



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 11.1.9

**Halifax Regional Council
July 7, 2009**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

A handwritten signature in cursive script, appearing to read "Wayne Anstey".

Wayne Anstey, Acting Chief Administrative Officer

A handwritten signature in cursive script, appearing to read "Cathie O'Toole".

Cathie O'Toole, Acting Deputy Chief Administrative Officer - Corporate Services and Strategy

DATE: June 30, 2009

SUBJECT: Renewal of HIAA Development Grant Agreement

ORIGIN

On October 5th, 2004, Regional Council approved a Development Grant Agreement with the Halifax International Airport Authority (HIAA) with a five-year term, eligible for renewal on March 31st, 2009.

RECOMMENDATION

It is recommended that Regional Council renew the Development Grant Agreement with the Halifax International Airport Authority (HIAA), for an additional five year period to March 31st, 2012, as described in Attachment 1.

BACKGROUND

On January 25th, 2000, Regional Council approved a Development Grant Agreement with the HIAA. On October 5th, 2004, a new five-year agreement was approved by Regional Council which put in place a revised formula to calculate the airport's tax. The agreement specifies that the airport pay a base amount of \$528,898 (subject to an inflation index) plus 22 cents per passenger. Any difference between this amount and the full tax otherwise owing is called the "Development Grant". Over the past five years, the Development Grant has varied from approximately \$700,000 to \$1,050,000, averaging \$893,000 per year over the term of the agreement. Unless one year notice is given to renegotiate the agreement, it rolls over for an additional five years. HRM did not provide one year written notice of any intent to renegotiate the agreement.

On October 12th, 2006, Regional Council approved a Memorandum of Understanding (MOU) with the HIAA that described areas of mutual interest and cooperation. In September 2008, an updated MOU was signed with the HIAA that included a commitment to work together on tax issues.

Regional Council's Economic Strategy includes, as one of its actions, supporting development of the Halifax Gateway and to work with partners to coordinate marketing, infrastructure investment and policy initiatives affecting the port, airport, rail and transportation facilities that comprise the Halifax side of the Atlantic Gateway. The Economic Strategy also focussed on ensuring "that a competitive tax and regulatory regime supports HRM's growth drivers."

In January 2008 Council adopted a policy position on HRM's role in the Atlantic Gateway initiative. The general role of HRM is one of strategic support based on aligning HRM's priorities with those of the Atlantic Gateway. A Development Grant to the Halifax Stanfield International Airport serves to further HRM's Gateway role and supports implementation of the Economic Strategy.

