



Report to: General Committee

Date Report Authored: March 26, 2015

SUBJECT: Transfer of Unclaimed Holdback Payments
PREPARED BY: Alex Moore – Senior Manager, Purchasing and Accounts Payable (Ext. 4711)
Raymond Law – Manager, Business Operations (Ext. 3585)

RECOMMENDATION:

- 1) THAT the report dated March 26, 2015 entitled “Transfer of Unclaimed Holdback Payments” be received;
- 2) AND THAT Council approve the placement of an advertisement in a construction trade newspaper and on the City website, in order to provide reasonable notice to contractors that may be eligible to apply for the release of holdback payments related to construction projects completed prior to January 1, 2010, and the forfeiture of said payments to the City’s reserve should they remain unclaimed;
- 3) AND THAT the cost incurred in placing the advertisement, estimated at \$1,000.00, be offset against the unclaimed holdback payments to be placed in the City’s revenue;
- 4) AND THAT the Treasurer be authorized to transfer unclaimed holdback payments up to the amount of \$212,799.89 to the Corporate Rate Stabilization Reserve, comprised of unclaimed holdback payments for projects closed prior to January 1, 2010 (\$218,227.61) less deferred refundable taxes paid (\$5,427.72);
- 5) AND THAT Council authorize Staff to charge an administration fee equivalent to 10% of the amount to be refunded to claimants, and to utilize the administration fee to recover staff cost associated with refunding these unclaimed holdback amounts with the amount being deposited into account 410 998-9399 (Revenue – Finance Department support);
- 6) AND THAT the Treasurer be authorized to release any of these holdback payments from the Corporate Rate Stabilization Reserve in the event of a future verifiable claim;
- 7) AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to obtain Council's approval to release of holdback payments related to construction projects completed prior to January 1, 2010.

BACKGROUND:

Contractors entering into contracts with the City of Markham are generally obligated to comply with the City's *General Terms and Conditions*. Unless otherwise specified, contracts where the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the "*Act*") applies are subject to Part III, Section 24 of the *General Terms and Conditions* regarding holdback payments. The *Act* prescribes a 10% holdback is required for construction projects in Ontario. The holdback is held in trust for the benefit of downstream trades and suppliers.

In accordance with Section 24 of the City's *General Terms and Conditions*, after payment of ninety per cent (90%) of the total amount due under the contract, acceptance of the work by the City and after all other provisions of the contract have been satisfied, the remaining ten per cent (10%) holdback can be paid, provided that the contractor:

- applies to the City to certify substantial performance (as that term is defined in the *Act*). A "Statutory Declaration" form, indicating that all work has been substantially completed and all payments made to persons for wages, material and subcontract work, shall accompany the request;
- provides to the City a Workplace Safety and Insurance Board "Certificate of Clearance" indicating that all assessments against the contractor and each and every subcontractor have been paid, and that the contractor is in good standing; and
- publishes a copy of the "Certificate of Substantial Performance" once in a construction trade newspaper to start the 45-day lien expiry period.

If no liens are registered against the contract after the expiration of the 45-day lien expiry period, then the holdback payment is eligible for release. If these requirements are not met, the holdback is not returned to the contractor.

The balance of the holdback payment account has increased over the years. Contractors have failed to initiate or complete the holdback payment release process, leading to the current net accumulation of unclaimed holdback payments totaling \$212,799.89 (unclaimed holdback payments \$218,227.61, net of deferred refundable taxes paid \$5,427.72) prior to January 1, 2010. Approximately sixty per cent (60%) of unclaimed holdback payments are related to construction projects completed prior to 1999.

DISCUSSION/OPTIONS:

It is recommended that advertisements in a construction trade newspaper and on the City's website be utilized to invite eligible contractors to apply for a release of holdback payments for work completed prior to January 1, 2010. Any claims received will be

verified by City Staff (to confirm that the work has been satisfactorily completed and that the holdback payment is eligible for release). The placement of a Public Notice that invites contractors to apply for a release of holdback payment provides a reasonable and expeditious method of informing eligible contractors. The public notice will also serve to limit the timeframe by which requests for release of holdback payments can be made. This approach of placing a public notice has been used by the City for other purposes including unclaimed refundable deposits.

It is recommended that the Treasurer be authorized to transfer to the Corporate Rate Stabilization Reserve, all unclaimed balances prior to January 1, 2010, less any payments made for verifiable claims in response to the Public Notice, and net of the cost of placing the Public Notice.

FINANCIAL CONSIDERATIONS AND TEMPLATE:

The Public Notice serves as a method of notifying contractors that may be eligible to receive payments for work that have been held back.

As the holdback payments are related to work already performed, the cost of advertising is the main financial implication in the context of this proposal. The cost of the advertisement in the construction trade newspaper is estimated at \$1,000.00 (exclusive of applicable taxes). Placement of the Public Notice on the City's website attracts no additional cost.

The following table outlines the accounts and balances for which this approval is being sought for transfer to the City's revenue totaling \$212,799.89. This net revenue will be reduced by the cost of the advertisement, and any holdback payments released to eligible contractors through this process.

ACCOUNT NO.	ACCOUNT TITLE	APPLICABLE BALANCE
025-2100004	Unclaimed Holdback Payments	\$218,227.61
006-1620002	Deferred Refundable Taxes	(\$5,427.72)
		\$212,799.89

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

BUSINESS UNITS CONSULTED AND AFFECTED:

The Legal Department was consulted as a part of this process to ensure the City has met its legislative obligations, including those outlined in the *Construction Lien Act*.

The Corporate Communications & Community Engagement Department was consulted in regard to the placement of the Public Notice.

RECOMMENDED BY:

08/04/2015

09/04/2015

X 

Joel Lustig
Treasurer

X 

Trinela Cane
Commissioner, Corporate Services