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CLOSED MINUTES – VICTORIA CITY COUNCIL

SPECIAL MEETING OF MONDAY, DECEMBER 31, 2012, AT 12:05 P.M.

PLACE OF MEETING: Committee Room #1, City Hall

PRESENT: Mayor Fortin in the Chair, Councillors Alto, Coleman, Gudgeon, Helps, Isitt, Madoff, Thornton-Joe and Young

CLOSED MEETING

It was moved by Councillor Coleman, seconded by Councillor Gudgeon, that Council convene a closed meeting that excludes the public under Section 12(6) of the Council Bylaw for the reason that the following agenda items deal with matters specified in Sections 12(3)(i) and (k) of the Council Bylaw. Carried Unanimously

1. **Johnson Street Bridge Project – Proposed Agreement**

The Chair thanked Council for attending this meeting on a short notice. He also thanked the Johnson Street Bridge Project team and for their hard work over the holiday season in order to observe the time constraints on the JSB project.

Peter Sparanese (JSB Project Principal): Provided an overview of the JSB replacement project.

John Haythorne (Fraser, Milner and Casgrain (FMC) City of Victoria External Legal Advisor): I

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The Project Principal made a presentation of the proposals which emphasized a number of optimizations to the project as well as the following amendments to the MMM contract:

- With the alteration of the bascule pier and the hydraulic system as compared to indicative design, a substantial design effort is needed. The best way to accomplish this within the schedule is for MMM to retain Hardesty and Hanover Consultants as their sub-consultant. This is the firm which undertook the preliminary design for PCL and provided plans and preliminary details for their proposal.
- MMM has reviewed its budget and is able to accommodate the majority of the Hardesty and Hanover Consultant's costs which are estimated at \$2,650,000; however, MMM requires an additional \$250,000. This is not as originally contemplated in the contract.
- In lieu of the previous negotiations, MMM staff has indicated that they are agreeable to cover all costs of the design work for the additional value engineering changes and not share in the opportunity for a share of the final contingency, if there is an amount left at the end of the project.

Conclusion

- The City's Consultant, MMM Group, has reviewed the contract documents prepared by FMC and the City, including optimizations, contingency, project risks and the value engineering opportunities, and in their professional opinion recommend that the City proceed with the project and enter into a contract with PCL Westcoast. The project team supports the recommendation to proceed.
- The City Solicitor advises that, **Section 14, Section 17**

Recommendation

- That Council approve the award of the contract for the construction of the new Johnson Street Bridge to PCL Constructors Westcoast Inc. in the amount of \$63,235,000 and authorize the Mayor and the Corporate Administrator to execute the contract generally in accordance with Attachment 5.
- That Council approve the amendment to the MMM engineering consulting agreement and authorize the Mayor and Corporate Administrator to execute the amending contract generally in accordance with Attachment 6.
- That Council approve the award of the retaining wall and associated soil removal costs to PCL in an amount not to exceed \$640,000 (not including taxes and preliminary design costs) to be funded from the tax sale lands reserve.
- That Council direct staff to prepare a public presentation on the award of the construction contract in January 2013.

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Next Steps

- Council approval to award contract to PCL Constructors Westcoast Inc.
- That Council approve the amendment to the MMM Group Contract
- Rise and report in January Open Meeting
- Start construction in 2013

Gail Stephens (City Manager): There is urgency to this project to meet the timeline. The contract with PCL is a fixed price contract so confirming the cost of steel and fabrication needs to be taken into consideration.

Peter Sparanese: The multi-use trail overpass optimization has been included in the PCL's proposal.

John Haythorne:

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Mayor Fortin questioned whether Mr. Joost Mayboom of MMM should be in this closed meeting of Council.

Peter Sparanese: Mr. Mayboom is the chief engineer on this project and has full knowledge of all the engineering aspects of this project, and will answer Council's questions. Mr. Mayboom will be excused from the meeting prior to any discussions by Council regarding the MMM contract with the City.

