
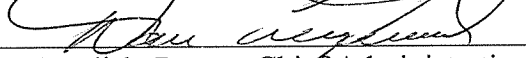


**Halifax Regional Council**  
**October 5, 2004**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

  
\_\_\_\_\_  
George McLellan, Chief Administrative Officer

  
\_\_\_\_\_  
Dan English, Deputy Chief Administrative Officer

**DATE:** September 24, 2004

**SUBJECT:** **Development Grant Agreement - Halifax International Airport Authority**

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**ORIGIN**

Adoption by Regional Council on July 6, 2004 of a Grant Formula for the Halifax International Airport Authority and direction to staff to prepare a Development Grant Agreement

**RECOMMENDATION**

**IT IS RECOMMENDED THAT HALIFAX REGIONAL COUNCIL:**

1. Authorize the Mayor and Municipal Clerk to execute the Development Grant Agreement between the Halifax Regional Municipality and the Halifax International Airport Authority as attached hereto.
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## **BACKGROUND**

A comprehensive report by staff outlining the merits of entering into a Development Grant Agreement with the Halifax International Airport Authority ( HIAA) was submitted to Regional Council at its July 6, 2004 session. The Development Grant Agreement formula approved by Council included a combination of the previous fixed amount of \$528,898 increased by the Consumer Price Index for Halifax and \$0.22 per enplaned/deplaned passenger commencing Fiscal 2004 and ending Fiscal 2008.

## **DISCUSSION**

The attached development grant agreement formalizes the recommendations as approved by Council on July 6, 2003. In addition a section has been added to address a proposed parking facility should it be constructed and or operated by a private or public corporation unrelated to the HIAA.

The HIA requested that its tax burden be calculated only on the basis of passenger volumes. The staff report of July 6, 2004 went into detail why HRM staff could not recommend such a course of action at that time.

Commencing later this month, an Ad Hoc Committee will be struck of HIAA and HRM staff to review this request both from a local and national perspective. Members of the Committee will include operating departments of the HRM. In the report of July 6, 2004, staff committed to concluding this review within 18 to 24 months.

## **BUDGET IMPLICATIONS**

There are no budget implications in respect to the recommendation contained in this report.

## **FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from and the utilization of Capital and Operating reserves, as well as any relevant legislation.

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ALTERNATIVES

There are none . This report is following Council's directive.

ATTACHMENTS

- 1) Development Grant Agreement between the Halifax Regional Municipality and the Halifax International Airport Authority.

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Reg H. Ridgley, CGA, Manager, Strategic Capital Project Support 490-6475 

Report approved by :   
S. Dale MacLennan, CA, Director, Financial Services 490-6308

## DEVELOPMENT GRANT AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_\_ day of October , 2004.

**B E T W E E N:**

**HALIFAX REGIONAL MUNICIPALITY**  
(hereinafter called "HRM")

- and -

**HALIFAX INTERNATIONAL AIRPORT AUTHORITY**  
(hereinafter called the "Authority")

**WHEREAS** the Authority was incorporated on November 23, 1995 under the provisions of Part II of the *Canada Corporations Act* as a not-for-profit, non share-capital corporation with a mandate to manage, operate and develop Halifax International Airport (hereinafter called "HIA");

**AND WHEREAS** pursuant to the ground lease made between Canada and the Authority as of February 1, 2000, (hereinafter called the "Ground Lease") Canada leased to the Authority all of the "Lands" (as defined in the Ground Lease) for a term of sixty (60) years;

**AND WHEREAS** the Authority endeavors to manage, operate and develop HIA in such a manner as to improve transportation facilities and to generate economic activity in and around the various communities comprising the HRM;

**AND WHEREAS** HRM views the HIA as a significant contributor to the maintenance and expansion of economic activity in and around HRM and wishes to support the Authority in its efforts and plans to expand, improve and develop HIA;

**AND WHEREAS** the Authority continues to confer regularly with HRM and other community stakeholders on matters affecting the operation and development of HIA;

**AND WHEREAS** the Authority and HRM had previously entered into an agreement dated April 28, 2000 (hereinafter called the "Development Grant Agreement") whereby the HRM had agreed, *inter alia*, to make an annual grant, pursuant to section 56 of the *Municipal Government Act*, to the Authority in an amount calculated in accordance with the terms and conditions of the said Development Grant Agreement;

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AND WHEREAS the term of the said Development Grant Agreement expired on March 31, 2004;

AND WHEREAS the parties desire to set out below the details of the new development grant agreement that has been reached between the parties;

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, it is agreed as follows:

1. **Definitions.** In this Agreement,

1.1 “Act” means the Municipal Government Act.

1.2 “Adjusted Base Amount” means the Base Amount increased annually, commencing in 2005, by the Consumer Price Index for HRM, currently identified as reference catalogue number 62-001-XPB for the City of Halifax.

