

HALIFAX

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Item No. **9.1.1**
Audit and Finance Standing Committee
October 21, 2015

TO: Chair and Members of the Audit and Finance Standing Committee
Original Signed

SUBMITTED BY: Richard Butts, Chief Administrative Officer
Original Signed

Jane Fraser, Director, Operations Support

DATE: September 17, 2015

SUBJECT: Budget Increase CBU01004 – Former CA Beckett School – Soil Remediation

ORIGIN

- Approved 2007/08 Project Budgets
- CAO Award Report, June 3, 2015 - Budget Increase to CBU01004-Former CA Beckett School – Soil Remediation

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Council approved, December 11, 2012, that all budget increases are to be presented to the Audit and Finance Standing Committee, prior to submission to Council.

Halifax Charter, Section 93(1) - The Council shall make estimates of the sums that are required by the Municipality for the fiscal year; Halifax Charter, Section 79(1) - Specifies areas that the Council may expend money required by the Municipality; Halifax Charter, Section 35(2)(d)(i) - The CAO can only authorize budgeted expenditures or within the amount determined by Council by policy; Halifax Charter, Section 120(6) - The Municipality may maintain other reserve funds for such purposes as the Council may determine; Halifax Regional Municipality policy on Changes to Cost Sharing for Capital Projects - Changes requiring Council approval; and the Halifax Regional Municipality Reserve Policy - No reserve funds will be expended without the CAO's recommendation and Council's approval.

RECOMMENDATIONS

It is recommended that the Audit and Finance Standing Committee recommend Regional Council to:

1. Increase **Project No. CBU01004 – Former CA Beckett School – Soil Remediation** by \$218,372.02 (net HST included) with cost sharing \$215,872.02 from Halifax Regional School Board (HRSB) and \$2,500 from CAPPOOL as outlined in the Financial Implications section of this report.
2. Increase **PO No. 2070720498** to Vector Demolition, by \$187,714.80 (net HST included) with cost sharing \$168,943.32 from Halifax Regional School Board (HRSB) and \$18,771.48 (10%, net HST included) HRM's cost-shared portion.
3. Increase **PO No. 2070356885** to Stantec, by \$52,143 (net HST included) with cost sharing \$46,928.70 from Halifax Regional School Board (HRSB) and \$5,214.30 (10%, net HST included) HRM's cost-shared portion.

BACKGROUND

The former CA Beckett School property (now HRM park land) at 23 Fenerty Road, Halifax, and surrounding properties were adversely impacted by fuel oil leaked into the ground while the property was occupied as a school. Remediation work was undertaken following the discovery of the leak in 1993 by the Halifax Regional School Board. It was thought at the time that all fuel oil was removed.

Further investigation in 2006 uncovered more contamination in the area. Most of the remaining properties were remediated in 2008/9, except for one property, due to disagreement on the clean-up details. The remaining property owner, HRM and the Halifax Regional School Board staff have spent several years negotiating the exact details of the clean-up work, which have now been finalized. This contract will remediate the last remaining affected property to the Provincial guidelines.

HRM Council approved a cost sharing arrangement with Halifax Regional School Board on April 3, 2007 for the remediation of the remaining impacted properties. The agreement was that Halifax Regional School Board will cost share 90% of all expenses on this project and HRM 10%. To date, approximately \$2.5 Million (HRM and HRSB combined) has been spent on this project.

Tender 15-167 involves excavating and removing contaminated soil to an appropriate land-fill facility certified for contaminated materials. Affected areas will be landscaped and restored to the same condition as prior to the excavation. All work will be conducted to all applicable government standards. A portion of the park at 23 Fenerty Road will be temporarily used by the contractor during the project, and will be fully restored when the work is complete.

DISCUSSION

During excavation work, the foundation wall was discovered not to have a footing, which would be expected for a house of this age and size. Without a proper footing, the house foundation was much weaker than normally expected. The consultant had to make a design change that resulted in a more complex and labour intensive excavation to safely complete the work. The change involved a closely spaced temporary support to stabilize the house during excavation. Options were assessed to minimize the increase; the proposed work is the most cost-effective solution. (Note: This project does not fix the foundation of the house, only supports the foundation to enable the soil remediation work.)

Scope and Schedule:

The duration of this work was expected to be approximate ten (10) weeks. With the changes to the methodology as noted, it is expected to take an additional five (5) weeks. Staff will communicate project details to affected property owners, and to park users.

For the duration of the project, a Halifax Regional School Board representative will meet with the HRM Project Manager on a regular basis to discuss project details.

FINANCIAL IMPLICATIONS

Funding is available in the approved Project Budget with a transfer from CAPPOOL and the approved cost sharing agreement terms with HRSB. Budget availability has been confirmed by Finance.

