



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 11.1.1**

**Halifax Regional Council  
March 3, 2009**

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

A handwritten signature in cursive script, appearing to read "Dan English", written over a horizontal line.

**SUBMITTED BY:** Dan English, Chief Administrative Officer

A handwritten signature in cursive script, appearing to read "Wayne Anstey", written over a horizontal line.

Wayne Anstey, Deputy Chief Administrative Officer - Operations

**DATE:** February 19, 2009

**SUBJECT:** Nova Scotia Transportation and Infrastructure Renewal Construction Agreement 2009-012

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### **ORIGIN**

This report originates as a result of a request from the provincial Department of Transportation and Infrastructure Renewal.

### **RECOMMENDATION**

It is recommended that his Worship the Mayor and the Municipal Clerk be authorized, by resolution of Regional Council, to sign on behalf of Halifax Regional Municipality, Construction Agreement No. 2009-012 between HRM and the Nova Scotia Transportation Infrastructure Renewal (NSTIR), a three-year agreement, as outlined in the Discussion Section of this report.



## **BACKGROUND**

The Aid-to-Municipality is an agreement between NSTIR and Nova Scotian municipalities (including HRM) to upgrade provincially owned and maintained gravel roads to asphalt. With respect to roads located within HRM boundaries (outside the core area), it is the Province's responsibility under this program to create a construction agreement, and to design, tender and construct the work. HRM's role is to identify the streets to be paved, and to facilitate the Local Improvement Charge process. The program is cost-shared between the Province and the Municipality, each paying 50% of the total construction costs. However, HRM's portion is recovered in its entirety by levying Local Improvement Charges to the abutting properties on the relevant streets.

Each year, HRM is requested by NSTIR to submit a prioritized list of gravel streets outside the core area for cost sharing for paving under the Aid-to-Municipality Program. NSTIR then approves the list of streets relative to their funding levels, produces a construction agreement between HRM and NSTIR, and requests approval of this agreement from Council. This process is conducted on an annual basis and once approved the Province then designs, tenders and constructs the work.

## **DISCUSSION**

NSTIR is changing the procedure from a one year construction agreement to a three year agreement. This change has no real impact on the process required from HRM. The attached Agreement 2009-012 refers only to the terms and conditions relating to paving of gravel roads under the Aid-to-Municipality program. It is noted that HRM is not required to submit a three year paving list. Each year NSTIR will continue to request a list of streets to be paved from HRM. The Province will then notify HRM which streets can be paved under the program relative to their approved funding levels. A report will be submitted to Council requesting approval of the street list and funding. Upon Council approval, this list will be conveyed back to the Province which will then become an addendum of the Construction Agreement 2009-012.

## **BUDGET IMPLICATIONS**

There is no net cost to HRM as 50% of the total cost is paid by the Province, and the remaining 50% is recovered through the HRM Local Improvement Charges for paving.



## **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**

There are no recommended alternatives.

## **ATTACHMENTS**

Construction Agreement 2009-012

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax at 490-4208.

Report Prepared by: Ann Reid, LIC Technician, Design & Construction Services at 490-6849

Report Approved by:



David Hubley, P. Eng. Manager, Design & Construction Services at 490-4845

Report Approved by:



Phillip Townsend, Acting Director, Infrastructure and Asset Management at 490-7166





## **Transportation and Infrastructure Renewal**

### **CONSTRUCTION AGREEMENT NO. 2009-012**

**THIS AGREEMENT** made this 7<sup>th</sup> day of January 2009.

**BETWEEN:**

**HER MAJESTY THE QUEEN** in Right of the Province of Nova Scotia, as represented by the Minister of Transportation and Infrastructure Renewal (the "**Minister**")

-and-

**HALIFAX REGIONAL MUNICIPALITY**, a body corporate (the "**Municipality**")

**WHEREAS** the Minister is of the opinion that certain village and subdivision streets, under the jurisdiction of the Province, and located within the Municipality, are necessary and in the public interest;

**AND WHEREAS** by Memorandum to the Cabinet Number MH1104 dated May 12, 1988 the Executive Council approved a cost sharing paving policy on these Village Streets and Subdivision Streets;

**NOW THIS AGREEMENT WITNESSETH** that in consideration of \$1.00, the receipt and sufficiency of which is acknowledged by the parties and the covenants, promises and agreements herein contained to be by them observed, performed and paid, the parties mutually agree as follows:

**1. INTERPRETATION**

1.1 In this Agreement, unless something in the subject matter or context is inconsistent therewith, the following terms shall have the meanings set forth below:

(a) "**Agreement**" means this Agreement.

(b) "**Business Days**" means any day other than a Saturday, Sunday or a statutory holiday in the Province of Nova Scotia.



- (c) "Fiscal Year" means the 12 month period beginning on April 1 and ending on March 31; and
- (d) "Paving" means the work of completion of grading, gravelling, culvert work and asphalt concrete paving of the subdivision streets and shall also include pre-engineering, and/or design costs, on site engineering supervision and inspection and incidental costs from the edge of the existing paved roadway to the limit of the right of way, but does not include feasibility studies, the construction, reconstruction, relocation, repairs or adjustments of sidewalks, water lines, fire hydrants, sanitary sewers, sanitary sewer manholes, utility poles, street lighting or similar work.

1.2 In this Agreement, unless something in the subject matter or context is inconsistent therewith, words importing the singular number shall include the plural and *vice versa*; words importing a gender shall include the masculine, feminine and neuter genders; and words importing persons shall include individuals, partnerships, companies, associations, trusts, government agencies and any other form of organization or entity whatsoever.

