
Subject: Canada Summer Games Park - Transition Performance

Report to: Special Council

Report date: Thursday, May 20, 2021

Recommendations

1. That a gross capital budget adjustment in the amount of \$ 77,293,105 gross and \$100,000 net **BE APPROVED** (and **INITIATED**) for the Canada Summer Games Park as per Appendix 3 of Report CAO 10-2021, and that the budget reconciliation **BE FUNDED** from:

- Municipal Cost Sharing - St. Catharines (\$10,105,501),
- Municipal Cost Sharing - Thorold (\$5,105,501),
- Cost Sharing Other - Brock University (\$996,643),
- Other External – Sponsorship/ Fundraising (\$5,400,000),
- Provincial Grants (\$27,792,730),
- Federal Grants (\$27,792,730), and
- Capital Variance - Levy (\$100,000).

Key Facts

- The purpose of this report is to (i) inform Regional Council that the Canada Games Park transition has, subject to a couple of remaining deliverables which staff anticipate being in receipt of on or around May 20, 2021, been completed; (ii) provide Regional Council with an account of the current financial and construction status of the project; and (iii) to adjust the Regional project budget to account for the transfer of the project construction from 2021 CSG Host Society Inc. ("**CSG Host Society**") to the Region.
- Importantly, and notwithstanding the necessary budget adjustment to account for the transfer of construction responsibility, the Region's contribution to the project is only increasing by \$100,000 at this time to \$ 20,136,786
- On June 4, 2020 Regional Council approved, in principle, the transitioning of responsibility for construction of Canada Games Parks to the Region.
- On June 30, 2020 The Regional Municipality of Niagara (the "**Region**") executed a Transition Agreement (the "**Transition Agreement**") with CSG Host Society setting

out the details, including preconditions, to the transition of responsibility for managing the remaining construction of Canada Games Park to the Region.

- One of the key preconditions to effecting the transition was obtaining the Province's consent to same, as was required under the Investing in Canada Infrastructure Program (ICIP) Transfer Payment Agreement (the "**Provincial Consent**").
- The Region and CSG Host Society continued to follow-up on the status of the Provincial Consent throughout the summer and fall months. The Province circulated a draft of the necessary amending agreement on December 14, 2020 with the final agreement being executed and circulated by the Province on May 12, 2021.
- Once the Provincial Consent was in hand, the Region and CSG Host Society moved quickly to finalize the transition, which is anticipated to occur on or before May 20, 2021 (the "**Closing Date**").

Financial Considerations

A. Financial Reconciliation and Budget Adjustment

The total capital budget for the Canada Games Park is \$103.2 million. Given that the construction of the Canada Games Park is currently underway and CSG Host Society has both received and disbursed money in respect of same, the Transition Agreement contemplates a complete reconciliation of the Canada Games Park budget in order to reallocate the required capital funds for the project from CSG Host Society to the Region. As a result, \$97.4 million of the total capital budget for Canada Games Park will be transferred to the Region for the construction of the facility, while the Host will continue to manage the remaining \$5.9 million for games competition equipment and site servicing. The completed financial reconciliation is summarized below, in Table 1, and results in the Region paying to CSG Host Society \$372,770. A more detailed reconciliation can be found at Appendix 1.

Table 1 - 2021 Capital Budget Cash Flow Reconciliation

Expenses incurred in respect of the Project as at Closing Date		<u>NR</u> <u>Reconciliation</u>
Total Revenue Collected for Project		\$72,595,729
Total Expenses for Project		\$64,732,152
HST to be reimbursed to the Region by Host*		\$2,749,064
Total Surplus Revenue		\$5,114,640
Funds for Host budgeted Offsite Works/Games Equipment		
Offsite Works		\$1,612,326
Games Equipment		\$3,667,061
HST		\$208,024
Total Funds Retained by Host		\$5,487,410
Total Payable to CSG Host		-\$372,770

* Under the direction of Deloitte, CSG Host has filed a section 211 election which eliminates the non-recoverable HST which was not initially included in the CSG Host Society budget. Accordingly, the recoverable HST of \$2,957,088 will be repaid to the Region after receipt.