Budget Summary:

| <u>Project No. CBU01004 –Former CA Beckett School – Soil Remediation</u> | |
|---|----------------------|
| Cumulative Unspent Budget | \$ 21,534.18 |
| Plus: Transfer from CAPPOOL | \$ 2,500.00 |
| Plus: Cost share HRSB | \$ 215,872.02 |
| Less: Increase to PO 2070720498 | \$ 187,714.80 |
| Less: Increase to PO 2070356885 | \$ 52,143.00 |
| Balance | \$ 48.40 |

Contract Summary:

| | (Combined HRM and HRSB portions) (Net HST included) | (HRM Portion Only) (Net HST included) |
|-----------------------------------|--|--|
| PO 2070720498 (Vector Demolition) | \$ 355,615.26 | \$ 35,561.53 |
| Previous Increases | \$ 35,561.53 | \$ 3,556.15 |
| Current Increase | <u>\$ 187,714.80</u> | <u>\$ 18,771.48</u> |
| Balance | \$ 578,891.59 | \$ 57,889.16 |
| | | |
| PO 2070356885 (Stantec) | \$ 323,662.29 | \$ 32,366.22 |
| Previous Increases | \$ 108,676.39 | \$ 10,867.63 |
| Current Increase | <u>\$ 52,143.00</u> | <u>\$ 5,214.30</u> |
| Balance | \$ 484,481.68 | \$ 48,448.15 |

The increase to PO 2070720498 represents a cumulative 62.7% increase to the original contract value.

The increase to PO 2070356885 represents a cumulative 49.7% increase to the original contract value.

The cost sharing arrangement is 90% responsibility of the School Board and 10% responsibility of HRM.

The demolition work was originally estimated to cost \$365,000 (net HST included). Estimating soil remediation work is an imprecise exercise due to the unknown amount of contamination, the geology and soil conditions of the area, and the potential for hidden underground issues.

This contract is a unit price contract, where the quantity of work is estimated based on best available data, and subject to change.

ENVIRONMENTAL IMPLICATIONS

The affected area is currently non-compliant with Provincial environmental legislation.

ALTERNATIVES

The Audit and Finance Standing Committee may choose not to approve the recommendations in the report; this is not recommended as the affected homeowner has signed a legal agreement with HRM and HRSB. Not completing this work could result in legal action against HRM by the homeowner.

ATTACHMENTS

- 2007/08 Project Supplementary Sheet
- HRSB and HRM Settlement

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Greg MacKay, Project Manager, Corporate Facility Design and Construction, 233-5171

Original Signed

Report Approved by: Terry Gallagher, Manager, Corporate Facility Design and Construction, 476-4067

Capital Project Supplementary Report

| | |
|---|--|
| Project Name: Former CA Beckett School - Soil Remediation | |
| Category Buildings | Project Number CBU01004 |
| Business Unit Transportation and Public Works | |
| Priority Number | Project Manager: Larry Oakes |
| District # 17 | Asset Life Expectancy |
| Start Date: July 2007 | Completion Date: November 2008 |

| Annual Gross Expenditures (current dollars) | Previous Years (Office Use Only) | Capital Budget 2007-08 (000's \$) | Capital Plan 2008-09 (000's \$) | Capital Plan 2009-10 (000's \$) | Future Years (000's \$) | Total Years (000's \$) |
|---|--|---|---------------------------------------|---------------------------------------|-------------------------------|------------------------------|
| Gross Base Budget | \$0 | \$2,000 | | \$0 | \$0 | \$2,000 |
| Gross Capability Budget | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Gross Expenditures | \$0 | \$2,000 | \$0 | \$0 | \$0 | \$2,000 |
| Estimated Capital Funding | | | | | | |
| External Cost Sharing | \$0 | \$1,800 | \$0 | \$0 | \$0 | 1,800 |
| Reserves - Operations Stabilizati | 0 | 200 | 0 | 0 | 0 | 200 |
| LIC | 0 | 0 | 0 | 0 | 0 | 0 |
| Other Funding (describe) | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Estimated Funding | \$0 | \$2,000 | \$0 | \$0 | \$0 | \$2,000 |
| Net Budget: | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

Project Objective:
Soil remediation of the former CA Beckett School site and surrounding properties.

Project Description:
The Former CA Beckett School Soil Remediation program is designed to remediate oil contaminated soil on HRM property and surrounding private properties to a level acceptable to the Department of Labour and Environment.

Project Justification (incl. deliverables):
Current soil conditions are not compliant with Department of Labour and Environment standards.

Does the Capital budget include salaries? (Y/N) No

Status of Project & Anticipated Barriers:
The draft RFP for consultant service is prepared. Advertisement is anticipated within the month. Fall and winter weather will preclude remediation activities

BETWEEN:

THE HALIFAX REGIONAL MUNICIPALITY, a body corporate
(hereinafter referred to as "HRM")

-and-

HALIFAX REGIONAL SCHOOL BOARD, a body corporate
(hereinafter referred to as "HRSB")

MINUTES OF SETTLEMENT

WHEREAS the HRM is the owner of certain lands located at or near Fenerty Road in Armdale in the HRM;

AND WHEREAS the HRSB was the occupier of these lands for the purpose of operating C.A. Beckett School;

AND WHEREAS there is environmental contamination from the release of oil from an underground tank located at the property during the occupation by HRSB which has affected both the HRM property and neighboring properties;

AND WHEREAS HRM has commenced an action in the Supreme Court to recover amounts expended to investigate and remediate damage from the oil;

AND WHEREAS the HRSB and HRM have agreed on terms to resolve the present litigation and remediate the affected properties.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. There will be a cost sharing arrangement whereby HRSB and HRM agree to pay 90% and 10% respectively of the total existing and future costs of remediating the damage to the HRM and neighboring third party properties.

