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Town of Aurora
Council Closed Session Report
No. CMS24-003

Subject: Aurora Town Square – Contract Negotiations Update

Prepared by: Robin McDougall, Director of Community Services

Department: Community Services

Date: January 16, 2024

This report is being considered by Council in Closed Session as the subject matter involves:

- 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 municipality or local board as per Section 239(2)(k) of the Municipal Act, 2001.

Closed Session Recommendation

1. That Council Closed Session Report No. CMS24-003 be received.

Open Session Recommendation

1. That Council Closed Session Report No. CMS24-003 be received; and,
2. That the project budget for Aurora Town Square be increased by \$600,000 to \$53,739,700 and that the increase be funded from funds collected as part of the capital campaign; and,
3. That the closed session report be released publicly at an appropriate time.

Executive Summary

The Aurora Town Square construction project was tendered and awarded within budget approval at the start of the pandemic. Even though the project has progressed well, there have been external pressures not anticipated at the commencement of the project (i.e. material shortages, delays in material delivery, spike in material costs, shortages of

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available skilled labour, and construction trades strike, etc.). With these pressures, it has resulted in additional time to complete the project requiring longer consultant oversight and additional funds to support material cost pressures.

The purpose of this report is to inform Council of the negotiations that have been occurring and to seek approval of up to a maximum of \$600,000 of additional construction contingency funds.

- Staff are confident the additional funds will be sufficient to reach project completion.
- Additional funds are needed in the construction contingency reserve to cover the necessary costs to reach the end of the project construction.
- Current industry climate for construction projects have observed a large price increase over the last 12-24 months.

Background

In February 2023, staff brought a report before Council to seek approval for additional funds to support negotiations for both the construction contract and consultant contracts. Staff requested a total of \$1,700,000 (\$1,000,000 towards construction contingency and \$700,000 towards consultant contracts). Council only approved a total of \$1.2 million (\$500,000 towards construction contingency and \$700,000 towards consultant contracts) with the understanding that if the additional funds were needed, staff would need to come back to seek approval from Council for the additional funds.

At that time, February 2023, Chandos had estimated that the project would be completed by the Fall of 2023. Therefore, the request for additional consultant funds at that time was based on that anticipated completion date. Chandos has since provided an update to their completion date, which now anticipates May 2024 as the substantial completion date. This extends the project and need for consultant oversight for an additional 5 months.

Also, as projected in February 2023, additional funds are in fact required to cover the needed construction contingency demands. An additional \$600,000 in construction contingency is being requested at this time.

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The contingency reserves for this project originally consisted of \$3 million for construction contingency (7.3% of construction cost) and \$1 million for management reserve. Construction contingency is solely to cover any change orders for work that was not anticipated in the original tender. The management reserve was established to handle any Town driven changes or unplanned or unforeseen events.

Analysis

Staff are confident the additional funds will be sufficient to reach project completion.

The primary consultants (The Planning Partnership and Colliers Project Leaders) have submitted requests for additional fees to enable them to continue to monitor and manage the design and construction through to completion (May 2024). These additional funds equate to approximately \$220k and with room still available in the management reserve, it is recommended that this reserve be used to cover the consultant's additional costs to the end of the project. No additional funds are required to support the consultant's additional request.

It is important to note that through various discussions, staff met with the consultants to negotiate and challenge their requests. Following a few revisions, the consultants resubmitted a revised request resulting in a savings of approximately \$131k from their original submission.

By way of Council's authority, the CAO has the authority to extend the Purchase Orders (POs) and use contingencies to support the consultants contract extensions.

Throughout the project, staff and the primary consultants have worked diligently to mitigate every change order tabled by the general contractor. This type of ongoing discussion and negotiation is critical in mitigating changes that could be reconsidered or reduced. A key element for these negotiations is having the consultants/experts on board to assist Town staff to negotiate the best value. For example, through successful negotiations, approximately Fifty-one (51) contemplated changes have been rejected totaling an estimated value of \$643k, and through reviews and negotiations, the Town, Colliers, and the Consultant team have generated approximately \$852.5k in further savings to-date. As an additional step in negotiations, there were change orders which were identified as contentious / for potential arbitration but were successfully negotiated down and agreed to by the consultant team and the Town. To-date

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approximately \$101.7k in savings have been realized through these specific negotiations.

During negotiations and throughout the management of the project, staff will continue with this level of scrutiny and management to ensure the Town receives the best value.

Due to project schedule and construction industry impacts, additional funds and contract extensions are needed but through negotiations, staff will mitigate the impact.

The contingency reserves for this project originally consisted of \$3 million for construction contingency (7.3% of construction cost) and \$1 million for management reserve. With Council's approval in February 2023, an additional \$500,000 was added to the construction contingency bringing the balance to \$3.5 million (8.5% of construction cost).

Construction contingency is solely to cover any change orders for work that was not anticipated in the original tender. These could be for electrical, mechanical, architectural, landscape/site, structural, and unforeseen site conditions. All change orders have been reviewed, challenged, and, through negotiation, were often reduced from their original estimate. But if deemed necessary, they were approved based on the project team's recommendations. Some of these change orders relate to coordination issues resulting in an omission from the original design. This is not unusual for a project of this size and complexity. The reality of an omission means a change order is needed. The work could have been included in the original tender if caught before tendering, ultimately resulting in the value being part of the original project cost. Similarly, other change orders relate to unforeseen discoveries or site conditions and are common in renovation and large development projects where extensive demolition or significant site excavation is part of the project. In both of these cases, it means the Town must pay for the work after the contract has been awarded, thus, the project uses the construction contingency to cover the changes.

As noted in the CAO's monthly updates to Council, and as the project nears completion, the balance of the management reserve was redistributed to support the consultant fees (as noted in previous section) and to top up the construction contingency to \$3.9 million. Currently, \$3.14 million of the \$3.9 million construction contingency fund has been approved in Change Orders. Another \$1.15 million is forecasted in upcoming changes. Therefore, an additional \$600k is needed to support this added pressure.

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This would bring the construction contingency total to \$4.5 million (10.9% of construction costs).

The use of this additional funding request will be faced with the same level of negotiation and scrutiny to ensure only the absolute necessity of changes are approved.

If the requested increase is not approved, the project progress will be impacted, and areas of development may need to stop as some of the changes have a ripple effect and could cause other areas to not be completed and delivered as expected.

Current industry climate for construction projects have observed a large price increase over the last 12-24 months.

It may be helpful to know that a project similar in size and complexity to the Aurora Town Square (ATS) (involving renovation and a heritage building), might typically build in a contingency in the range of 12-15% of construction costs or \$5-6 million. Even in this climate, the project team is anticipating being able to manage the project change orders and complete the project within a total of \$4.5 million (\$3.9 million currently + \$600k request) or 10.9% of construction cost.

Some may question the cost increase being requested in this report; however, the project team is still confident that the project is being delivered for the best value compared to the cost increases other municipal projects are facing in today's climate. A few examples of projects that went to tender with an estimated cost and then received bids significantly higher than the pre-tender estimate include:

SARC Gym Addition – started out at \$8.2M (2021), through final Class A cost estimates it was anticipated to be \$11.1M (2022). The tender resulted in a final project budget of \$14.1M (2023). This is 27% over pre-tender budget or 72% over original estimate.

Newmarket's Mulock Park – started out with an estimate in 2021 of \$48.2M. It increased to \$64.2M in fall 2023. This is a 33% increase to the budget. Newmarket is moving ahead with the project at the new price.

South Bowmanville Recreation Centre started out at \$65M and ended up at \$134M (106% over budget). Clarington also elected to strip down the project but are moving forward with phase 1 and committed to spend \$65M. After further assessment, they will reconsider the rest of the project.

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Whitby Sports Complex - started out with an estimate of \$111M and ended up at \$155M (39.6% over budget). Whitby is moving ahead with the project.

As another comparison, StatsCan reports that non-residential construction prices increased by 11.6% in the Toronto area in 2021, an additional 15.6% increase in 2022, and another 8.1% in 2023. These increases are directly related to labour and material shortages. For the ATS, this would represent an additional cost of more than \$16.2M in total for 2021, 2022 and 2023. Thus, if the Town had tendered this project in 2021 or 2022, the overall project would have been significantly higher than awarded and even with the additional request in this report, ATS project costs are still forecast to be much lower than if tendered more recently.

Advisory Committee Review

Not Applicable

Legal Considerations

Town staff have dealt with a number of change orders within the approved project budget pursuant to the applicable contract. As addressed in the report, numerous items have been negotiated by the parties, and additional funding is being requested to deal with anticipated costs to complete the project. In some cases, if staff are not able to consider a request for a change or adjustments by the contractor due to lack of financial authority, such disputed items could result in claims by the contractor.

Further legal considerations are provided throughout the report.

Financial Implications

The \$600,000 increase to the budget is for the construction contingency. It's recommended that this increase be funded from the funds collected as part of the capital campaign.

To date, \$2,525,000 in capital campaign funds have been confirmed. A total of \$1,200,000 was previously allocated to cover the original request for additional funds, therefore, there is a total of \$1,325,000 remaining to cover this additional request of

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\$600,000 leaving a remaining balance of \$725,000. Using funds from this source will have no impact on the Town's reserves and the ability to deliver other capital projects.

Communications Considerations

None

Climate Change Considerations

The information contained within this report does not impact greenhouse gas emissions or impact climate change adaptation.

Link to Strategic Plan

The Aurora Town Square project supports the following Strategic Plan goals and key objectives:

Supporting an exceptional quality of life for all in its accomplishment in satisfying requirements in the following key objectives within these goal statements:

- Invest in sustainable infrastructure.
- Celebrating and promoting our culture

Alternative(s) to the Recommendation

1. Council may provide further direction.

Conclusions

With the external pressures not anticipated at the commencement of the project (i.e. material shortages, delays in material delivery, spike in material costs, shortages of available skilled labour, and construction trades strike, etc.), additional funds are needed to supplement the construction contingency. It is important to mitigate these added costs, therefore, staff will continue to negotiate all change orders and negotiate the fee requests from the consultants.

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If the contracts with our consultants are not extended, the risk to the project would be significant as we have relied on the specialized skills of our consultant team to support our oversight and cost control of the project. The services of the architects are vital to the successful completion of the full project.

In the absence of an increased contingency fund, we would continue to monitor and negotiate change orders to minimize additional costs, but we would have to consider cuts to other areas of the project to stay within the approved budget. This would require additional negotiations with the contractor as it is often difficult to reduce the scope of the contract and actually achieve the full cost benefit of the reduction.

Attachments

None

Previous Reports

CMS23-007 Aurora Town Square – Contract Negotiations, February 21, 2023

Pre-submission Review

Chief Administrative Officer, Town Clerk, Director of Corporate Services/Town Solicitor and Director of Finance

Approvals

Approved by Robin McDougall, Director, Community Services

Approved by Doug Nadorozny, Chief Administrative Officer