John Haythorne:

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Councillor Young said that in the list of contingencies, not all are true contingencies because we already know the City has to pay some of those costs. On the contingency list, there is approximately \$300,000 that has to be paid; the rest is contingency. We want assurance that, other than the risks listed, nothing else will arise. Also, will concrete block girders be used on the multi-use trail overpass bridge?

Peter Sparanese: If the concrete box girders are to be used they are deeper than the original design and may cause the grades to be steeper from an accessibility perspective, and if so they will have to be changed back to steel girders for an additional cost of \$250,000.

Councillor Young said the price of ballast steel is much lower than structural steel and yet it would seem that the City is paying for the ballast steel as structural steel.

Joost Mayboom: The ratio of ballast steel to structural steel is 3 to 1. PCL is responsible for 1700 tonnes of structural steel plus 5% above the 1700 tonnes. It would be prudent to carry contingency over and above what PCL is responsible for. In this case there is a low probability of a steel overrun.

Peter Sparanese: If the requirement exceeds the 5% above the 1700 tonnes, the City will be responsible for the excess.

Councillor Thornton-Joe said that some of the contingencies on the list are not real contingencies. What happens if something is discovered that would take time to deal with? How big is the time risk regarding the archaeological finds? Would federal funding be available if we are delayed by archaeological finds?

Dwayne Kalynchuk (JSB Project Director): We anticipate going out to the site early and start doing some excavation so if problems are encountered, we can fix those problems before the deadline. It would not be a problem to our timeline for the project. With respect to federal funding, the City can ask if the federal government would extend the deadline but there is no guarantee that the federal government will agree.

Councillor Helps asked what the portion of the budget should be at this stage in time.

Peter Sparanese: It depends on how the design is advanced. We do not fully know the amount of funding until the design is fully developed.

Councillor Helps asked if the contingency for steel is 4% of the budget.

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John Haythorne:

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Dwayne Kalynchuk: We are changing the design from mechanical to hydraulic.

Councillor Coleman

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John Haythorne:

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Peter Sparanese: The design of abutments on the east side and west side has been changed from a slanted phase to a vertical phase in order to stay within the budget allotted for the project. The level on the east side will be raised. We will have the consultant and contractor continue to improve the design.

Joost Mayboom was excused from the meeting at 12:35 p.m.

Peter Sparanese:

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John Haythorne:

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Councillor Young said there seems to be quite a substantial amount of fundamental changes in the MMM design. Is this still a MMM design?

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John Haythorne:

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Peter Sparanese: This case scenario is not uncommon. MMM coordinates all the entities to bring the project together. The City has a contract with MMM and it is MMM's responsibility to provide us with a completed design. By bringing in H & H as a sub-consultant, it will help us complete the project on time.

Councillor Young said a fair amount of the design done by MMM has been discarded – e.g. the counterweight and mechanism. Are we to assume that the City pays for both designs?

Dwayne Kalynchuk: We try to minimize this kind of work so that there is not much duplication. It is complicated to integrate MMM and PCL.

Councillor Young asked are we importing steel from China as discussed previously.

Peter Sparanese: This project is a world class design and we try to incorporate all the suppliers.

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Councillor Alto said with phrases like fundamental changes, we would assume changes in material and design. In the long run, will we get a bridge that will deliver the amenities that we are expecting?

Peter Sparanese: Yes, the bridge will deliver the expected amenities.

Councillor Alto asked

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Tom Zworski (City Solicitor):

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Councillor Alto asked if

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The Contract change to MMM be that H & H will be taking over design changes that MMM were supposed to do. Since MMM did not give us the proper design, why is the \$250,000 not paid by MMM? Why is it the City's responsibility?

Dwayne Kalynchuk: MMM has to pay the estimated \$2,650,000 for H & H's costs. Commercial rates are higher than domestic rates.

Peter Sparanese: MMM has to accelerate the design to meet the project's timeline so that PCL can complete within the deadline, thus, the hiring of a sub-consultant. The design will be done quicker by MMM retaining H & H rather than engaging a firm with no experience on project.

Councillor Alto said she is still puzzled as to why the City is adding money to the MMM contract.

