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**Halifax Regional Council**  
**May 24, 2005**

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

**SUBMITTED BY:**

  
George McLellan, Chief Administrative Officer

  
Dan English, Deputy Chief Administrative Officer

**DATE:** May 17, 2005

**SUBJECT:** **Harbour Solutions Project - Sewage Collection System Contract  
Amendment #6**

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**ORIGIN**

December 7, 2004 Council Report, "Duke Street and Salter Street Drainage Area Sewer Separation" authorizing staff to amend the Harbour Solutions Infrastructure Development Agreement with Dexter Construction Company Limited.

**RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Approve Amendment #6 to the Halifax Harbour Solutions Infrastructure Development Agreement with Dexter Construction Company Limited to include the addition of the Salter and Duke Streets Drainage Area Sewer Separation Project, which comprises sewer and water main replacements, with funding available from capital project CSE00500 - Combined Sewer Overflow Prevention per the Budget Implications section of this report; and
2. Authorize the execution by the Mayor and Municipal Clerk of Amendment #6 (substantially in the form of Appendix A) to the Infrastructure Development Agreement.

## **BACKGROUND**

On October 19, 2004 confirmation was received from Infrastructure Canada that the HHSP contribution agreement would be amended to reflect additional support of \$30M. In turn, HRM committed \$30M of its funds to a watershed protection program comprised of four categories: Diffuser Ratio Upgrade, Central Biosolids De-watering Facility, Combined Sewer Overflow Prevention, and Pumping Station Upgrades/Wet Weather Flow Solutions. Staff brought a report forward to Council on December 7, 2004, entitled "Duke Street and Salter Street Drainage Area Sewer Separation" seeking approval of its first project under the Combined Sewer Overflow Prevention Category.

When the report was tabled, Halifax Regional Water Commission (HRWC) confirmed its support of the project and the goal to minimize disruption in the downtown core. HRWC examined its assets in the Duke and Salter Streets sewersheds and identified opportunities to replace aging infrastructure. During the 2005/06 capital budget process, an additional \$590,000 in cost sharing from HRWC was added to the project budget to carry out water main replacements.

Further cooperation among HRM business units to coordinate work in the downtown core is evident in the 2005/06 capital budget. Through the Capital District, sidewalk improvements and approved underground wiring will be carried out simultaneously with the sewer and water work. Transportation & Public Works has also planned complementary projects under its resurfacing and paving renewal programs.

Amendment #6 is now before Council for consideration as the value of the proposed change exceeds Director and CAO authority. Work is underway to bring a report to Council to determine appropriate authority levels for contract changes on the Harbour Solutions Project. Even a 1% change, ordinarily within the Director's authority, exceeds the \$500,000 threshold for CAO approval.

## **DISCUSSION**

Staff has concluded negotiations with Dexter Construction Company Limited on the amendment to the Infrastructure Development Agreement to include sewer separation, new sewer piping, and water main replacement in the Duke and Salter Streets sewersheds. A copy of the amendment has been reproduced and attached to this report as Appendix A.

The scope of work outlined in the amendment includes sewer separation in the Duke and Salter Streets sewersheds; sewer pipe replacement at Market, Grafton, Argyle, Granville, Lower Water, Barrington, and Salter Streets and Terminal Road; and water main replacement at Market, Grafton, Argyle, and Granville Streets.

Conducting the sewer separation work at this time renders the Duke Street combined sewer overflow chamber unnecessary. This item can be eliminated from the contract with savings of approximately

\$1.18 million. If the sewer separation work were to be deferred or cancelled, construction of the chamber would have to proceed to maintain the schedule for completion of the Halifax sewage collection system and treatment plant.

Communication and cooperation will play an integral role in this project. Staff and the Contractor will liaise with other HRM departments, Council, the public, and local businesses during the planning and construction periods to minimize potential disruptions. The majority of the sewer separation and water main work will be completed by December 2005.

**BUDGET IMPLICATIONS**

In keeping with the Infrastructure Development Agreement, the amendment is structured based on Guaranteed Maximum Prices (GMP). All prices are subject to inflation, as outlined in Appendix A. The following table outlines pricing, by component, of Amendment #6.