The Region has budgeted \$20.14 million for the capital contribution, consisting of \$0.1million funded through a capital variance - levy, \$6.3 million funded with debentures and \$13.7 million funded from the Gas Tax capital funding (see Appendix 2 for the current project budget). Of note, all but \$0.45 million of the Region's capital contribution has already been transferred to CSG Host Society.

As was reported in CSD 42-2020, the transition of construction responsibility from CSG Host Society to the Region, requires a budget adjustment. While the Region's capital contribution to the project remains unchanged, the budget needs to be increased to reflect the other funding partners as well as the full cost of construction of the Canada Summer Games Park (the Region will record in its financial records the value of costs incurred to date on the facility as well that the budget for remaining costs to be incurred to complete the project). The budget adjustment particulars are shown in Appendix 3.

The budget adjustment requested in this report is in accordance with the Region's Budget Control Policy. In the event of a budget shortfall at any time that would be considered by the Region for funding, the Policy would require the incremental funding to be approved by way of a budget amendment which would require a funding source to be identified and public disclosure of the reconsideration of the budget.

B. Financial Risks

At the time of transition, Region staff have identified financial risks of approximately \$3.0 million flowing specifically from pending project change orders and other construction risks. In some cases these projected costs result from deficiencies or unforeseen issues that will need to be resolved before project completion. Further details on the project risks contributing to this forecasted budget risk can be found in the Analysis section, below. It should be noted that a potential HST expense could occur when construction is completed and the completed asset is transferred to the consortium, however, a potential mitigation is available at the time of transfer that will negate this risk.

Analysis

A. Canada Games Park - Transition Timeline

It was always contemplated (including in the ICIP Funding Agreement) that the Canada Games Park assets would, eventually, be transitioned from CSG Host Society to a consortium consisting of the Region, the City of St. Catharines, the City of Thorold and Brock University (the "**Consortium**"). Transitioning during the construction phase allows for:

- I. CSG Host Society, a largely volunteer organization, to focus their efforts on the balance of the (much smaller) capital projects associated with the 2022 Games Summer Games and the actual delivery of games (including sponsorship and funding activities); and
- II. The Consortium to control and manage the commissioning and handover of the Canada Games Park asset – an asset that the Consortium will be responsible for throughout the legacy period.

Accordingly, on June 30, 2020 the Region executed a Transition Agreement with CSG Host Society setting out the details, including preconditions, to the transition of responsibility for managing the remaining construction of Canada Games Park to the Region.

The Region and CSG Host Society formally sought Provincial Consent on July 4, 2020 and continued to inquire about the status of the Provincial Consent, including at Provincial Steering Committee meetings over the course of the next several months. The Region and CSG Host Society first received a draft of the necessary Provincial Consent (in the form of an amending agreement to the ICIP Funding Agreement) on December 14, 2020. The draft was finalized over the course of the next several weeks with the Province circulating the document for execution by CSG Host Society, the Region and the 'Participants' (i.e., the Consortium) in March¹. The Province was the final signatory to the amending agreement and signed on May 12, 2021.

With the Provincial Consent in hand, there are only a couple of remaining preconditions to completing the transition – namely:

- (i) to have the performance security (i.e., performance bond and labour and material bond) issued in accordance with the construction contract re-issued and/or assigned to the Region. CSG Host Society is working with the construction contractor, Aquicon, to complete this step; and
- (ii) being in receipt of an insurance certificate from the architect/contract administrator evidencing the Region as an additional insured under the architect's policies of insurance

The Region anticipates having these deliverables from CSG Host Society on or before May 20, 2021, which would complete the transition.

Notwithstanding the considerable passage of time since the execution of the Transition Agreement, CSG Host Society and the Region continued to work closely with the Region assuming a more active role in construction oversight of Canada Games Park in the months leading up to the Closing Date (notwithstanding the fact that the formal transition had yet to occur). Staff have reviewed all of the change orders to date, are regularly attending on site and have developed relationships with the relevant project contacts to ensure a smooth and efficient transition of responsibility from CSG Host Society to the Region.

Importantly, and notwithstanding the transition of construction responsibility for Canada Games Park, the successful delivery of Canada Games Park in time for the 2022

¹ Niagara Region executed the document on March 29, 2021.

Canada Summer Games will still require the mutual coordination and cooperation of CSG Host Society and the Consortium partners.

B. Canada Games Park – Construction Progress

The construction contractor, Aquicon, mobilized on the site in December 2019. After 18 months of construction, various project milestone work is complete or nearing completion. This includes site works (excluding landscaping), storm water management, outdoor athletic facilities, west parking and driveways, foundations, below slab building services, superstructure (structural steel and concrete block), structural steel, gymnasium slab and portions of the building envelope.

In addition, all major building equipment packages including ice rink refrigeration, electrical back-up generator, roof top HVAC units, boilers, cooling tower and main electrical switchboard are installed.

On June 1, a large portion of the onsite parking will be handed over to Brock University for their use.

Roofing, HVAC, plumbing, life safety, rough-in for mechanical / electrical Interior works including drywall, mechanical ductwork, plumbing, lighting, glazing partitions and rink refrigeration headers / slab reinforcing are underway.

Interior finishes have not started. Detailed planning for the commissioning phase of the project is underway with the oversight of the 3rd party commissioning agent.

Schedule

At the time of award, the Aquicon contract was phased such that all of the work needed for a successful Games would be complete by the end of July 2021 (Phase 1 and 2). Construction would pause during August 2021 for the Canada Summer Games and the contractor would then remobilize in September to complete the remaining work (Phase 3) with a substantial Performance contract date of December 1, 2021.

On December 19, 2020, Aquicon provided a construction schedule indicating early substantial Performance on July 30, 2021 and the following milestones:

- July 30, 2021 - Substantial Performance of Phase 1 including outdoor program facilities for the Games, exterior amenities and associated electrical, mechanical and communications systems.
- July 30, 2021 - Substantial Performance of Phase 2 and 3 including all Games ready interior amenities and all other work complete in building and on site.
- August 2021 - Construction shut down for Canada Summer Games.
- October 29, 2021 – Total Performance.
- The original project schedule indicates delivery of the project 3 months earlier than required by the contract including a 1 month shut down during August.

In the March 2020 Monthly Summary Report, the project manager (UEM) assigned a moderate to high risk factor for the Substantial Performance of Phase 2 by July 30, 2021 due to weather events, unknown site conditions, permit delays and anticipated material and labour shortages along with an aggressive construction schedule with fixed deadlines. The March report also included a moderate to high risk to the project based on a letter from Aquicon (March 25, 2020) indicating delays to the project due to the impact of COVID-19 on construction efficiency and the uncertainty around labour availability and material supply chains.

After a one month shut down due to COVID-19, the contractor remobilized on site and on May 5, 2021 formally advised of a project delay of 20 days due to the provincially mandated shut down. On May 13, 2021, Aquicon issued a revised construction schedule with an overall delay of 6 weeks, moving the date of Substantial Performance for Phase 3 to September 17, 2021 and total Performance to November 26, 2021.

Since May 2021, the contractor has materially revised the construction schedule two times:

- July 13, 2020: date of Substantial Performance for Phase 3 revised to December 1, 2021 and date for Total Performance revised to January 26, 2022.
- October 6, 2021: date for Substantial Performance for all three phases revised to December 1, 2021 and date for Total Performance on January 26, 2022. With the Games delayed by one year (confirmed on September 16, 2020), a phased hand over of the site is no longer necessary.

The contractor has provided an additional five schedules (December 2, 2020, December 23, 2020, January 20, 2022, March 2, 2021 and April 6, 2021) with no change to the dates for Substantial Performance and Total Performance.

Schedule Risk: Moderate to High

Although construction is progressing well based on 18 months of construction and the contractor has not revised the date of Substantial Performance, there are various items determining the moderate to high risk factor assigned by Region staff, including the following:

- Numerous milestone work is tracking behind schedule due to poor weather conditions, market availability, loss of productivity due to COVID-19 and coordination issues on site. Some of the work is on the critical path while other aspects of the work likely have some float within the schedule.
- As per the UEM April 2021 Project Status Update report, the contractor has logged 19.75 working days lost due to inclement weather. Another 50 working days have been contractually added to the schedule: 20 days due to the provincially ordered shutdown, 10 days indicated on CO 12 (Poor Soils) and 20 days indicated on CO 130R1 (Cable Tray Locations).
- The work associated with Change Directive 6 (Thermal expansion for roof overhangs) started in early April and involves reinforcement of numerous structural connections already constructed along the roof overhangs. The change directive has delayed completion of parts of the building envelope and is anticipated to take another 6 to 8 weeks to resolve. To date, the contractor has not formally notified the CSG Host Society of an extension to the construction schedule resulting from the additional work.
- IT, communications and telephony infrastructure and equipment are not included in the base scope of the project as they are typically budgeted and completed by the owner (outside of the general contractor contract). The architect is currently developing a contemplated change order to perform the work by the general contractor.
- Due to the extension of the Games, the contractor has been able to largely mitigate the impact of COVID-19 on the project but uncertainty surrounding the

pandemic remains a risk and the pandemic continues to affect the project schedule, cash flow, budget and potentially equipment, material and labour supply.

Although the contractor has not revised the date for Substantial Performance there remains a moderate to high risk that the Substantial Performance date extends past December 1. It is too early to predict the impact on the schedule, but any extension beyond mid-December will jeopardize opening the Park to public use in January 2022 and will materially affect the Consortium's revenue projections for 2022.

In the event that the construction schedule is delayed, staff will work closely with UEM, the architect and the contractor towards possible mitigation measures to minimize the impact on the facility opening date.

Construction Cost

To date, the project has approved 140 Change Orders totaling just over \$6.1M (7% of the contract amount). This is higher than the 5% of contract cost typically carried on new construction projects and is largely attributed to poor soils conditions on the site. Of the \$6.1 M, \$4.2 M is due to soil conditions, \$1.35M potentially related to errors and/or omissions in the contract documents, \$155,000 addresses existing conditions, \$600,000 is for the Host (Games equipment) and the remaining \$363,000 is for Consortium requested changes. As reported, above, in the financial section of the report Region staff estimate a further budgetary risk of approximately \$3 million due to pending or anticipated future change orders.

C. Canada Games Park – Legacy Operation Matters

A Consortium and Co-Tenancy Agreement (the “**Consortium Agreement**”) formally creates the Consortium called “The Canada Games Park Consortium” and deals with a number of matters relating to the orderly planning, governance, activities and affairs of the Consortium and their co-tenancy of the leasehold title to the lands upon which Canada Games Park is built (the “**Legacy Lands**”).

The Consortium has arranged itself such that each Consortium member will, from and after the Performance of construction (“**Project Performance**”), own an undivided 25% interest in the leasehold title to Canada Games Park. Prior to Project Performance the Region is responsible for completing construction of Canada Games Park for and on

behalf of the Consortium and then, at Project Performance, turning over Canada Games Park to the Consortium.

Following Project Performance a ground lease (the “**Legacy Lease**”) between Brock, as landlord, and the Consortium, as tenant, commences such that the Consortium will have possession of the Legacy Lands for a 38 year period.

As the construction of Canada Games Park is set to be completed by the end of this calendar year the Consortium has commenced work on a number of implementation matters to help ensure that the Consortium is ready to accept and begin operation of the facility at Project Performance, including the following key activities:

- Establishing a management committee as formal governance structures for decision-making;
- Development of an RFP for the retention of independent operator to manage the day-to-day operations of Canada Games Park; and
- Establishing a sponsorship committee for the purpose of securing sponsorship revenue, including with respect to the long term naming rights of Canada Games Park.

Staff will keep Council informed as legacy operations matters further develop.

Alternatives Reviewed

N/A

Relationship to Council Strategic Priorities

The successful delivery of Canada Games Park will provide the Region with a legacy of health, wellness and athletic excellence for decades to come. In this way, the project supports meeting Council’s strategic objective of fostering a “healthy and vibrant community”.

Other Pertinent Reports

CSD 64-2020
CSD 67-2020
CAO 11-2020
CSD 42-2020

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Appendices

Appendix 1 Transition Budget

Appendix 2 Project Budget

Appendix 3 Budget Adjustments