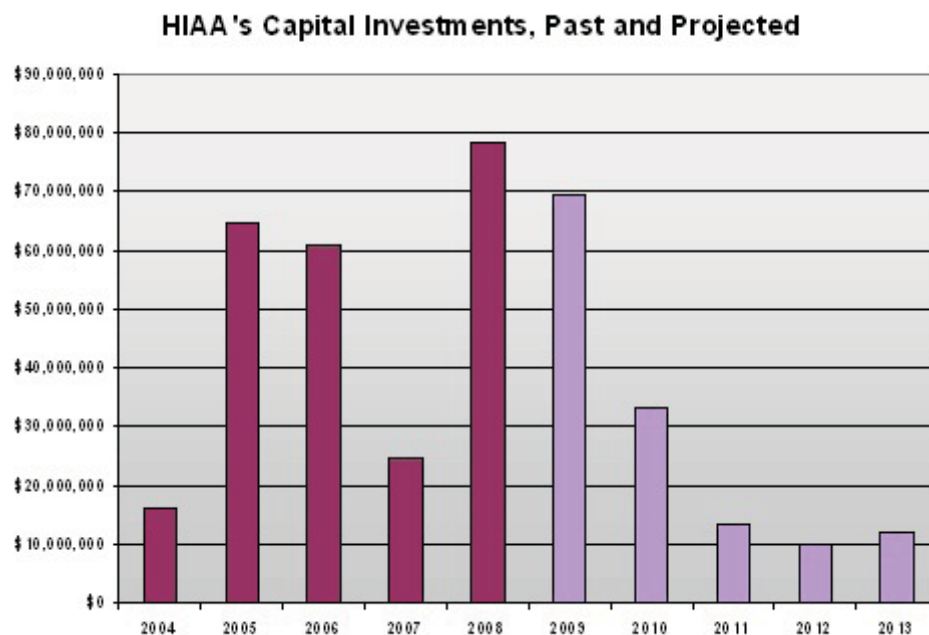
DISCUSSION

The development grant is intended to support the economic development of the region and the contribution of the HIAA in achieving this end. The HIAA has invested more than \$244 million in capital projects over the past five years, some of which are ongoing. The main areas of investment have included:

- Air Terminal Building (ATB) Expansion Program
- ATB Groundside Redevelopment Program
- Airfield Restoration Program
- Combined Services Complex
- Multi-Tenant Cargo Facility

The HIAA plans to invest a further \$146 million in these projects over the next five years plus it is currently developing a new capital plan for the next five years,.

Since the original agreement was first signed the HIAA has developed additional sources of funding for its capital program. This includes its Airport Improvement Fee (AIF) of \$15 per passenger, which raised \$13.6 million for the Authority in 2007. Nonetheless, the significant expansions and



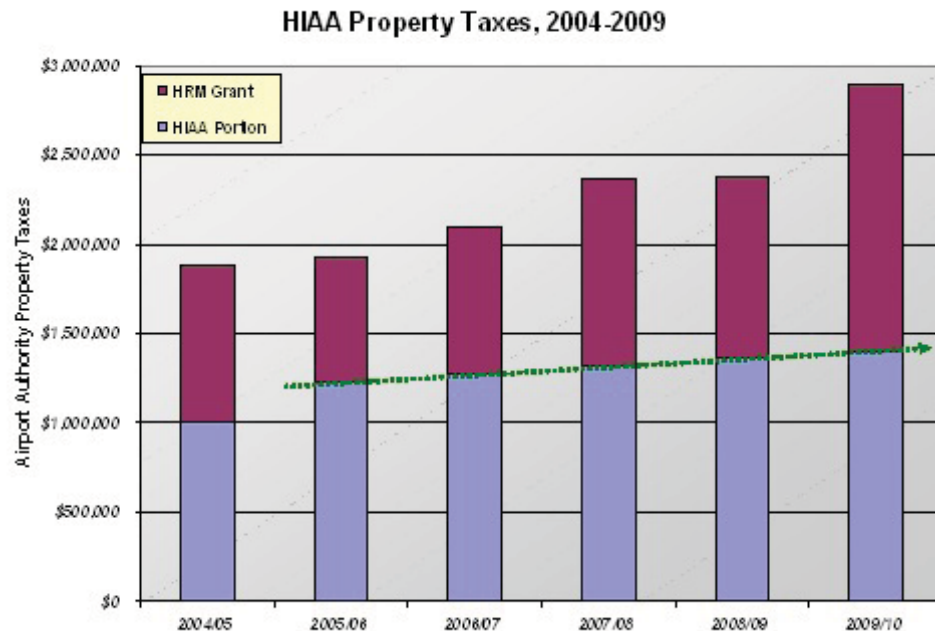
improvements being carried out by the HIAA does create strain on the ability of the airport to maintain its cost competitiveness. Many airlines are very cost sensitive especially considering the current economic recession. Without the Development Grant, airplane landing and other fees would face upward pressure. For example, Halifax is currently in the mid-range of competitiveness for 737 landing fees (see Table 1). The loss of the Development Grant could add \$50 to \$60 to such landing fees, making the airport less competitive to other Canadian cities.

