

**STAFF REPORT:      Engineering & Public Works Department**

**REPORT TO:**            Council  
**MEETING DATE:**    December 14, 2009  
**REPORT NO.:**        EPW.09.121  
**SUBJECT:**            Camperdown Sewer Servicing Contract  
                                 No. 4918  
**PREPARED BY:**     Reg Russwurm, Director of Engineering and  
                                 Public Works

**A. Recommendation**

THAT Council approve increasing the Camperdown Sewer Servicing Contract No. 4918 by \$805,083.33 from \$7,796,753.50 to \$8,601,836.83 as outlined in Staff Report EPW.09.121 "Camperdown Sewer Servicing Contract No. 4918".

**B. Background**

The Town entered a construction contract with Drexler Construction Ltd (Drexler) for the Camperdown Sewer Servicing Contract No. 4918 in September 2005 and the works were substantially complete on November 23, 2006. There were numerous disputes that the Town and the Town's Consultant, Skelton Brumwell and Associates, attempted to resolve during 2007 and 2008. On November 18, 2008, Drexler Construction Ltd filed a claim with the Ontario Superior Court of Justice against the Town in regards to Camperdown Sewer Servicing Contract No. 4918. The Statement of Claim was for \$2,074,252.46 for breach of contract plus \$2,074,252.46 damages for negligence, or alternatively, \$3,187,845.24 for breach of contract and negligence in the event there was no agreement related to dewatering. The Town retained Ms. Cynthia Sefton of Aird & Berlis LLP to represent the Town in this action.

The Town has had intensive discussions over 2009 with Drexler Construction Ltd and has negotiated a lump sum settlement of \$1,150,000 to resolve a rather complicated law suit. The payment is a fair and reasonable solution based on the significantly higher rock quantities and the revision to the dewatering methodology from that anticipated in the original tender. The Camperdown Developer Group has been well informed of the discussions to date with Drexler Construction Ltd and has stated they will defer to the Town to resolve the matter. The current Development Charges Background Study includes an allowance for a settlement of the litigation. A payment of \$1.15M falls within that allowance.

Staff recommend that the contract value for Camperdown Sewer Servicing Contract No. 4918 be increased by \$805,083.33 from \$7,796,753.50 to \$8,601,836.83 to permit the payment of the \$1.15M settlement. The payment will be made with the advice of Aird & Berlis LLP to ensure that appropriate wording and terms are provided with the payment to protect the Town's interests.

Previously, an in trust payment for \$73,199.95 (excl GST) was sent to Aird & Berlis LLP in trust to settle agreed to claims to no avail. This amount will be considered in the \$1.15M payment. The chart below tabulates the calculations.

Total Paid (PC #14)	\$7,451,836.83
Lump Sum Settlement	<u>\$1,150,000.00</u>
Proposed Contract Cost	\$8,601,836.83
Less Contract Value	<u>\$7,796,753.50</u>
Over Contract Value	\$805,083.33

### **C. The Blue Mountains' Strategic Plan**

This action furthers the Town's Strategic Goal #2 "Addressing the Town's municipal infrastructure needs" and Strategic Goal #6 "Providing a strong well managed municipal government".

### **D. Environmental Impacts**

None.

### **E. Budget Impact**

All project costs including construction, engineering, legal and any claim settlement, will ultimately be included in the cost recovery agreement with the Camperdown Developers and the existing benefiting property owners. Currently, the Draft Development Charges Background Study provides \$1.175M to settle the claim and to pay outstanding legal fees.

### **F. Attached**

None.

Respectfully submitted,

---

Reg Russwurm  
Director of Engineering and Public Works

For more information, please contact:  
Reg Russwurm  
[russwurm@thebluemountains.ca](mailto:russwurm@thebluemountains.ca)  
519-599-3131 ext. 260