



## ACTION REQUIRED

### Disposal of Contaminated Soil on Hotel Site – Exhibition Place

<b>Date:</b>	September 9, 2013
<b>To:</b>	Executive Committee
<b>From:</b>	Dianne Young, Chief Executive Officer, Exhibition Place
<b>Wards:</b>	Not Applicable
<b>Reference Number:</b>	

#### SUMMARY

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This report seeks approval of expenditures for disposal of pre-existing contaminated soil dating from the early 1900s which expenditures are in keeping with the terms of the lease agreement (“Lease”) between the Board of Governors of Exhibition Place (“the Board”) and Princes Gates Hotel LLP (“PGH”).

#### RECOMMENDATION

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It is recommended that City Council approve that Exhibition Place, in consultation with City Finance staff:

- 1) Reallocate unspent funds from its 2013 Capital Program, Park, Lots, Roads Project (Festival Plaza) that total \$1,728,000 as detailed in Appendix “A” to the new Parks, Lots, Roads Project (Contaminated Soil Disposal); and,
- 2) Borrow from the Exhibition Place Conference Centre Reserve Fund (CCRF) an amount up to \$2.6M and arrange to repay the Fund from any operating surpluses commencing from 2014 and future years.

#### Financial Impact

The disposal of the pre-existing contaminated and hazardous soil in the parking lot at Exhibition Place (the site of the future Hotel Phase I) could be in the range \$2.0 to 5.0M. The recommendations outline in 2(a) above will cause one capital project to be deferred to 2014.

## **DECISION HISTORY**

At its meeting of October 8, 2009, the Board approved of the development plan for a hotel at Exhibition Place and the terms and conditions of a lease with HKH which recommendations were subsequently approved by City Council at its meeting of November 30 2009.

At its meeting of June 24, 2011, the Board approved of amendments to the construction schedule. As a result of these amendments, the commencement date for the Hotel Lease will be delayed, to December 1, 2012 at the earliest.

At its meeting of September 6, 2013, the Board considered subject report, and unanimously recommend it for approval by City Council.

## **ISSUE BACKGROUND**

PGH has through its detailed soil investigations of the Phase I hotel site notified Exhibition Place of its findings of both hazardous and contaminated soils which pursuant to Section 11.8 of the Lease is the responsibility of the Board.

## **COMMENTS**

Section 11.8 of the Lease states the following:

The Tenant and the Landlord agree that the Tenant shall have no responsibility or liability for pre-existing contamination or hazardous materials existing in or on the Leased Premises prior to the Commencement Date, which shall be the responsibility of the Landlord. The Landlord will comply with all applicable Environmental Laws. Subject to the Tenant's obligations, the Landlord agrees to indemnify, defend and save harmless the Tenant from any and all costs, claims, legal actions, liability and expenses which may be asserted against or incurred by the Tenant in connection with damage to property and the environment as a result of the presence of Contaminants in, on or under the Leased Premises which exist as of the Lease Commencement Date or arise thereafter due to an act or negligence of the Landlord. Notwithstanding the foregoing, in no event is the Landlord responsible for and the Tenant hereby releases and forever discharges the Landlord from and with respect to any and all indirect or consequential damages incurred by the Tenant no matter how the same are caused whether or not resulting from the events contemplated herein or otherwise.

The wording in the Lease generally follows the responsibilities in the *Environmental Protection Act*.

93.(1) The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause an adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.

93.(2) The duty imposed by subsection (1) comes into force in respect of each of the owner of the pollutant and the person having control of the pollutant immediately when the owner or person, as the case may be, knows or ought to know that the pollutant is spilled and is causing or is likely to cause an adverse effect.

Several studies have been undertaken of the soil composition under the asphalt of the existing parking lot that is the site of the hotel to be constructed by PGH. The first such investigation of 14 boreholes was done by the Board in 2004. Two (2) of the boreholes in that investigation showed a layer of asphaltic concrete over a granular base with earth fill underlying the granular base made up of clay containing sand and gravel and other materials such as brick, concrete, topsoil, coal, cinders and ashes. These 2 boreholes were at the southerly part of the Exhibition Place site and was evidence of the lake fill likely dumped in this area around the early 1900s.

In July 2010, PGH completed an additional 22 boreholes and its report found that 2 of the 22 boreholes samples had hazardous chemical levels and several boreholes (at the southerly end of the site) showed the same lake fill as in 2004 investigation. Consequently in June 2013, PGH dug two test pits in order to collect substantial materials for analysis. One sample from these test pits was positive for inorganics, petroleum hydrocarbons and semi-volatile and volatile compounds and would be classified as hazardous and this small amount of material (estimated to be approximately 2 truckloads) must be disposed of at a special disposal site in Quebec. Again, the test pits provided a more detailed analysis of the lake fill found in 2004 and the extent of this fill.

The classification of this lake fill as Industrial Standard fill would not allow it to be disposed of as Residential Standard fill but require a disposal premium estimated to be approximately \$45 a cubic ton. While the full cost of disposal cannot be known until the actual excavation begins, estimates of Industrial Standard fill range from \$2.0M to \$5.0M. In order to narrow the potential cost estimate, Exhibition Place engaged Fisher Environmental Inc. to undertake 25 more boreholes and based on these results, Exhibition Place believes that the final cost will be in the range of \$1.6M not \$5.0M – in other words the cost will be totally managed by the deferral of projects within the 2013 Capital Program. However, because actual costs will not be known until the site is excavated and the soil disposed of, this report continues to propose how a \$5.0M budget pressure would be addressed.

The first funding source to be used would be the unspent allocations in the 2013 Capital Program (Parks, Lots, Roads Project) totalling \$1,728,000 which were to be allocated to the first phase of Festival Plaza. The intent would be to defer Festival Plaza (Phase I) to 2014 and Exhibition Place staff are in discussions with City Finance on this matter which will become presented as part of the 2014 Capital Program submission to Council.

The second funding source would be any surplus funds over the 2013 Operating Budget. Since 2009, Exhibition Place has delivered operating surpluses in the range of \$1.0M to \$2.0M (average 4 years surpluses of \$1.3M). The 2<sup>nd</sup> quarter results for the 2013 Operating Budget are positive and ahead of budget, and accordingly, Exhibition Place

staff believe an additional \$0.7M of soil disposal costs can be funded, if necessary, from the 2013 operating budget surplus.

As stated above, based on the additional investigations done by Exhibition Place in August 2013, no further funding would be required. However, if additional funds are required, this report is recommending borrowing up to \$2.6M from the CCRF with repayment of this fund from operating surpluses commencing with 2014 and future years. This fund as of August 2013 has a balance of \$4.1M.

Exhibition Place staff have worked with City Finance and City Financial Planning Department and both concur with the arrangements being proposed.

## **CONTACT**

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## **SIGNATURE**

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Dianne Young  
Chief Executive Officer

## **ATTACHMENT**

Appendix “A” – Reallocation of Unspent Funds - Capital Works Program

Appendix "A"

2013 Capital Works Program			
Project	Status	Funding	Comments
Parks, Parking Lots and Roads (Festival Plaza portion)	10% completed	\$1,248,000	Reallocated to the Revised 2014 Capital Program (see Appendix "B")
Equipment (Parking Kiosks, replace fibre optic cable)	0% completed	\$260,000	Deleted (can consider within Parking Operating budget)
QE Office HVAC; QE Hall Air handling unit	19% completed	\$220,000	Construction Budget included in 2014 Capital Program
Estimated 2013 Operating Surplus			
		\$700,000	
Conference Centre Reserve Fund			
		\$2,572,000	
<b>TOTAL</b>		<b>\$5.0M</b>	