



The Corporation of the Town of Tecumseh

Public Works & Engineering Services

To: Mayor and Members of Council

From: Phil Bartnik, Director Public Works & Engineering Services

Date to Council: December 13, 2022

Report Number: PWES-2022-44

Subject: Lesperance Road VIA Rail Crossing Improvements
Tender Award and VIA Rail Agreements

Recommendations

It is recommended:

That the tender for the Lesperance Road VIA Rail Crossing Improvement in the amount of \$2,961,219.48 excluding HST **be awarded** to Rudak Excavating Inc.;

And that By-law 2022-090 **be given** the first, second, third and final reading, to authorize the Mayor and Clerk to execute an agreement, satisfactory in form to the Town's solicitor, with Rudak Excavating Inc.;

And further that funding allocations, reflecting a total budget requirement of \$4,271,200 with a \$2,139,000 increase to the original allocation **be accommodated** as follows:

- Road Lifecycle Reserve – increase from \$1,849,300 to \$3,745,955
- Watermain Reserve Fund – increase from \$0 to \$79,069
- Wastewater Sewers Reserve Fund – increase from \$0 to \$100,774
- Storm Sewer Lifecycle Reserve – increase from \$282,900 to \$345,292

And furthermore that By-law 2022-091 **be given** the first, second, third and final reading, to authorize the Mayor and Clerk to execute the Collaborative Work Agreement, satisfactory in form to the Town's solicitor, with VIA Rail Canada Inc.;

And further moreover that By-law 2022-097 be given the first, second, third and final reading, to authorize the Mayor and Clerk to execute the Infrastructure Contract (Crossing and Permission to Access), satisfactory in form to the Town's solicitor, with VIA Rail Canada Inc.;

And further moreover that By-law 2022-098 be given the first, second, third and final reading, to authorize the Mayor and Clerk to execute the Fencing Agreement, satisfactory in form to the Town's solicitor, with VIA Rail Canada Inc.

Background

In 2014 VIA Rail Canada Inc. (VIA) conducted inspections on all their grade crossings, including the two rail crossings located in the Town of Tecumseh – Lesperance Road north of Tecumseh Road (Mile: 99.31), and Tecumseh Road just west of Lacasse Boulevard (Mile: 99.13). The inspection identified minor improvements that were required such as faded road paint and consideration for additional safety features. The major item that came from the inspections was the crossing inspection at Mile 99.31 (Lesperance Road). It was determined that the gradient for the road approach exceeds the maximum gradient of 2% within 8 metres of the nearest rail and 5% for 10 metres beyond.

In a News Release published May 20, 2021, the Minister of Transport announced more than \$21 million in funding for new projects under the Rail Safety Improvement Program (RSIP) to enhance rail safety in Canada. The Town's Lesperance Road/VIA Rail Improvement project is one of 135 initiatives approved across Canada.

At the January 25, 2022 Regular Meeting of Council, Council approved the recommendations (Motion: RCM-23/22) of Report [PWES-2022-03](#) titled "Approval of 2022 Public Works & Engineering Services Capital Works Projects" that authorized Administration to proceed with the identified 2022 capital works projects including the construction of the Lesperance Road VIA Rail Crossing Improvements.

At the June 28, 2022 Regular Meeting of Council, Council approved the recommendations (Motion: RCM-200/22) of Report [PWES-2022-32](#) titled "Lesperance Road VIA Rail Crossing Improvements – Tender Results".

Comments

Tender Call No.1 (Spring 2022)

A tender call was advertised on the Town's website along with being posted on the Town's bids and tenders account on April 28, 2022. One (1) tender submission was

received on May 19, 2022 and was virtually opened in the presence of Administration and the Director Financial Services & Chief Financial Officer.

The single tendered bid received in the amount of \$4,080,279 was significantly over the construction budget (at 243% of the construction estimate). At the June 28, 2022 Regular Council Meeting, Council rejected the single tender due to the bid being significantly over budget. If the single bid was accepted, the total project budget would have been an estimated \$5,218,300.

Administration, through the assistance of Dillon Consulting Ltd. (Dillon), consulted with Contractors to provide the reasoning why they did not submit bids for this project, which may have potentially resulted in an acceptable bid. A combination of the time of work, an influx of other projects in the area, and concerns with VIA requirements were provided as the reasons that certain plan takers did not submit a bid.

Tender Call No.2 (Fall 2022)

A second tender call for the project was advertised on the Town's website along with being posted on the Town's bids and tenders account on October 18, 2022. Dillon also provided notification of the tender to the Windsor Construction Association and reached out to known contractors in the area. Five (5) tenders were received on November 17, 2022 and were virtually opened in the presence of Administration and the Director Financial Services & Chief Financial Officer. The Tender results are summarized as follows:

Tenderer	Total Tender Price (excluding HST)
Rudak Excavating Inc.	\$2,961,219.48 ¹
J & J Lepera Infrastructures Inc.	\$3,045,000.00
GIP Paving Inc.	\$3,295,567.00
SheaRock Construction Group Inc.	\$3,750,000.00
J.C.S. Construction Inc.	\$4,985,331.00 ¹

¹ denotes corrected totals

Some minor mathematical errors were noted in two of the bids submitted. These mathematical errors were identified and corrected by Dillon, with the respective updates reflected in the above table. Updates to bid prices were not significant and did not result in any changes in the original standings of the tenderers. Details on errors and the

respective corrections can be found in Attachment 1 - Summary of Tender Results and Award Recommendation Letter.

In the spring of this year, Administration received one submission during the first tender call of \$4,080,279 . In comparison with the lowest construction bid of \$2,961,219.48, the Town has received a bid approximately \$1,119,100 lower than the bid received in the spring of this year.

Administration, in consultation with Dillon, recommends that Council award the Tender for the Lesperance Road VIA Rail Crossing Improvement project in the amount of \$2,961,219.48 excluding HST to Rudak Excavating Inc.

VIA Rail Canada Agreements

To proceed with this project, VIA Rail requires that the Town enters into a “Collaborative Work Agreement”, “Infrastructure Contract” and “Fencing Agreement”.

Collaborative Work Agreement

The Collaborative Work Agreement is an agreement which discusses the general work being completed by the parties as part of the project; the costs associated with the work and the respective cost-shares; and the contract specifications to be used in conjunction including insurance, liability, and safety requirements.

Infrastructure Contract

The Infrastructure Contract (Crossing and Permission to Access) is an agreement entered into by VIA and the Town to: premise access to the area; allow the construction, use, and maintenance of infrastructure within area; and address crossing improvements including the payment of operation and maintenance of such.

The Infrastructure Contract includes three separate subcontracts: Sub-Contract “A” Underground Pipes Crossing; Sub-Contract “B” Permission to Access Premises and Liability Release; and Sub-Contract “C” Railway Crossing. Sub-Contract “C” includes a financial component which will be discussed further in the Financial Implications section of this report.

Fencing Agreement

The Fencing Agreement is an agreement which allows the Town to construct, use, and maintain a fence to reduce trespassing activities and increase pedestrian safety across the VIA Rail corridor at the crossing.

Consultations

Financial Services
Dillon Consulting Ltd.
Town Solicitor
VIA Rail Canada Inc.

Financial Implications

Report PWES-2022-03 provided an estimated project cost of \$2,132,200 and funding approval as follows:

Lifecycle Reserve Fund	Amount
Road Lifecycle Reserve Fund	\$1,849,300
Storm Sewer Lifecycle Reserve Fund	\$282,900
Total	\$2,132,200

The tendered/projected costs are summarized below:

Cost Item	Amount
Construction (tender)	\$2,961,300
Engineering	\$646,000
Utility Relocation Allowance	\$5,000
Property Acquisition/Easement	\$250,000
Intellistreet Supply of Poles/Lumaires	\$63,000
VIA Rail Access Permit	\$2,000
Additional VIA Rail Items	\$170,000
Budgetary Contingency	\$100,000
Sub-total	\$4,197,300
Non-rebatable HST (1.76%)	\$73,900
Total²	\$4,271,200

² Denotes rounded total

The total tendered/projected cost is over the \$2,132,200 budget by \$2,139,000. The original budget allocated for this project was based on a preliminary cost estimate provided by Dillon, which had been created prior to the completion of detailed design.