2. Total costs are anticipated to be in the range of \$2 million including HRM's disbursements to date for remediation of 15/19 Fenerty Road and consulting fees.
3. The following HRM property will be remediated to a commercial or most cost effective standard:
 - a. C.A. Beckett School site;
 - b. Fenerty Road right of way; and
 - c. 10 foot strip of land between Fenerty Road and Coronet.
4. All affected properties shall be remediated to a level such that a certificate of compliance can be obtained in accordance with the *Environment Act and Regulations*.
5. Costs are to include reasonable HRM disbursements to date for remediation of 15/19 Fenerty Road including consulting fees. HRSB has not been provided with a summary and back-up documentation concerning costs to date and same will be provided by HRM within 30 days and be paid by HRSB within a further 60 days unless the reasonableness of the charges are contested and submitted for dispute resolution pursuant to paragraph 11.
6. Costs are not to include either parties legal costs to date associated with the litigation or any staff costs to date associated with the remediation.
7. Costs are to include the reasonable ongoing and future costs of remediating the HRM and other properties including project management costs, consulting costs, costs associated with the acquisition and sale of property and costs of relocation of third parties, but excluding legal costs or staff costs other than legal costs associated with the transfer of property.
8. The 90%-10% sharing shall apply to amounts paid by HRM and HRSB in respect of settlements or damages awards for third party claims arising from the same contamination episode (beyond the direct cost of remediating property). Settlements shall be mutually agreed between the parties as being reasonable as determined by their respective legal counsel. Each of HRM and HRSB shall be responsible for their own legal costs in relation to such third party claims.
9. HRM will assume responsibility for management of the remediation project and is hereby authorized to approve expenditures that will facilitate management of the project as follows:
 - a. HRM will engage outside project management through an RFP process administered by HRM and approved by HRSB.
 - b. The project manager will produce a remediation plan to be approved by both HRSB and HRM.
 - c. HRM will arrange separately for the award of contracts for the construction or remediation work subject to the approval of HRSB.

- d. HRM will consult and seek HRSB approval for any other major decisions in the course of the remediation such as the purchase or acquisition of any third party property.
 - e. HRM will continue the services of Martin Jones as a liaison with third party property owners.
 - f. Larry Oakes will be the HRM supervisory contact for the purpose of the project and Ron Heiman will be the HRSB contact for the project and the cost of using these personnel shall not be charged to the project but shall be borne by their respective employers.
10. HRSB will reimburse HRM its share of future costs within 60 days of being presented with a summary of the amount demanded with back-up documentation. Demands shall be presented each quarter by HRM, not later than 60 days following the end of each fiscal quarter.
 11. The parties agree that if any dispute arises over the interpretation or application of this agreement which cannot be resolved by discussion between the parties within 15 days, such dispute shall be submitted for arbitration to an arbitrator to be agreed on or failing this to Peter MacKeigan, Q.C. for determination in accordance with the provisions of the *Commercial Arbitration Act* and his decision shall be final.
 12. HRM will have the present legal action against HRSB in the Supreme Court of Nova Scotia dismissed without costs.
 13. It is understood that this agreement and the dismissal of the existing Supreme Court legal action does not in any way restrict HRSB from pursuing recovery of its costs associated with the remediation of the properties or otherwise from any third parties other than the owner or occupiers of the affected properties. HRM has specifically been advised by HRSB that HRSB may pursue an action against Jacques Whitford Environmental Limited in relation to its role in remediation carried out for the HDSB in or around 1993. HRM shall cooperate with HRSB in a timely manner in connection with such claims and actions including providing documentation, access to possible witnesses, or other assistance reasonably requested by HRSB or its counsel.

Dated at the Halifax Regional Municipality this 4th day of ~~February~~ ^{June}, 2007. A

SIGNED, SEALED and DELIVERED)
in the presence of:)
Original Signed)
_____)
Witness)

HALIFAX REGIONAL)
SCHOOL BOARD)
Original Signed)
per)
Carole Olsen, Superintendent)

SIGNED, SEALED and DELIVERED)
in the presence of:)
Original Signed)
_____)
Witness)
Original Signed)
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Witness)

HALIFAX REGIONAL MUNICIPALITY)
per:)
Original Signed Peter J. Kelly)
_____)
MAYOR)
Original Signed)
A/ MUNICIPAL CLERK)