Table 1
737 Landing Fees
(HIAA)

Winnipeg	\$773
Moncton	\$956
Calgary	\$999
Vancouver	\$1,013
Halifax	\$1,014
Ottawa	\$1,080
Edmonton	\$1,190
Montreal	\$1,223
Toronto	\$3,640

BUDGET IMPLICATIONS

In 2009-2010 the Approved Operating Budget assumes the continuation of the Development



Agreement. Hence, an extension of the agreement will have no impact upon the current operating budget. The Development Agreement was estimated at \$1,525,000 while the tax revenues to HRM are estimated at \$1,365,000. The value of the Development Agreement for 2010-2011 and future years cannot be reliably estimated at this time.

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

1. Regional Council could reject the proposed Agreement and impose full taxation on the HIAA. This is not recommended as there could be adverse economic impacts for the community.
2. Regional Council could opt to amend the proposed Agreement to include a maximum level for the Development Grant. This would help to limit HRM's fiscal exposure, but could put a financial burden on the HIAA during their multi-year airport improvement program.

3. Regional Council could opt to renew the proposed Agreement for a period of only two or three years, to better match the period during which major HIAA investments are taking place. HRM did not provide a one-year written notice of intent to renegotiate the Agreement, so would need to rely on its working relationship with the HIAA -- and good will -- to work through these taxation issues.

ATTACHMENTS

Attachment 1 - Proposed Development Grant Agreement, 2009-10 to 2013-14

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Andre MacNeil/Financial Consultant, 490-6241



Report Approved by:

Bruce Fisher/Manager, Fiscal & Tax Policy, 490-4493



Report Approved by: Cathie O'Toole, Director of Finance/CFO 490-6308

DEVELOPMENT GRANT AGREEMENT (Draft)

THIS AGREEMENT made as of the _____ day of July, 2009.

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 Stanfield International Airport (hereinafter called "HSIA");

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 HSIA 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 HSIA 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 HSIA;

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

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 70 of the *Halifax Regional Municipality Charter*, to the Authority in an amount calculated in accordance with the terms and conditions of the said Development Grant Agreement;

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

AND WHEREAS the Authority and HRM entered into an agreement dated November 15, 2004 for another five (5) years, commencing on April 1, 2004, which term of the said Development Grant Agreement expired on March 31, 2009;

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 *Halifax Regional Municipality Charter*.

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 62-010-X1B for 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 1st of any applicable year and ending on March 31st 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 HSIA 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 HSIA 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 70 of the *Halifax Regional Municipality Charter*, and which shall be calculated in accordance with the provisions of Section 3 of this Agreement.

1.12 “HSIA” means the Halifax Stanfield 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 3.4 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, 2009 (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.

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 Annual Period. For each 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 Property Valuation Services Corporation, 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.

3.2 Passenger Volume Reporting. The Authority shall provide the actual passenger volume amounts to HRM annually, on or before January 31st 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 HSIA.

3.3 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.

3.4 Declines in Passenger Volumes. Subject always to section 3.3 of this Agreement, commencing in the 2009-2010 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.

3.5 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 HSIA 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 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 the Authority leases the parking garage to an unrelated third-party 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 is the Schedule 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.

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, Costs, Expenses. 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
City Hall
Box 1749
Halifax NS B3J 3A5
Facsimile: 902-490-4208

Halifax International Airport Authority
1 Bell Boulevard
Enfield, Nova Scotia
B2T 1K2
Facsimile: 902-873-2800

Attention: Municipal Clerk

Attention: General Counsel

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.

SIGNED, SEALED AND DELIVERED)
in the presence of:)

Witness: _____)

HALIFAX REGIONAL MUNICIPALITY

By: _____

And: _____

**HALIFAX INTERNATIONAL AIRPORT
AUTHORITY**

Witness: _____)

By: _____

And: _____

SCHEDULE A

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

<u>Annual Period</u>	<u>Passenger Volume</u>	<u>Passenger Amount</u>	<u>Adjusted Base Amount</u>
2009/10	3,401,848	\$787,248	\$573,631
2010/11	3,489,505	\$787,248	\$587,972
2011/12	3,640,497	\$800,909	\$602,671
2012/13	3,782,338	\$832,114	\$617,738
2013/14	3,908,263	\$859,818	\$633,182