Cost escalation from the original budget can be attributed to the following:

- **Scope changes** – During detailed design, the scope of the project was more well-defined and included items not included in the preliminary cost estimate.
- **Inflation** – The construction industry, like many others, have seen substantial increases in prices related to material and labour.
- **VIA Rail** – Consultations with VIA Rail have taken place over 12 months resulting in additional engineering and solicitor fees for meetings, correspondence, and design revisions not previously anticipated.
- **Scope of work** – The contract includes constrained and complicated work areas which require additional time and care during construction. General contractors indicated they prefer larger road and sewer projects and that the scope of the work along with VIA Rail requirements likely resulted in higher costs.
- **Retendering** – On rejection of the first tender, additional engineering time was used to evaluate tender bids and retender the project to include updated details.

Based on the distribution of costs within the tender, reserve funding is to be adjusted as detailed in the table below. Notwithstanding the RSIP grant awarded, it is customary to request allocation for the full project cost in order to secure authorization to pay for the works upfront and seek reimbursement from the funding agency afterwards. The net project cost is set out in a table further on in the report.

Lifecycle/Reserve Fund	Project Budget	Tendered / Projected Costs	Change
Road Lifecycle Reserve Fund	\$1,849,300	\$3,746,000	\$1,896,700
Watermain Reserve Fund	\$0	\$79,100	\$79,100
Wastewater Sewers Reserve Fund	\$0	\$100,800	\$100,800
Storm Sewer Lifecycle Reserve	\$282,900	\$345,300	\$62,400
Totals	\$2,132,200	\$4,271,200	\$2,139,000

Rail Safety Improvement Program (RSIP) Funding

In July 2020 the Town applied to the RSIP 2021/2022 Intake for the improvements required at the VIA Rail/Lesperance Road grade crossing. In a letter dated March 19, 2021, the Director of Transportation and Infrastructure Programs for Transport Canada advised the Town of its approval for funding (a Contribution being 80% of eligible costs to a maximum of \$10M) under the Rail Safety Improvement Program. The Government of Canada's investment towards the Town's project will be 80% of eligible costs up to a maximum of \$1,027,200.

Following a subsequent meeting with RSIP staff, Administration inquired with RSIP staff as to the possibility of increased funding for the project under this program due to increased costs discussed above. Although not approved, RSIP staff had confirmed that there exists an opportunity to increase funding for this project, with requests of up to 20% additional funding being approved by the grant program administrators. Requests above 20% would require a lengthier review and approval process.

Administration will be requesting additional funds as part of the agreement amendment at the end of the year.

A summary of the project costs including the approved recoverable from the RSIP, inclusive of the net impact to reserve and lifecycle funds, is outlined in the following table:

Lifecycle / Reserve Fund	Tender Project Cost	Original RSIP Funding	Additional 20% RSIP Funding³	Net Impact to Reserve Funds
Road	\$3,746,000	\$1,027,200	\$205,400	\$2,513,400
Water	\$79,100	\$0	\$0	\$79,100
Wastewater	\$100,800	\$0	\$0	\$100,800
Storm Sewer	\$345,300	\$0	\$0	\$345,300
Totals	\$4,271,200	\$1,027,200	\$205,400	\$3,038,600

³ Administration to discuss with RSIP on the potential for a higher percentage increase

VIA Rail: Infrastructure Contract (Crossing and Permission to Access)

Included within the Infrastructure Contract that is required to commence work, is Sub-Contract “C” which stipulates future financial implications to the Town for the duration of the contract (99 years).

Sub-Contract “C” includes the agreement:

- i) that the cost of maintenance and operation of the automatic warning system is to be equally shared between the Road Authority and VIA Rail;
- ii) that costs of maintaining the roadway approaches to the crossing are paid fully by the Road Authority; and
- iii) that costs of crossing rehabilitation be paid equally by the Road Authority and Via Rail.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh’s current and future growth is built upon the principles of sustainability and strategic decision-making.
<input checked="" type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh’s plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town’s “continuous improvement” approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town’s leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Cameron Hedges, P.Eng.
Engineering Project Manager

Reviewed by:

Tom Kitsos, CPA, CMA, BComm
Director Financial Services & Chief Financial Officer

Reviewed by:

Phil Bartnik, P.Eng.
Director Public Works & Engineering Services

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	Summary of Tender Results and Recommendation Letter