Peter Sparanese: MMM would do all the duties of engineering work as identified by the design contract.

Dwayne Kalynchuk: H & H is retained to accelerate the design so it could meet the PCL schedule in five months.

Councillor Madoff said the question is whether or not we have confidence in MMM to get the job done. Revised design and design refinement are very different things. Should we be concerned that we are not getting the value of this project that we originally thought we had? Are we looking at refinements as to the features of bridges? Are the adjustments better?

John Haythorne:

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Councillor Madoff said she cannot see anything that we lost in the design.

John Haythorne:

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Gail Stephens: There are improvements to the design.

Dwayne Kalynchuk: H & H will be designing the package.

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Tom Zworski:

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Councillor Alto asked

Section 14, Section 17

Tom Zworski:

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Councillor Alto asked if MMM cannot afford to deal with H & H, correct?

Dwayne Kalynchuk: Yes, MMM does not retain H & H until they get the actual money.

Councillor Madoff asked at some point, when do they stop getting the opportunity to ask us for money?

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Dwayne Kalynchuk: If the City did not have schedule pressures, we would not be having this discussion. PCL has to put staff out to work and meet deadline. This is the premium we are paying to MMM to meet PCL's schedule.

Councillor Alto said anything positive is accompanied by a price-tag. This process of making a decision is unfair. We do not have a choice in this case and that makes the choice difficult. This has put me in a really uncomfortable position.

Councillor Gudgeon said we have a strong team of professionals who are advising us to take the contract. In order to eliminate finger pointing at a later date, we look to the team and asked if they have faith in these recommendations. We are looking to the City Manager for accountability – do you have confidence in the team?

Councillor Thornton-Joe said she is looking to the team and asking the team if they are confident with their recommendations.

Gail Stephens: There is no guarantee because all major projects have risks. What we reported is only a small portion of the existing problems. As to this major capital project, the team has worked very hard and cannot imagine that we can do anything better. We have a team that is totally dedicated to this project. This team has given you everything we have. She approved the report.

Councillor Madoff said we are looking for confidence in this project. The last paragraph of the solicitor's report said

Section 14, Section 17

The funding of the retaining wall is coming out of the land sales tax reserve.

Dwayne Kalynchuk: There is more value in the property by putting a retaining wall on it instead of dirt. If the City does not have a retaining wall on the property, we cannot lease it.

Councillor Madoff said it is good that we are not taking the cost of the retaining wall from the budget of bridge. We need to put this in the rise and report.

Councillor Isitt said this is a bit of a stretch that the retaining wall is not part of the project. Was it not foreseeable that the property and Right of Way might be leasable? Why is the retaining wall not considered as part the JSB project?

Dwayne Kalynchuk: If we had soil on the site, we would not need a retaining wall. In this case, Ralmax's plans changed also to accommodate the retaining wall. We could build the bridge without the retaining wall. It is better if the retaining wall is built there, but the retaining wall has nothing to do with the bridge. A portion of 203 Harbour Road property is dedicated as a Right of Way for the new bridge. Where do we put the boundary? By building the retaining wall, we are moving the boundary south.

Councillor Isitt said we are using City real estate to accommodate the bridge project. We cannot treat the City lands inventory as a free lunch.

Gail Stephens: The abutment protects the land, and also maximizes the future value of the land.

Councillor Isitt said if the bridge has to move, we want to retain as much of 203 Harbour Road as possible.

Councillor Helps asked is it by the referendum that we are bound to the 100 year life of the bridge. Is it 100 years or 75 years? On the conceptual design life, it is assigning a 75 year bridge, not a 100 year bridge.

Joost Mayboom re-entered the meeting at 1:18 p.m.

Mayor Fortin said H & H said they are building 75 year design life.

Joost Mayboom: The steel has a 100 year design life. Taking into consideration the durability and wear and tear on the mechanical pieces, a 100 year design life is not unrealistic. A conservative estimate of the design life for the mechanical pieces would be 75 years. How long the mechanical pieces would last would depend on the maintenance and operation regime, which is in the contract. If the bridge is maintained properly, then it would probably last longer than the warranty period. The life of the mechanical pieces would depend on the material that the suppliers are using.

