upgrade, the existing switch gear for the Office Tower (266 Graham Avenue) failed which meant that life safety elements of the Tower were lost resulting in the evacuation of the Tower's occupants.

    ii. the loss of the switch gear impacted the life safety of WPS Headquarters as the fire pumps are powered from the Office Tower generator and provide fire suppression to both the Office Tower and WPS Headquarters.

b. The second incident was the severe rain storm that hit downtown Winnipeg on the evening of August 21, 2014 (between 6 pm and 8:30 pm):
   i. A significant amount of rain fell in a short period of time (2.5 hours) in the downtown area. It caused an over-load of the City's combined sanitary system around the WPS Headquarters building resulting in a pressure build-up in the building's roof drain leaders.

   ii. The result of the pressure build-up caused two of the five rainwater leaders to break, in two separate locations on the P1 level. The water flowed to the north end of P1 level of the building (low end) and infiltrated the lower P2 level. The electrical vault, which houses the high voltage transformers for both the Office Tower and WPS HQ, is located at this site on P2. The water caused the loss of the one of the 3 existing Office Tower transformers while the two new high voltage transformers for the WPS HQ underwent a controlled shutdown.

The scope of the City's insurance claim included all architectural, mechanical and electrical water damage remediation work on the Main Floor, Level P1 and Level P2 including remediation to the life safety equipment/systems, the electrical transformers (2 new units for the WPS HQ, 3 existing units for the Office Tower), as well as professional fees and incremental soft costs.

Description	Total Submitted	Total Recommended Payment by Insurers
Water Remediation Incl. General Contractor Management Fees	$5,980,939.79	5,638,782.28
Professional Fees	$ 939,803.53	$623,845.50
Incremental – Soft Costs	$1,231,761.19	$1,169,915.02
Deductible	($100,000.00)	
TOTAL (Excl. GST)	$8,052,504.51	$7,432,542.80

The difference between expenses submitted and those that the insurers have not approved in the settlement were determined to be – (i) Uninsured expenses and costs associated with the water remediation claim but not recoverable under the policy of insurance; and (ii) Expenses or fees with unsupported explanations and / or lack of supporting documentation.

Best efforts were made to recover as much as possible based on the documentation submitted to the insurers and their representatives. Insurance policies, including Course of Construction insurance policies, are not "all inclusive" in scope and therefore not written to capture every expense associated with a loss. Some expenses are simply not insurable. In this proposed settlement, the City of Winnipeg is able to recover 92.3% of its submitted expenses. The City's insurance broker has stated that in their experience, large complex property claims where there are disputed factors; for example relating to loss estimates, necessary work performed, fees for services, extra expenses, lost revenue etc., typically result in a negotiated settlement for less than the submitted claims under the policy. In recent years they have been involved in at least

two other losses where there were disputed claim amounts (between what the Insured was requesting and what the Insurer accepted as reasonable amounts). These losses were eventually settled at 90% - 95% of what the insured was originally claiming.
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In support of this information, benchmarking claims examples obtained by the Public Service from other local organizations appear to have been settled at lesser values which further affirms the reasonableness of the proposed settlement.

It should be noted the shortfall in recovery noted above is fully provided for through the Insurance Reserve Fund which has a current balance of approximately $3.084 million before current recoveries. All related soft costs were incurred in previous year budgets. The City will be determining allocations of recoveries between the operating fund and the Insurance Reserve Fund once final recovery is received.

Since the date of loss, the Public Service has been meeting regularly to ready the building for Police occupancy and provide detailed information to the Insurers for claim review.
The following outcomes were achieved during the period from the date of loss on August 21, 2014 to date:

- On December 10, 2014, Council approved that as a result of water damage in August 2014, at the Winnipeg Police Services (WPS) Headquarters and the subsequent insurance claim, the Chief Administrative Office be delegated the authority to approve contract over-expenditures with Caspian Projects Inc., Adjeleian Allen Rubeli Ltd., and Integrated Designs including provision of interim/bridging costs, from the Insurance Reserve Fund in order to proceed with the required repairs in a timely matter and to cover any possible uninsured costs that may be required.
- On February 12, 2015, the City signed a Second Supplemental Agreement with Caspian Projects Inc. for the remedial work related to water damage from the August 21, 2014 rain event.
- In February 2015, approval was given to the contractor by Change Orders to complete the remediation work caused by the water damage including architectural, mechanical and electrical remediation work.
- The building passed the Building Code Life Safety testing on June 17, 2015. The HQ project Interim Occupancy permit was attained on June 19, 2015.
- The Certificate of Substantial Performance, as defined under Provincial Legislation was issued to Caspian Projects Inc. on June 29, 2015.
- The Municipal Accommodations Division of Planning Property and Development took possession of the HQ building on July 17, 2015.
- A separate capital project to address building safeguards was created and work began in September of 2015 to address WPS operational building security requirements prior to WPS moving in. The majority of the building safeguard work was completed by March 29, 2016.
- The WPS commenced moving into the HQ building on December 15, 2015. WPS completed their move to the new Headquarters in July, 2016.
- The Final Occupancy Permit for the WPS Headquarters was issued on October 21, 2016.
- The Final report to the Standing Policy Committee of Finance was approved on December 1, 2016. It was noted in this report that “No further work will be authorized to the HQ project at this date. Once invoices on the building safeguards work have been

received and final costs determined, it is the recommendation and intent, with appropriate approval (relevant SPC), the remaining HQ capital project funds be transferred to the 2016 building safeguards project."

In addition this same report stated the following: "There is a possibility that the insurers will not cover all related costs/losses the City incurred due to the August 21, 2014 water event. The Insurance Reserve Fund has set aside sufficient funds to cover any interim/ bridging costs or any uninsured costs. A final project report will be submitted in regards to the insurance claim once finalized."

Throughout the period dating back to August, 2014, the City has maintained continued contact with its Insurers and Insurance Brokers. In this regard, the City provided the following reasons in support of its course of action with full knowledge of its Insurers:

- Avoid the expense of a breach of contract as the building was under the contractor's control;
- Avoid the contractual expense/cost of having to release the project consultants;
- Avoid the added expense of new project consultants reviewing and re-certifying drawings;
- Avoid the time and expense of re-tendering the project and selecting a new general contractor;
- Avoid the time and expense submitting new permit requirements (including drawings) for approval;
- Maintain the building warranties by retaining the same contractor and sub-trades (electrical, mechanical. Many subtrades had moved on to new commitments.
- Minimize security clearance approval delays for new project personnel by retaining existing project staff who already had WPS required Level 2 security clearance for the high security facility;
- Retain the technical knowledge/expertise and working experience of the existing project team;
- Reduce the impact on WPS move-in schedule (and operations) by keeping the same project team; and
- Reduce the overall timeframe and incremental costs incurred by the City for any delays on existing leases, maintenance costs, salaries, etc. by keeping the same project team and schedule.

One of the major issues with contracting out the remediation work was the time factor to prepare a full set of tender documents in preparation for a formal bid opportunity to address a remediation project of this size. Initial remediation construction estimates reached $14 million, most of which were related to the electrical repairs following the industry guidelines for water-damaged electrical equipment. It would have taken a minimum of nine months to prepare and issue a full set of tender documents and award a contract to a new contractor. All existing warranties would be voided by the existing contractor on all affected equipment. In proceeding in this manner the City maintains it had saved the insurance companies over $6 million.

In view of the foregoing, the Claims Branch and Legal Services recommend settling the City's insurance claim concerning the August 21, 2014 rain / flood event at $7,432,542.80. In order to do so, a Proof of Loss signed by the CFO will be required to obtain the remaining $571,282.80 not yet paid by the insurers.

FINANCIAL IMPACT

Financial Impact Statement

Date: April 10, 2017

Project Name:

Insurance Settlement of Water Damage Claim - Winnipeg Police Services Headquarters

First Year of Program **2017**

	2017	2018	2019	2020	2021
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Recovery	571,283	-	-	-	-
Net Cost/(Benefit)	$ (571,283)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (571,283)	$ -	$ -	$ -	$ -

Additional Comments:

The Incremental Recovery above will bring the balance in the Insurance Reserve to $3.655 million (current balance as at April 10, 2017 is $3.084 million).

(Original signed by R. Hodges)
Ramona Hodges
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

Legal Services

OURWINNIPEG POLICY ALIGNMENT

Direction 1: Provide efficient and focused civic administration and governance

SUBMITTED BY

Department: Corporate Finance
Division: Risk Management
Prepared by: Cindy Bauer, Manager of Corporate Risk
Date:
File No: City of Winnipeg Claim #GC2014049890

Attachments: WPSHQ Insurance Claim Summary Spreadsheet



WPS Insurance Claim
- Financial Summary -