

HALIFAX

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Item No. 12.1.3
Audit and Finance Standing Committee
February 12, 2016

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

Original Signed

SUBMITTED BY:

John Traves, Acting Chief Administrative Officer

Original Signed

Jane Fraser, Director, Operations Support

DATE: January 11, 2016

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 on Page 2

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 \$135,000.00 (net HST included) with cost sharing \$121,500.00 from Halifax Regional School Board (HRSB) and \$13,500.00 from CAPPOOL as outlined in the Financial Implications section of this report.
2. Increase **PO No. 2070720498** to Vector Demolition, by \$130,000.00 (net HST included) with cost sharing \$117,000.00 from Halifax Regional School Board (HRSB) and \$13,000.00 (10%, net HST included) HRM's cost-shared portion.

BACKGROUND

The former CA Beckett School property (now the HRM Crown Drive Park) at 23 Fenerty Road, Halifax, and surrounding residential 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.

In 2006, further investigation identified more contamination in the area. All of the properties were remediated in 2008/9, except for #14 Fenerty Road. 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 on July 26, 2014. Tender 15-167 will remediate #14 Fenerty, to meet or exceed the Provincial guidelines.

April 3, 2007, HRM Council approved a cost sharing arrangement with the Halifax Regional School Board for the remediation of the remaining impacted areas. The Halifax Regional School Board agreed to cost share and reimburse 90 percent of all expenses on this project and HRM 10 percent. To date, approximately \$2.8 million (HRM and HRSB combined) has been spent on this project.

June 3, 2015, Tender 15-167 was awarded by the CAO. The tender involved 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. Tender 15-167 original scope of work included underpinning and excavating under the foundation of #14 Fenerty.

1st Increase:

November 10, 2015, Halifax Regional Council approved an increase to PO No. 2070720498 to Vector Demolition. During their work, larger boulders than expected were encountered during the work which resulted in a larger amount of excavation. The larger excavation expanded to include the house at #12 Fenerty. The two houses were discovered to not have foundation footings, which would be expected for houses of this age and size. Without proper footings, the house foundations were much weaker than normally expected. The lack of footing required a major design change that resulted in a more complex and labour intensive excavation to safely complete the work. The change involved closely spaced temporary supports to stabilize the two houses during excavation. Options were considered but the proposed work was the safest, least disruptive to citizens and the most cost-effective solution. (Note: This project did not fix the foundation of the two houses, it only supports the foundation to enable the soil remediation work.)

DISCUSSION

2nd Increase:

After approval from HRM Council on November 10, 2015, the work re-commenced to complete the underpinning and excavation of contamination soil. The revised scope of work could not be completed as estimated, resulting in a needed 2nd increase to the contract. Contributing factors that resulted in additional costs to the project, from the November 10, 2015 contract increase are:

Estimated Condition	Actual Condition	Approx. Cost Variance (net HST included) (HRSB and HRM combined costs)
Dry fall conditions	Heavier than expected rainfall. Longer then estimate duration of work	\$50,000 water treatment costs
Moderately compacted soil	Extremely compacted soil in a confined area limiting the size of equipment that could be used and therefore requiring extensive labour	\$30,000 labour costs
Underpinning required on one house	Underpinning required on two house due to local soil conditions	\$20,000 labour and material costs
Small boulders in the soil	Large boulders, required additional excavation and underpinning work	\$20,000 labour and material costs
Summer/Fall work	Fall/Winter work	\$10,000 labour and material costs
	Variance and 2nd Contract Increase	\$130,000 (net HST included)

Estimating soil remediation work is an imprecise exercise due to the unknown amount of contamination, weather, the water table, the geology and soil conditions of the area, and the potential for hidden underground issues. The base contract is a unit price contract, where the quantity of work is estimated based on best available data and subject to change. The change to contract was evaluated on a time and materials basis, as the work was too variable to be evaluated at a fixed price.

Scope and Schedule:

The original duration Tender 15-167 was originally expected to be (10) weeks. The actual work has taken an additional twelve (12) weeks, for twenty two (22) weeks to date. Remaining work is expected to take two (2) weeks to complete, and will be completed as soon as the ground is thawed in the springtime, or earlier if there are mild winter conditions.

