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Item No. 11.1.1
Halifax Regional Council
October 20, 2009

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

Dan English, Chief Administrative Officer

Wayne Anstey, Deputy Chief Administration Officer - Operations

DATE: September 23, 2009

SUBJECT: **Request for additional funds - Tender # 08-160 -Former CA Beckett School Soil Remediation**

ORIGIN

In accordance with the Halifax Regional Municipality Charter, any increases to the Capital Budget must be approved by Council. This report also originates from a need to increase the contract beyond 15 percent of its original value.

RECOMMENDATIONS

It is recommended that the Halifax Regional Council:

1. Approve an increase to Capital Account No. CBU01004 - Former CA Beckett School - Soil Remediation in the amount of \$270,000.00 due to cost sharing from the Halifax Regional School Board;
2. Approve a transfer of funds in the amount of \$30,000 from Capital Account No. CBU00941 - Environmental Remediation & Building Demolition to CBU01004 - Former CA Beckett School - Soil Remediation; and
3. Approve an increase to the contract with Hazco Contracting, in the amount of \$95,000.00 (net HST included). This contract was originally awarded in the amount of \$619,519.02 (net HST included). A contract increase of \$352,970.92 (net HST included) was approved by the CAO on January 11, 2009. The total combined increase recommended is \$447,970.92 or 72% for a total revised contract of \$1,067,489.94 (net HST included).

BACKGROUND

The former CA Beckett School property at 23 Fenerty Road, Halifax, and surrounding properties, have been adversely affected by fuel oil which leaked from an underground tank while the property was occupied as a school. Some remediation work was undertaken following the discovery of the leak in 1993; however, the contamination spread to adjacent properties. A cost sharing arrangement with Halifax Regional School Board (HRSB) was approved by HRM Council on April 3, 2007 for the remediation of the properties. HRM staff managed this remediation project.

The purpose of this project was to remove as much contamination as possible from the eight directly affected residential properties, adjacent roadway, and to restore the area as close as possible to the previous conditions.

HRM Council awarded the consulting services of this project to Jacques Whitford (now Stantec) by way of a competitive bid process on September 18, 2007. Stantec have completed a report for each property describing the clean up that was performed. A copy of the report was sent to each homeowner and to the Nova Scotia Department of Environment for review.

Contract 08-160 was awarded to the lowest bidder, Hazco Contracting, at the September 9, 2009 Council to complete the remediation work. Remediation work started in late September and is primarily completed except for the items noted in Discussion.

DISCUSSION

The cost sharing arrangement is 90% responsibility of the School Board, and 10% responsibility of HRM. For the duration of the project, the School Board representative has met with the HRM Project Manager on a regular basis to discuss project schedule, scope and costs.

During the excavation work for the project, it was determined that there was a significant variation in the quantity of contaminated soil. This increase in the contract addresses the issue of the variation between the estimated quantities and the actual quantities found on site.

Increase to Contract 08-160 Hazco Contracting

Contract award Amount (net HST included)	\$ 619,519.02
Previously approved increase (net HST included)	\$ 352,970.92
Current Request for Increase (net HST included)	\$ 95,000.00
New Contract Value (net HST included)	\$1,067,489.94*

*This contract was originally estimated at \$900,000

This is a UNIT PRICE contract and the cost is dependent upon the actual quantities measured and approved by the consultant.

The purpose of this report is to fund additional work to complete the project and includes landscaping of the affected area, additional trees and shrubs, paving of affected driveways, minor repairs to several houses, and additional consulting fees to restore the area to the previous condition.

BUDGET IMPLICATIONS

In accordance with the cost-sharing arrangement reached with Halifax Regional School Board, funding for 90% of the additional costs will be provided by the School Board. HRM's share of the additional costs will be available in Capital Account No. CBU01004 - Former CA Beckett School-Soil Remediation. The budget availability and agreement from Halifax Regional School Board have been confirmed by Financial Services.

Budget Summary: **Account CBU00941 Environmental Remediation & Building Demolition**

Available Reservation 1304.1	\$351,892
Less: Transfer to CBU01004	<u>(\$30,000)</u>
Balance:	\$321,892

Account CBU01004 Former CA Beckett School - Soil Remediation

Cumulative Unspent Budget	\$ 83,071
Plus: Cost-sharing HRSB	\$270,000
Plus: Transfer from CBU00941	\$ 30,000
Less: Increase to 08-160	<u>(\$95,000)</u>
Balance:	\$288,071 *

* Remaining funds will be used to complete work as outlined above in the discussion section.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation. If approved, this report will increase the gross Capital budget by \$270,000 but not the net.

ALTERNATIVES

The Halifax Regional Council may decide not to approve the Capital Budget increase. This is not recommended by staff. Not approving the Capital Budget would compromise the success of the project.


ATTACHMENTS

Attachment A - Halifax Regional School Board's cost-sharing commitment

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, Facility Development 490-4148


Report Approved by:


Terry Gallagher, Manager, Facility Development 476-4067

Procurement Approval by:


Anne Feist, Operations Manager, Procurement 490-4200

Report Approved by:


Phil Townsend, Director, Infrastructure and Asset Management 490-7166

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:

W. Keefe
Witness

HALIFAX REGIONAL
SCHOOL BOARD

per: *Carole Olsen*
Carole Olsen, Superintendent

SIGNED, SEALED and DELIVERED
in the presence of:

Leley MacKinnon
Witness

Amanda Saylor
Witness

HALIFAX REGIONAL MUNICIPALITY
per:

Peter J. Kelly
MAYOR

Julia Hamcastle
MUNICIPAL CLERK