Joost Mayboom was excused from the meeting at 1:21 p.m.

Councillor Alto said

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John Haythorne:

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Councillor Alto said the potential costs as to GST and PST can be quite significant in this project.

Peter Sparanese: Section 22.4 of the contract states that the contractor is solely responsible and will pay all taxes, duties, levies and charges (excluding GST/HST) payable in respect of the Contract Price. We have \$2.9 million allotted to taxes if required.

Councillor Alto said Appendix A, page 56, sections 20.1, 20.2 and 20.3, GC.20, on the warranty is definitive and straightforward. It states a warranty period of two years, which is significantly different from 75 years.

Dwayne Kalynchuk: Most contracts have a warranty period of one year. They are giving the City a two year warranty. We have to make sure that the pieces are put together properly.

Councillor Alto asked

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John Haythorne:

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Councillor Young said there is design clause, item 3, on the retaining wall. There is no constraint to spend on beneficial improvement of the lot in a legal manner. He shares Councillor Isitt's concern on the treatment of this property.

Tom Zworski: This issue was thoroughly reviewed by the team and with Finance. In terms of the history of the project contemplating a retaining wall, the City has negotiated with Ralmax and has modified the project to maximize leasable property by constructing the retaining wall.

Councillor Young said this is another cost to the project. He does not agree that it is not part of contract because it should be part of contract. He wants to direct staff to prepare reports on both contracts. He is uneasy on some things that are considered known risks on the contingency list, such as City costs and BC Hydro costs, which are expected to come out of the \$66 million envelope. He is concerned that we are understating the costs in the contract.

Tom Zworski: The retaining wall is to be done under one contract with PCL. All the costs are included in Schedule C, which are to be paid out of the \$66,000,000 dollar budget.

Councillor Young said some of the costs are termed contingency, and it is not fair to characterize them as contingency. We know that we will be spending on BC Hydro and City costs. The cost of steel is unknown at this point. Some of those items are not unknown, and we know that the City has to pay out from the envelope of which we do not know.

Mayor Fortin said you are including other costs with contingencies. Staff is saying that the contingency fund is paying other costs that we do not know about.

Dwayne Kalynchuk: We allocated a component of allocated risks and other costs associated with the PCL proposal in the amount of \$3,072,500.

Councillor Young said we have allocated risks and costs for \$3,072,500 and other costs that are expected to come out of \$66,000,000 budget. What are the changes from straightening the abutment walls to shorten the approach?

Dwayne Kalynchuk: The savings doing that may be \$900,000.

Mayor Fortin asked are we willing to pay the extra cost to lower the beams in the bridge design just to have the design look aesthetically pleasing.

Councillor Gudgeon asked are we going to create a new bridge maintenance division? Labour costs are already a problem with the City budget.

Dwayne Kalynchuk: We either train our staff to do the maintenance or tender it out. We have to review the hydraulic motor first, in order to budget the maintenance requirement. Then we will bring the matter before Council.

Councillor Gudgeon asked what is the quality of the parts that we are buying?

Dwayne Kalynchuk: There will be a lot of off-the-shelf components from a variety of suppliers. The initial parts will be of the highest quality. For the two year period, contractors and sub-contractors will be doing that maintenance. After that we have to assign the maintenance work to staff or tender it out.

Councillor Gudgeon said there are no risks to accommodate hazards. Our existing bridge is more of a hazard.

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Mayor Fortin said the ongoing operating cost for the new bridge is lower than maintaining the old structure.

Councillor Gudgeon said the cost of maintenance of the new bridge would be less than maintenance of old bridge.

Councillor Thornton asked is the maintenance more economical in the choice of the design of bridge.

Dwayne Kalynchuk: Yes

Mayor Fortin excused himself from the room at 2:06 p.m., and Acting Mayor Madoff assumed the Chair.