<b>Work Component</b>	<b>Total Cost (\$)</b>	<b>Sewer (\$)</b>	<b>Water (\$)</b>
Duke Street	3,080,363	2,578,088	502,275
Salter Street	<u>3,360,642</u>	<u>3,294,476</u>	<u>66,166</u>
Subtotal-work to be completed	6,441,005	5,872,564	568,441
Screening chamber credit	<u>(1,182,470)</u>		
Subtotal-net of credit	5,258,535		
Estimated inflation (@ 6%/annum)	338,216		
Net HST	<u>232,446</u>		
<b>Total Cost</b>	<b><u>5,829,197</u></b>		

The Duke Street combined sewer overflow screening chamber credit will be directly applied to the sewer separation work. Among other objectives, sewer separation is an alternate means to achieving the goal of the screening chamber: reducing combined sewer overflow incidents. Without the sewer separation, the screening chamber would still be required so directing the savings to the separation work is a logical step.

Funding commitments to the Duke and Salter Streets Sewer Separation have been made by Industry Canada, through the Canada Strategic Infrastructure Fund, and Halifax Regional Water Commission. Funding availability in the following capital project has been confirmed by Financial Services:

Budget Summary: Capital Project No. CSE00500-Combined Sewer Overflow Prevention

Cumulative Unspent Budget	\$7,240,500
Less: CSO Prevention	<u>\$5,829,197</u>
Uncommitted Budget	\$1,411,303

**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 the utilization of Capital and Operating reserves, as well as any relevant legislation.

**ALTERNATIVES**

Council could direct staff to cease proceeding with sewer separation in the Duke and Salter Streets drainage areas at this time. This approach is not recommended. Staff has identified sewer separation in the Duke and Salter Streets sewersheds as priority replacement work due to the age and condition of the infrastructure. Carrying out the sewer separation work now provides HRM with an immediate opportunity to avoid costs of \$1.18 million by removing the Duke Street combined sewer overflow chamber from the design. Further, considerable effort has been made to coordinate planned 2005/06 capital projects such as water main replacement, sidewalks, streets, and burying wires with the sewer separation work, minimizing future disruptions to the downtown core.

**ATTACHMENTS**

Appendix A - Amendment #6 to the Infrastructure Development Agreement  
Schedule A- Salter Duke Overview

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: Holly Power-Garrett, CGA, Financial Consultant, Harbour Solutions Project

Financial Review: Kellea Redden May 17/05  
May 10-13/05 Kellea Redden, CMA, Financial Consultant - Financial Services (490-6267)

Report Approved by: B. Anguish for  
Ted Tam, P.Eng., Project Manager, Harbour Solutions Project (490-6130)

Report Approved by: B. Anguish  
Brad Anguish, P.Eng., Director Environmental Management Services (490-4825)

**Appendix A**

**HALIFAX HARBOUR SOLUTIONS**

**SIXTH AMENDMENT TO PROJECT AGREEMENTS**

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THIS SIXTH AMENDMENT TO PROJECT AGREEMENTS made as of the \_\_\_\_\_ day of April, 2005,

AMONG:

HALIFAX REGIONAL MUNICIPALITY ("HRM")

OF THE FIRST PART

- and -

DEXTER CONSTRUCTION COMPANY LIMITED ("Company")

OF THE SECOND PART

- and -

MUNICIPAL ENTERPRISES LIMITED ("Guarantor")

OF THE THIRD PART

WHEREAS the parties entered into an infrastructure development agreement ("Infrastructure Development Agreement") dated August 15, 2003 as amended by an agreement ("Amendment to Project Agreements") dated October 15, 2003 and further amended by agreements dated October 2003 ("Second Amendment to Project Agreements"), June 15, 2004 ("Third Amendment to Project Agreements"), November 15, 2004 ("Fourth Amendment to Project Agreements") and January 20, 2005 ("Fifth Amendment to Project Agreements") (collectively "Infrastructure Development Agreement as amended");

AND WHEREAS the parties have reached agreement on further amendments to the Infrastructure Development Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties from each of the others, the parties hereto agree as follows:

**Article 1 - Interpretation, Agreement and Schedules**

**1.01 Definitions**

Capitalized words and phrases used herein shall, for all purposes of this Agreement and the Schedules hereto, unless there is something in the subject matter or context inconsistent therewith or unless otherwise defined herein, have the meaning set out in Schedule "A" to the Infrastructure Development Agreement, as amended by the Amendment to Project Agreements.

## **1.02 Headings**

Headings, recitals and the provision of a table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.03 References**

Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, subsection, clause, subclause or other subdivision is a reference to such Schedule to this Agreement or to such Article, Section, subsection, clause, subclause or other subdivision within this Agreement.

## **1.04 Parties**

References in this Agreement to the "parties" shall mean the parties to this Agreement and a reference to a "party" shall mean one (1) of the parties to this Agreement.

## **1.05 Number and Gender**

Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

## **1.06 Monetary References**

Whenever an amount of money is referred to herein, such amount shall, unless otherwise expressly stated, be deemed to be Canadian dollars.

## **1.07 Accounting Terms and Principles**

Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with generally accepted accounting principles which are in effect in Canada, including those published in the handbook of the Canadian Institute of Chartered Accountants, or any successor, as at the date on which such calculation is made or is required to be made as the same are generally applied to persons carrying on the type of business carried on by the Company; provided however, that the basis of accounting for the purpose of this Agreement shall be applied on a basis consistent with prior periods except as otherwise specifically provided herein.

## **1.08 Time**

Time shall be of the essence of this Agreement. If the last day of any period of days set out herein falls on a day which is not a Business Day, such period of days shall be extended to the first Business Day immediately following the last day of such period of days. If anything herein falls to be done or held on a day which is not a Business Day, the same shall be done or held on the next succeeding Business Day.



### **1.09 Authority**

Where reference is made to a direction, response, act, decision, determination, consent, waiver, approval, notice, request or other communication of HRM that is required or that may be done, performed or carried out by HRM pursuant to this Agreement, it may be so done, performed or carried out by the HRM Representative or such other Person or Persons as may be authorized by HRM to act in his stead and any such Person or Persons or any other Persons who may be designated from time to time as HRM Representative for the purposes of the Project Agreements by notice from HRM to the Company in accordance with this Agreement.

### **1.10 Governing Law and Choice of Forum**

This Agreement shall be deemed to have been made in the Province of Nova Scotia and shall be governed by and construed in accordance with the laws in force in the Province of Nova Scotia. The parties covenant and agree that any disputes arising from or in connection with the Project or this Agreement shall be governed by the laws of the Province of Nova Scotia and that any matter regarding the interpretation and application of this Agreement and all disputes arising from or in connection with the Project or this Agreement shall be within the exclusive jurisdiction of the courts of Nova Scotia, except where this Agreement expressly stipulates reference to the Dispute Resolution Procedures, in which case the Dispute Resolution Procedure shall apply to the exclusion of all other dispute settlement procedures, proceedings, actions and causes of action, whether in domestic, foreign or international fora and the laws of the Province of Nova Scotia shall govern to the exclusion of all other sources of law.

### **1.11 Discretion**

Where reference is made to a direction, response, act, decision, determination, consent, waiver, approval, notice, request or other communication of HRM or to matters which must be satisfactory to HRM, then, unless otherwise expressly stated, that matter is to be conducted or carried out at the sole discretion of HRM, subject to HRM's obligation to act in good faith.

### **1.12 Amendments in Writing**

No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the parties hereto, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver or, if not so specified, on the date on which the last party executes and delivers the amendment, variation or waiver.

### **1.13 No Waiver**

#### **(a) Only the Matter Specified is Affected**

Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.

(b) Waiver Extends to Named Party Only

Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.

(c) Failure to Give Notice

The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfilment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.

(d) No Waiver

The acceptance by any party of payment or performance of any obligation after the breach or non-fulfilment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

**1.14 Severability**

If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Laws.

**1.15 Sixth Amendment to Project Agreements**

"Agreement", "this Agreement", "the Agreement", or "the Sixth Amendment to Project Agreements" means this Sixth Amendment to Project Agreements, inclusive of all recitals, Schedules and all instruments in writing by their terms expressly amend, waive or vary the provisions of this Agreement; "hereof", "hereto", "herein", "hereby" and "hereunder", and similar expressions mean and refer to this Agreement and, unless the context otherwise requires, not to any particular Article, Section, subsection, clause, subclause or other subdivision within this Agreement.

**Article 2 - Consent of Surety and Insurers****2.01 Condition Precedent**

The parties acknowledge and agree that it is a condition precedent to the effective date of this Sixth Amendment to the Project Agreements that the Company obtain from the Surety and its insurers their consent in writing to this Agreement and that, if such consent is not secured within thirty days (30) days of the date hereof, this Sixth Amendment to the Project Agreements shall be null and void and of no force and effect.

### **Article 3 - Project Requirements**

#### **3.01 Amendment to Project Requirements**

The Project Requirements attached to the Infrastructure Development Agreement as Schedule "B" are hereby amended as set forth in Schedule "A" hereto.

### **Article 4 - Guaranteed Maximum Price**

#### **4.01 Increase in Guaranteed Maximum Price**

The Guaranteed Maximum Price for the Halifax Sewage Collection System shall be increased and the dollar amount "\$51,824,344" set forth in clause 13.02(a)(i) of the Infrastructure Development Agreement as amended shall be replaced with the dollar amount "\$57,082,879".

#### **4.02 Amendment to GMP Breakdown**

The GMP Breakdown attached as Schedule "H" to the Infrastructure Development Agreement is hereby amended by:

- a) deleting the entire line for the subcomponent referenced as "Duke Street," under the component referenced as "CSO's & Diversion Chambers," with an associated GMP figure of \$673,834;
- (b) deleting the entire line for the subcomponent referenced as "Duke St. - Diversion Piping," under the heading "Pipeline Diversions," with an associated GMP figure of \$68,780;
- (c) deleting the entire line for the subcomponent referenced as "Duke St.," under the heading "Outfalls (Offshore & Onshore)," with an associated GMP figure of \$439,856;
- (d) adding the following under the component referenced as "Tunnel" and before the line referenced as "Total":

		pipe dia	length	HALIFAX			
		(mm)	(m)	GMP	Civil	Electrical	Mechanical
SEPARATION OF STORM AND SEWAGE FLOWS	Duke Street Sewershed			1,853,700	1,853,700		
	New piping replacement at Market, Grafton, Argyle, Granville and Lower Water Streets			724,388	724,388		
	New water pipe at Market, Grafton, Argyle and Granville Streets			502,275	502,275		
	Salter Street Sewershed			2,849,900	2,849,900		
	New piping replacement at Barrington, Salter, Granville and Hollis Streets and Terminal Road			444,576	444,576		
	New water pipe at Granville Street			66,166	66,166		

- (e) replacing the figure "51,824,344" where it appears in the line referenced as "Total" and under the column headed "Halifax GMP" with "57,082,879";
- (f) replacing the figure "36,393,150" where it appears in the line referenced as "Total" and under the column headed "Civil" with "42,093,746";
- (g) replacing the figure "2,542,435" where it appears in the line referenced as "Total" and under the column headed "Electrical" with "2,498,285"; and
- (h) replacing the figure "5,890,338" where it appears in the line referenced "Total" and under the column headed "Mechanical" with "5,492,427".

#### 4.03 Amendment to Payment Schedules

The Payment Schedules, as amended, attached as Schedule "I" to the Infrastructure Development Agreement is hereby further amended by replacing the dollar amount "56,665,044" with the dollar amount "61,923,579" where it appears in the column headed "Cumulative Maximum Halifax" on the lines for Months 22, 23 and 24 on the page entitled "Halifax Sewage Collection System, Outfall Diffuser, Road and Mengoni Avenue Site Expansion Payment Schedule Commencing the Effective Date."

**4.04 Inflation Adjustments****(a) Sewershed Separation and Combined Sewer Replacement**

Notwithstanding subsection 13.03(b) of the Infrastructure Development Agreement, as amended, the parties agree that the Guaranteed Maximum Prices (which, for clarification exclude inflation) for each of the following subcomponents on the "GMP Breakdown for the Halifax Sewage Collection System," as amended by Section 4.02 of this Agreement, shall be adjusted monthly for inflation, at the applicable rate of inflation as set forth in the Inflation Index, in each month after September 2004 up to and including the month of December 2005 after which time there shall be no further adjustment for inflation:

- (i) "Duke Street Sewershed";
- (ii) "New piping replacement at Market, Grafton, Argyle, Granville and Lower Water Streets";
- (iii) "Salter Street Sewershed"; and
- (iv) "New piping replacement at Barrington, Salter, Granville and Hollis Streets and Terminal Road."

**(b) Water Pipe Replacement**

Notwithstanding subsection 13.03(b) of the Infrastructure Development Agreement, as amended, the parties agree that the Guaranteed Maximum Prices (which, for clarification exclude inflation) for each of the subcomponents on the "GMP Breakdown for the Halifax Sewage Collection System", as amended by Section 4.02 of this Agreement, shall be adjusted monthly for inflation, at the applicable rate of inflation as set forth in the Inflation Index, in each month after November, 2004 up to and including the month of December, 2005 after which time there shall be no further adjustment for inflation:

- (i) "New water pipe at Market, Grafton, Argyle and Granville Streets"; and
- (ii) "New water pipe at Granville Street."

**(c) Inflation Index Clarification**

For greater certainty, the parties agree that the Inflation Index was 119.60 at September 30, 2004 and 121.20 at November 30, 2004.

**10**  
**Article 5 - Schedules**

**5.01 Additional Schedules**

Section 1.17 of the Infrastructure Development Agreement is hereby amended by adding the following:

Schedule II - Drawing entitled "Salter-Duke Overview".

**Article 6 - General**

**6.01 Additional Documentation**

Each of the parties shall, from time to time, at its own cost and expense, do or cause to be done all things which are necessary to give effect to the provisions and intent of this Agreement.

**6.02 Sixth Amendment to Project Agreements**

All of the terms, conditions and provisions of the Project Agreements remain unaltered except as specifically amended by the Amendment to Project Agreements, the Second Amendment to Project Agreements, the Third Amendment to Project Agreements, the Fourth Amendment to Project Agreements, the Fifth Amendment to Project and Agreements and, subject to Section 2.01, the provisions of this Agreement.

**6.03 Counterpart Execution**

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

Article 7 - Execution

**7.01 Execution**

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

SIGNED, SEALED and DELIVERED )

in the presence of: )

) HALIFAX REGIONAL MUNICIPALITY

) Per: \_\_\_\_\_  
) Peter J. Kelly, Mayor

) Per: \_\_\_\_\_  
) Jan Gibson, Municipal Clerk

) DEXTER CONSTRUCTION COMPANY  
) LIMITED

) Per: \_\_\_\_\_

) MUNICIPAL ENTERPRISES LIMITED

) Per: \_\_\_\_\_

)  
)  
)

**SCHEDULE "A"****AMENDMENTS TO PROJECT REQUIREMENTS**

1. Clause 4.2.2 of the Project Requirements is hereby amended by deleting subparagraph 4.2.2.(j)(i) and replacing it with the following:

- "(i) separation of the storm and sewage flows in two sewer-sheds, namely the Duke Street Sewer-Shed and the Salter Street Sewer-Shed in accordance with the conceptual design attached to the Infrastructure Agreement as Schedule "II" entitled "Salter-Duke Overview", prepared by Harbour Engineering Incorporated dated January 3, 2005 and issued for review February 22, 2005, by:
  - (A) replacing existing combined sewer pipes with new sewer pipes at the selected locations on Market Street, Grafton Street, Argyle Street, Granville Street, Lower Water Street, Barrington Street, Salter Street and Terminal Road;
  - (B) replacing existing water mains with new water mains at the selected locations on Market Street, Grafton Street, Argyle Street and Granville Street;
  - (C) converting selected combined sewer to separate sanitary and storm sewers;
  - (D) installing new sanitary and storm sewers on selected streets;
  - (E) connecting existing or new laterals and catch basin leads to new or existing mainline separated sewers;
  - (F) diverting selected Duke Street combined flow to Salter Street Sewershed;
  - (G) reinstating pavement from curb to curb with asphalt recapping at a minimum 50 mm thickness;
  - (H) restoring all trench cuts with minimum 100 mm asphalt patch;
  - (I) reinstating curb/gutter and sidewalks; and
  - (J) repaving Bishop Street from curb to curb.