1.3 “Agreement” means this grant agreement, together with any amendments, modifications or extensions hereto.

1.4 “Annual Period” means that twelve-month fiscal year commencing upon April 1<sup>st</sup> of any applicable year and ending on March 31<sup>st</sup> of the following year.

1.5 “Authority” means the Halifax International Airport Authority.

1.6 “Base Amount” means the amount of Five Hundred and Twenty-Eight Thousand Eight Hundred and Ninety-Eight Dollars (CAD \$528,898), which represents that amount that was payable in lieu of taxes by Canada to HRM for the 1998-99 taxation year, based on the provincial assessed value for that taxation year.

1.7 “Canada” means Her Majesty the Queen in Right of Canada.

1.8 “Commencement Date” shall have the meaning ascribed to it in Subsection 2.1 of this Agreement.

1.9 “Deplaned Passenger” means any person, other than airline crewmembers, who disembarks from an aircraft at the HIA air terminal building during the applicable calendar year.

1.10 “Enplaned Passenger” means any person, other than airline crewmembers, who boards an aircraft at the HIA air terminal building during the applicable calendar year.

1.11 “Grant” means that amount, in Canadian currency, that the HRM agrees to credit to the Authority with respect to each Annual Period of this Agreement pursuant to section 56

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of the *Municipal Government Act*, and which shall be calculated in accordance with the provisions of Section 3 of this Agreement.

1.12 “**HIA**” means the Halifax International Airport.

1.13 “**HRM**” means the Halifax Regional Municipality.

1.14 “**Passenger Amount**” means the product of Twenty-Two Cents (CAD \$0.22) multiplied by the Passenger Volume applicable to the current Annual Period.

1.15 “**Passenger Volume**” means, subject to Section 3.5 hereof, the total number of Enplaned and Deplaned Passengers during the calendar year immediately preceding the commencement of the applicable Annual Period, which total number of Enplaned and Deplaned Passengers is based upon the estimates provided to the Authority by Transport Canada and set forth in Schedule A of this Agreement.

1.16 “**Tax**” or “**Taxes**” payable by the Authority means collectively any and all real property and business occupancy taxes in respect of the lands and premises occupied by the Authority and not by Tenants of the Authority.

1.17 “**Tenants**” means licensees, sublessees and tenants of the Authority.

## 2. **Term and Termination.**

2.1 **Initial Term.** The initial term of this Agreement is five (5) years, commencing on April 1, 2004 (the “Commencement Date”), and terminating in accordance with the provisions of this Section 2.

2.2 **Renewal.** This Agreement will automatically renew for successive five (5) year terms, unless the Authority or HRM gives written notice to the other, at least twelve (12) months prior to the end of the current five (5) year term, that it wishes to renegotiate the Agreement.

2.3 **Negotiations.** Upon receipt of such notice referred to in paragraph 2.2 of this section, the parties agree to negotiate in good faith in an effort to enter into a renewal of the Agreement prior to its expiration.

2.4 **Temporary Extension.** If the terms of the renewal are not agreed upon before the expiration of the initial term of the Agreement, and respectively before the end of each successive renewal term, the Agreement will continue in effect, with the term being extended on a year-to-year basis until the earlier of either: (a) the execution of a new agreement; or (b) the expiration of a period of not less than twelve (12) months following notice by HRM, of its intent to amend or cease the Grant formula.

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3. **Annual Grant.** The HRM hereby agrees to provide a Grant to the Authority with respect to each Annual Period for the duration of this Agreement as follows:

**3.1 First Annual Period.** For the Annual Period commencing April 1<sup>st</sup>, 2004, the Grant shall be equal to the difference between the amount of Taxes otherwise payable on a full-assessment basis, as determined by the Province of Nova Scotia – Assessment Division, and One Million Dollars (CAD \$1,000,000).

**3.2 Subsequent Annual Periods.** For each subsequent Annual Period, the Grant shall be equal to the difference between the amount of Taxes otherwise payable on a full-assessment basis, as provided by the Province of Nova Scotia – Assessment Division, and the sum of (a) the Adjusted Base Amount, and (b) the Passenger Amount. For illustration purposes only, anticipated estimates of the Adjusted Base Amounts and the Passenger Amounts for the initial five (5) year term of the Agreement has been set out in Schedule “A” hereto.

**3.3 Passenger Volume Reporting.** The Authority shall provide the actual passenger volume amounts to HRM annually, on or before January 31<sup>st</sup> of the following calendar year. The actual passenger volumes figures shall be based upon information on the total number of Enplaned and Deplaned Passengers reported to the Authority by the various commercial air carriers operating at HIA.

**3.4 Unanticipated Passenger Volume Variances.** Notwithstanding any other provision to the contrary in this Agreement, if at any time during the term of this Agreement, including any renewal or extension thereof, the actual passenger volumes vary by more than ten percent (10%) from the Passenger Volumes set out in Schedule A of this Agreement, the parties agree that either party may give notice to the other to terminate this Agreement upon not less than One Hundred and Eighty (180) days’ written notice prior to end of the current Annual Period and that both the Authority and HRM would agree to attempt, on a best efforts basis, to renegotiate amendments to the Agreement in order to take into account the actual passenger volumes.

**3.5 Declines in Passenger Volumes.** Subject always to section 3.4 of this Agreement, commencing in the 2005-2006 Annual Period, and thereafter for the remainder the initial term of the Agreement and any renewal term thereof, the actual Passenger Volume used to calculate the amount of the Grant in relation to any such Annual Period shall not be less than the Passenger Volume used to calculate the amount of the Grant in relation to the previous Annual Period.

**3.6 Use of Grant.** The Authority shall expend all amounts received by the Authority by way of a Grant hereunder in the expansion, improvement and development of HIA and the facilities and services situated and offered thereon and not in the implementation of the Authority’s Pyritic Slate Runoff Management Plan. Not less frequently than once each Annual Period, the Authority shall report to HRM on the projects upon which any Grant

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monies received have been expended. HRM shall signify its approval within thirty (30) days of its receipt of this report by providing written notice to the Authority as provided herein; provided, however, that the report shall be deemed to have been approved by HRM in the absence of any written notice to the contrary within said thirty (30) day period.

**4. Parking Garage.** In the event that: (a) the Authority constructs a parking garage facility on HIA property during the initial term of this Agreement, or any renewal term thereof, and (b) the Authority leases the parking garage to an unrelated third-party in order to out source the management and operation of the parking garage, then the parties hereby agree that, upon not less than One Hundred and Eighty (180) days' written notice by either party to the other, both the Authority and HRM agree to attempt, on a best-efforts basis, to negotiate amendments to this Agreement in order to take into account the management and operation of the parking garage facility by this unrelated third-party.

**5. General Provisions.**

**5.1 Headings.** The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Paragraph or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Paragraphs are to Articles and Paragraphs of this Agreement.

**5.2 Extended Meanings.** In this Agreement words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa* and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

**5.3 Schedules.** The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

**Schedule "A" – Estimates of Anticipated Passenger Volumes, Passenger Amounts and Adjusted Base Amounts**

**5.4 Further Assurances.** Each of the Parties shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

**5.5 Time of the Essence.** Time shall be of the essence of this Agreement.

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**5.6 Force Majeure.** Either party shall be excused of its obligations hereunder (other than any obligation to pay money) by reason of any cause beyond its reasonable control; provided that such party immediately notifies the other of the occurrence of such cause.

**5.7 Fees, etc.** Each of the parties hereto shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto.

**5.8 Benefit of the Agreement.** This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto.

**5.9 Reasonableness.** Each of the parties shall at all times act reasonably in the performance of its obligations and the exercise of its rights under this Agreement.

**5.10 Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

**5.11 Amendments and Waiver.** No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

**5.12 Notices.** Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

(a) In the case of the HRM,	(b) In the case of the Authority,
Halifax Regional Municipality	Halifax International Airport Authority
City Hall	1 Bell Boulevard
Box 1749	Enfield, Nova Scotia
Halifax NS B3J 3A5	B2T 1K2
Facsimile: 902-490-4208	Facsimile: 902-873-1258
Attention: Municipal Clerk	Attention: Corporate Counsel

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**5.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein. For the purposes of Part XX of the *Municipal Government Act* of Nova Scotia, this entire Agreement shall be deemed to be public information.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement by their duly authorized representatives on the day first above written.

<b>SIGNED, SEALED AND DELIVERED</b>	)	<b>HALIFAX REGIONAL MUNICIPALITY</b>
in the presence of:	)	
	)	
Witness: _____	)	By: _____
	)	
	)	And: _____
	)	
	)	
	)	<b>HALIFAX INTERNATIONAL AIRPORT</b>
	)	<b>AUTHORITY</b>
	)	
Witness: _____	)	By: _____
	)	
	)	And: _____
	)	

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**SCHEDULE A**

Estimates of Anticipated Passenger Volumes, Passenger Amounts and Adjusted Base Amounts

<b>A n n u a l P e r i o d</b>	<b>P a s s e n g e r V o l u m e</b>	<b>P a s s e n g e r A m o u n t</b>	<b>A d j u s t e d   B a s e A m o u n t</b>
2004/05	n/a	n/a	n/a
2005/06	3,161,592	\$695,550	\$539,476
2006/07	3,292,029	\$724,246	\$550,265
2007/08	3,449,285	\$758,843	\$561,271
2008/09	3,578,397	\$787,247	\$572,496