Councillor Thornton-Joe said she wants confidence from the team.

Dwayne Kalynchuk: The problem with maintenance of old bridge is that we have to go to second hand shop to get components. A hydraulic bridge, if maintained properly, would last a lifetime.

Councillor Thornton-Joe asked were there any best practices that we learned from the building of the arena.

Mayor Fortin returned at 2:09 pm and assumed the Chair.

Councillor Madoff noted the following:

- This contract is like night and day in comparison with the other contract. We have much higher confidence now.
- As to the City's discussion with Point Hope – look at it as a real estate requirement not a bridge requirement. It is important that this point is clearly communicated to the public
- Other concerns – what we know as contingency is contingency and the other costs are other costs. The public only look at the bottom line. The average person has to be able to see what is transferred. These are things that created a degree of uncertainty.

Motion

It was moved by Councillor Alto, seconded by Councillor Coleman, that:

1. Council approve the award of the contract for the construction of the new Johnson Street Bridge to PCL Constructors Westcoast Inc. in the amount of \$63,235,000, and authorize the Mayor and Corporate Administrator to execute the contract generally in accordance with Attachment 5 of the December 28, 2012 report.
2. Council approve the amendments to the MMM Group Limited, engineering consulting agreement, and authorize the Mayor and Corporate Administrator to execute the amending contract generally in accordance with Attachment 6 of the December 28, 2012 report.
3. Council approve the award of the retaining wall and associated soil removal costs to PCL Constructors Westcoast Inc. in an amount not to exceed \$640,000 (not including taxes and preliminary design costs) to be funded from the tax sale land reserve.
4. Council direct staff to prepare a public presentation on the award of the construction contract in January 2013.

Councillor Isitt asked

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Tom Zworski:

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John Haythorne:

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Councillor Isitt asked

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Tom Zworski:

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Dwayne Kalynchuk: We have done additional testing in September, and we have put in a substantial amount of work to identify and quantify the risks.

Councillor Isitt said contingency or lack thereof; the City-borne costs should be distinguished as there is not much left in contingency budget. There is not a lot of wiggle room and the design budget is not adequate. He cannot support the motion on the table.

Dwayne Kalynchuk: Our team did intensive work in identifying the risks. We and PCL feel comfortable with the assessment. Certainly, this is a critical decision for the team. Again there are unknown risks that we are talking about. We can only do our best.

Councillor Isitt said we have a design that cannot be built within the \$66 million limit. If unforeseen circumstances arise, we may not have the funds available. Taxpayers will not support an increase.

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There is a high likelihood that the City will have to increase the budget to complete this project. To see the breakdown detailed in Schedule C, we will be spending it, so there will not be enough funds for contingencies. We are trying to build a designer bridge in a small city on a small budget that is not adequate.

Councillor Helps said the solicitor's report is quite frank and helpful. She cannot support this and does not take this decision lightly. 'What if' is not a good way to make decisions? We need to see what is in front of us. Each one of us is not willing to spend more than \$93 million. There are a great number of unknowns, and we do not have the money to cover those concerns. She cannot support the motion on the table.

Councillor Alto said there are many concerns to consider:

- *We need a new bridge sooner than later;*
- *From the material that we have received, she sees a series of reports that say there are a lot of risks, but then, risks are part of any project. \$66 million is what we have left. All of the documents say that available funds are \$66 million. Staff is reasonable and has presented all of the details to Council.*

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- *She has many questions and concerns. There are unanswered questions. We need to know how we should present this to the public and report. This information should be provided to us.*
- *We need to rely on the expertise of others to help us complete this project within budget. She cannot see anywhere it says that we cannot do this.*
- *We need to move forward, so she will support the motion.*

Councillor Young said that he has concerns that if this project exceeds our budget, we will find other places to pull the money from, e.g. land sales tax reserve. He will support this motion as it is the best thing for the City at this time. It is not beneficial for City to carry the project to this stage and then abandon it. In order to meet the budget, we may not get a graceful bridge (change of design from graceful multi-facet beams to 4 sided vertical beams). The team that originally designed that bridge is different than what we have now. The decision to build a new bridge is a bad decision. We depended on MMM to provide the design but they cannot estimate the costs which is now 25% different. We could refit the old bridge instead of building a new one. He made those arguments in the past but could not persuade his colleagues and the public.

Councillor Coleman said that he is annoyed at the amendment to MMM in the amount of \$250,000. In order to move forward in this project and keep the price that we have, it is necessary to fund MMM the \$250,000. Thanks to Councillor Madoff for helping him with Item 3 in the recommendations regarding the retaining wall. He agrees with Councillor Young to move this one forward. We would end up with an incredibly negative image if we do not move forward and complete the project within \$93 million.

Councillor Madoff said when she came into this project; she was determined to save the old bridge under heritage preservation. When she was hit with all the facts, she had to realize the responsibility that she carries as a City Councillor. She has never been one to say doing something is better than nothing. With optimization, we can bring the project within the \$93 million. There is no such thing as certainty. When scrutinized, what are our chances of success in bringing this project within the budget? If this recommendation is supported, how we present the message to the public is very important. We need to spend some time to prepare a proper presentation to public. She will support this recommendation and move the project forward.

Councillor Thornton-Joe said that Council and staff are a team and we work as a team. She feels confident that staff wants this to be a success as much as the members of Council want it to be a success. We will not get a 100% certainty this project. She has confidence in staff to give good advice. At this point the project should move to next step.

Councillor Gudgeon said she appreciates that we have a better process in this project than the arena. She agrees with Councillor Young that pulling the plug is detrimental to the City. It is not that much of a political decision, as much as having complete confidence in the staff team doing it. She will support this motion.

Mayor Fortin noted:

- *Earlier in the process we had spent a half-million dollars to have studies done.*
- *It is not something that we walk into blindly. As to Item 3 in the recommendation, the decision was made later. We used City land out of the land reserve and did not sell the other land. We chose to recover the land to build a retaining wall.*
- *Deal with rise and report today and we will have until January 7, 2012 in the morning to come out with detail if we approve of it today.*

For:

**Mayor Fortin, Councillors Alto, Coleman,
Gudgeon, Madoff, Thornton-Joe and Young**

Against:

Councillors Helps and Isitt

Council agreed to provide details on January 7, 2013.

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ADJOURNMENT

Motion:

It was moved by Councillor Coleman, seconded by Councillor Helps, that the Closed Council meeting adjourn.
Time: 2:42 p.m. Carried Unanimously

RECONVENE SPECIAL MEETING OF MONDAY DECEMBER 31, 2012, at 2:43 P.M.

PLACE OF MEETING: Committee Room #1, City Hall

PRESENT: Mayor Fortin in the Chair, Councillors Alto, Coleman, Gudgeon, Helps, Isitt, Madoff, Thornton-Joe and Young

CLOSED MEETING

It was moved by Councillor Helps, seconded by Councillor Madoff, that Council convene a closed meeting that excludes the public under Section 12(6) of the Council Bylaw for the reason that the following agenda items deal with matters specified in Sections 12(3)(i) and (k) of the Council Bylaw. Carried Unanimously

RISE AND REPORT

Council expressed a desire to rise and report on Johnson Street Bridge Project replacement contract, and a full rise and report on the details of the agreement to take place in the morning of Monday, January 7, 2013.

Motion

It was moved by Councillor Alto, seconded by Councillor Helps, that Council empowers the Mayor to rise and report immediately and schedule a technical briefing and report on Monday, January 7, 2013.

For: *Mayor Fortin, Councillors Alto, Coleman, Gudgeon, Helps, Madoff, Thornton-Joe and Young*

Against: *Councillor Isitt*

ADJOURNMENT

It was moved by Councillor Alto, seconded by Councillor Helps, that the Closed Council meeting adjourn.
Time: 2:50 p.m. Carried Unanimously

CERTIFIED CORRECT:

ACTING CORPORATE ADMINISTRATOR

MAYOR OF THE CITY OF VICTORIA