Remaining work includes: replacing a large deck, fence, and porch, regrading the yard, placing grass sods, and restoration of the affected park area. Remaining work is on a fixed price contract, with no excavation work, and therefore, HRM exposure to risk is minimal.

Currently, all contaminated soil has been removed to an approved landfill facility. All applicable paperwork has been filed with Nova Scotia Environment for review.

For the duration of the project, a Halifax Regional School Board representative has/will meet with the HRM Project Manager on a regular basis to discuss project details. Staff will continue to communicate project details to the affected property owners and park users.

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	\$ 50.00
Plus: Transfer from CAPPOOL	\$ 13,500.00
Plus: Cost share HRSB	\$ 121,500.00
Less: Increase to PO 2070720498	\$ 130,000.00
Balance	\$ 5,050.00

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 – November 2015	\$ 221,814.80	\$ 22,181.48
Current Increase	<u>\$ 130,000.00</u>	<u>\$ 13,000.00</u>
Balance	\$ 707,430.06	\$ 70,743.01

The increase to PO 2070720498 represents a twenty two (22%) percent increase to the original contract value. The contract was previously increased \$34,100 (10%) (net HST included), by HRM Staff under their authority. Including the previous increases, the cumulative increase is ninety nine percent (99%).

The cost sharing arrangement is ninety (90%) percent responsibility of the School Board and ten (10%) percent responsibility of HRM.

Remaining project funds, approximately \$5,000 (net HST included) will be used for independent testing, engineering review and as a contingency. Remaining funds will be returned to CAPPOOL on project completion.

The base contract work was originally estimated to cost \$365,000 (net HST included). The change in scope of work was estimated at \$130,000 (net HST included) by the consulting team. The November 10, 2015 increase to contract included a \$55,000 contingency (net HST included).

ENVIRONMENTAL IMPLICATIONS

The affected area was non-compliant with Provincial environmental legislation. All areas are now compliant to the 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 homeowner has a legal agreement with HRM and HRSB. Not completing this work could result in legal action by the homeowner against HRM.

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/agenda.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

Original Signed

Report Approved by: Jane Fraser, Director, Operations Support, 490-7166

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.

Capital Project Supplementary Report

Project Name: Former CA Beckett School - Soil Remediation	Project # CBU01004
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Operating Costs (Implementation & On-going)

Expenditures & Savings (000's \$)	2007-08 (000's of \$)	2008-09 (000's of \$)	2009-10 (000's of \$)	Future Years (Yrs 4-10)	Total (Yrs 1 - 10)
Implementation Operating	0	0	0	0	0
On-Going Operating Costs	0	0	0	0	0
Replacement Reserve	0	0	0	0	0
Less:					
New Revenues	0	0	0	0	0
Savings to Future budgets	0	0	0	0	0
Total Operating Costs (Net of Savings)	\$0	\$0	\$0	\$0	\$0

Total FTE's	2007-08	2008-09	2009-10	Future Years (Yrs 4-10)	Total (Yrs 1 - 10)
New positions (Implementation)	0	0	0	0	0
New positions (On-going)	0	0	0	0	0
Total	0	0	0	0	0

Impact on Operating Budget:

Organizational Impact & Impact on Other Business Units:

Technology Requirements:

Strategic Linkage: (eg. Council Focus Areas, EMT Priority, Canada Games, etc.)

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. AT

SIGNED, SEALED and DELIVERED
in the presence of:

) HALIFAX REGIONAL
) SCHOOL BOARD
)

Original Signed

Original Signed

Witness

per: _____
Carole Olsen, Superintendent

SIGNED, SEALED and DELIVERED
in the presence of:

) HALIFAX REGIONAL MUNICIPALITY
) per:
)

Original Signed

Original Signed Peter J. Kelly

Witness

) MAYOR _____
)

Original Signed

) Original Signed
) _____
) A/ MUNICIPAL CLERK

Witness