



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**Amendment to Purchase Order No. 6034414 issued to
Rochon Genova LLP for Rent Arbitration – 2 Bloor
Street East**

Date:	September 1, 2015
To:	Government Management Committee
From:	Chief Corporate Officer Director, Purchasing and Materials Management City Solicitor
Wards:	Ward 27 Toronto Centre-Rosedale
Reason for Confidential Information:	Litigation or potential litigation, including matters before administrative tribunals, affecting the City or a local board.
Reference Number:	P:\2015\Internal Services\RE\Gm15030re – (AFS ## 21797)

SUMMARY

The purpose of this report is to request authority to amend Purchase Order No. 6034414, issued to Rochon Genova LLP in the amount of \$138,000 net of HST (\$140,428 net of HST recoveries). The total revised value of the Purchase Order will be \$1,547,238 net of HST (\$1,574,470 net of HST recoveries). The additional funds are required for the continuing retention of legal services with regards to a rent renewal arbitration for a long term ground lease on the City's property located at 2 Bloor Street East.

This Purchase Order was originally issued at \$459,238, net of HST (\$467,7321 net of HST recoveries) and subsequently increased under GM32.33 by \$750,000, net of HST (\$763,200 net of HST recoveries). It was further amended under GM3.25, by an increase in the amount of \$200,000, net of HST (\$203,520 net of HST recoveries). As such, the value of the current Purchase Order No. 6034414 is \$1,409,238, net of HST (\$1,434,041 net of HST recoveries).

The hearing of the arbitration was completed in July 2015. We await the decision. The reason for the increase is that unexpected additional hearing days were required to complete the hearing. This resulted in increased preparation time as well. The most recent account for legal services exceeds the amount remaining in the budget. It is possible that the arbitration panel may have questions during their deliberations which could result in further legal expense, although it is anticipated any such expenses would be minimal.

To finalize this matter, additional funds in the sum of approximately \$138,000 net of HST are required.

City Council approval is required in accordance with Chapter 71-11.1 (C) – Financial Control By-Law.

RECOMMENDATIONS

The Chief Corporate Officer, Director, Purchasing & Materials Management and City Solicitor recommend that:

1. City Council grant authority to amend and increase the value of Rochon Genova LLP Purchase Order No. 6034414 for an additional \$138,000 net of HST (\$140,428 net of HST recoveries). This amount will increase the current contract value from \$1,409,238, net of HST (\$1,434,041 net of HST recoveries) to \$1,547,238 net of HST (\$1,574,470 net of HST recoveries).
2. City Council direct that Confidential Attachment 1 remain confidential as it is the subject of litigation or potential litigation, including matters before administrative tribunals, affecting the City or a local board.

Financial Impact

The additional amount of \$138,000 net of HST (\$140,428 net of HST recoveries) to provide legal services will increase the current Purchase Order No. 6034414 from \$1,409,238, net of HST (\$1,434,041 net of HST recoveries) to \$1,547,238 net of HST (\$1,574,470 net of HST recoveries).

Funding for the continuing retention of legal services in the amount of \$138,000 net of HST (\$140,428 net of HST recoveries) is included in the 2015 Approved Operating Budget for Facilities Management, Real Estate & Environment and Energy (FREEE).

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On August 25, 26, 27 and 28, 2014, City Council granted the authority under GM32.33 to amend and increase the value of Rochon Genova LLP Purchase Order No. 6034414 for an additional \$750,000, net of HST (\$763,200 net of HST recoveries). That increased the contract value from \$459,238, net of HST (\$467,321 net of HST recoveries) to \$1,209,238, net of HST (\$1,230,521 net of HST recoveries). The following is the link to City Council Decision Document:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.GM32.33>

On May 5, 6 and 7, 2015, City Council granted the authority under GM3.25 to amend and increase the value of Rochon Genova LLP Purchase Order No. 6034414 for an additional \$200,000, net of HST (\$203,520 net of HST recoveries). That increased the contract value from \$1,209,238, net of HST (\$1,230,521 net of HST recoveries) to \$1,409,238, net of HST (\$1,434,041 net of HST recoveries). The following is the link to City Council Decision Document:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.GM3.25>

ISSUE BACKGROUND

The City is currently involved in a rent arbitration with Brookfield Properties Corporation (BPC) as a tenant regarding a long term ground lease on its property located at 2 Bloor Street East. Due to the complexity and length of the arbitration, Legal Services retained the firm of Rochon Genova LLP on December 12, 2011, through a non-competitive process, on behalf of the Real Estate Services Division. Rochon Genova in turn have retained Lerner LLP to assist. The reason for this choice is that counsel from Lerner worked with counsel from Rochon Genova on a previous City rent arbitration matter for 2 Bloor West and developed specialized expertise.

The ground lease commenced on December 1, 1971 with an initial term of 40 years and expired November 30, 2011, subject to the rights of termination as set out in the Ground Lease. The second term of the ground lease, for 26 years, commenced on December 1, 2011, without resolution of a new rental amount.

The City filed its Notice of Intention to Arbitrate to BPC on November 30, 2011.

Real Estate Services is now seeking Council authority to increase the amount of the Purchase Order, in order to pay for the outstanding legal account and any further legal services required to finalize the arbitration process.

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SIGNATURE

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Division

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City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information - Amendment to Purchase Order No. 6034414 issued to Rochon Genova LLP for Rent Arbitration – 2 Bloor Street East