1.3 This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.

1.4 This Agreement, constitute the entire Agreement among the parties hereto with regard to the subject matter hereof and supersedes all prior agreements, understandings, representations or warranties, negotiations and discussions, whether oral or written, among the parties hereto with respect thereto, entered into prior to the date hereof, which are hereby terminated.

1.5 No amendment of this Agreement shall be binding unless in writing and signed by all of the parties hereto.

1.6 No waiver by any party hereto of any breach of any of the provisions of this Agreement shall take effect or be binding upon such party unless in writing and signed by such party. Unless otherwise provided therein, such waiver shall not limit or affect the rights of such party with respect to any other breach.

1.7 Time shall be of the essence of this Agreement.

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## **2. TERM OF AGREEMENT**

2.1 This agreement shall be effective for each of the following Fiscal Years:

- (a) 2009 and 2010
- (b) 2010 and 2011
- (c) 2010 and 2012

## **3. DESIGNATION AND ACCEPTANCE OF STREETS**

3.1 On or before January 31 of each Fiscal Year the Municipality shall provide the Minister with a list of Provincial subdivision streets it is requesting be Paved under this Agreement. In the event that a Municipality chooses not to participate in the program for any of the fiscal years covered under this agreement, they must advise the Minister as soon as possible but in no case later than January 31 of each Fiscal Year. Failure to submit a list of requests, or to otherwise notify the Minister that the Municipality will



not be participating for a particular Fiscal Year by the dates noted, will result in the Municipality being excluded from participating in the program for that particular fiscal year.

3.2 If the Minister has received a request pursuant to section 2.1, on or before April 30 of the Fiscal Year for which the request is being made, the Minister shall advise the Municipality which streets the Minister has agreed to accept for Paving under this Agreement during that Fiscal Year and the anticipated cost of such Paving (the "**Cost Estimate**"). The extent to which requested projects will be approved is contingent upon the amount of funding the subdivision paving program receives within that Fiscal Year, and the number of requests received from the various municipalities. The Municipality will notify the Minister within 15 Business Days of the receipt of the Cost Estimate that it accepts the list of approved projects and the Cost Estimate. If a notice of acceptance is not received within this time period, the Municipality is deemed to not accept the list of approved projects and the Cost Estimate, and the Province will proceed no further with these projects.

#### **4. ADDITIONAL WORK**

4.1 The Municipality may request, in writing, that the Minister make adjustments to manholes, catch basins or water valves as part of its tender for Paving ("**Additional Work**"). If the Minister, in his discretion, agrees to accept the request from the Municipality for Additional Work, he shall provide the Municipality with a unit price for the Additional Work (the "**Unit Price**"), which the Municipality shall be deemed to have accepted unless it notifies the Minister within 10 Business Days that it does not want to proceed with the Additional Work.

#### **5. MUNICIPALITY'S OBLIGATIONS**

5.1 The Municipality shall be responsible for acquiring, at its sole expense, all additional land required for Paving and Additional Work, including any necessary license or leases.

5.2 The Municipality agrees to indemnify and save harmless the Minister and his officers, employees and agents from all liabilities, fines, suits, claims, demands and actions, of any kind and nature for which the Minister or his officers, employees or agents shall or may become liable or suffer by reason of any breach, violation or non-performance by the Municipality of any covenant, term or provision hereof or by reason of any death or injury of any person or any damage or destruction of any property resulting from any act, neglect or default on the part of the Municipality or any of its servants, employees, agents, invitees or licensees whatsoever.

#### **6. MINISTER'S OBLIGATIONS**

6.1 The Minister shall be responsible for tendering the Paving and Additional Work and for all construction oversight and management of the Paving and Additional Work.

6.2 The Minister shall notify the Municipality in writing of any cost overruns in excess of ten (10%) percent of the Cost Estimate (the "**Cost Overrun**") within 10 Business Days of becoming aware of such Cost Overruns

6.3 The Minister shall provide the Municipality with statements of account for Paving and Additional



Work within 30 days of the completion of the Paving and Additional Work, (the "Statement of Accounts").

## **7. CONTRIBUTION AND PAYMENT**

7.1 The Municipality shall pay to the Minister, within 60 days of submission of accounts by the Minister to the Municipality:

- (a) fifty percent (50%) of the total amount of the statement of account for Paving, and
- (b) one hundred percent (100%) of the amount of the statement of account for Additional Work.

## **8. NOTICES**

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

(a) to the Municipality at

Julia Horncastle  
Municipal Clerk  
Halifax Regional Municipality  
PO Box 1749  
Halifax, NS B3J 3A5

to the Minister at

Attention: Program Management Engineer  
Johnston Building  
1672 Granville St.  
P.O. Box 186  
Halifax, NS  
B3J 2N2  
Fax (902) 424-0571

or to such other address, individual or electronic communication number as may designated by notice given by either party to the other in accordance herewith. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to be given on the day of actual delivery thereof and, if given by registered mail, on the fifth business day following the deposit thereof in the mail and if given by electronic communication, on the day of transmittal thereof if given during normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonable to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or communication shall not be mailed but shall be given by personal delivery or by electronic communication.



**IN WITNESS WHEREOF** the Minister has hereunto subscribed his hand and affixed his seal and the Municipality has set and affixed its corporate seal authenticated by the signatures of the Mayor and the Municipal Clerk hereunto duly authorized.

**SIGNED, SEALED AND DELIVERED**

in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Minister of Transportation and Infrastructure  
Renewal, Province of Nova Scotia

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk



