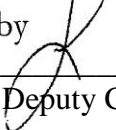


**Item No. 11.1.3**  
**Halifax Regional Council**  
**October 18, 2011**

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

**SUBMITTED BY:** Original signed by   
\_\_\_\_\_  
Richard Butts, Chief Administrative Officer

Original Signed by   
\_\_\_\_\_  
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** September 14, 2011

**SUBJECT:** **Cost Shared Agreement for the Paving of "J" Class Subdivision Streets**

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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 the Mayor and Chief Administrative Officer be authorized, by resolution of Regional Council, to sign on behalf of Halifax Regional Municipality, Construction Agreement No. 2012-012 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 other Nova Scotia municipalities (including HRM) to upgrade provincially owned and maintained gravel roads to asphalt. It is the Province’s responsibility, under this program, to create a construction agreement, and to design, tender and manage the construction of the paving work. HRM’s role is to identify the streets to be paved, and to facilitate the Local Improvement Charge (LIC) 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 LIC’s to the abutting properties on the relevant streets.

## **DISCUSSION**

The attached Agreement No. 2012-012 is a three year agreement, and 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 at this time. Beginning in 2012, each year over the next three years, HRM will have the opportunity under this agreement to submit a list of streets to NSTIR to be considered for paving. A recommendation report will be submitted to Regional Council listing the streets that HRM has requested to be paved under the Aid-to-Municipality program. NSTIR will then notify HRM as to which streets can be paved relative to their approved funding levels. Once HRM receives confirmation from NSTIR as to which streets have been approved for paving from the original list, staff will submit an Information Report to Council advising of this updated list.

## **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, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

## **COMMUNITY ENGAGEMENT**

Community Engagement was not deemed to be necessary in this process as there is no impact to the community at this point in time.

**ALTERNATIVES**

Council could choose to not approve the recommendation in this report; however, staff does not recommend this alternative.

**ATTACHMENT**

Construction Agreement No. 2012-012

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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 490-4208.

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

Report Approved by: \_\_\_\_\_  
David Hubley, P.Eng., Manager Design & Construction Services 490-4845

Financial Approval by: \_\_\_\_\_  
James Cooke, CGA, Director of Finance/CFO, 490-6308

Report Approved by: \_\_\_\_\_  
Ken Reashor, P.Eng., Director, Transportation & Public Works, 490-4855

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AR/pm



**NOVA SCOTIA**

**Transportation and  
Infrastructure Renewal**

**CONSTRUCTION AGREEMENT NO. 2012-012**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2011.

**BETWEEN:**

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

-and-

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

**WHEREAS** the Province is of the opinion that certain 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 program 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 neutral 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.

## **2. TERM OF AGREEMENT**

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

- (a) 2012-13
- (b) 2013-14
- (c) 2014-15

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

3.1 On or before January 31 prior to the start of each Fiscal Year to which this Agreement applies, the Municipality shall provide to the Province a notice stating if it intends to participate in the Paving program for the Fiscal Year in question, and if so, which subdivision streets it wishes to be considered for Paving.

3.2 If the Province receives a notice under section 3.1 that the Municipality wishes to participate in the Paving program for a Fiscal Year, the Province shall review the request and notify the Municipality of the streets the Province accepts for Paving and the anticipated cost of such Paving (“Cost Estimate”).

3.3 Within 15 Business Days after the delivery of the Cost Estimate to the Municipality the Municipality shall notify the Province whether or not it accepts the list of approved streets and the related Cost Estimate.

3.4 If the Municipality does not provide a notice to the Province under sections 3.1 or 3.3 by the specified times it shall be deemed to be notification that the Municipality does not wish to participate in the Paving program for the Fiscal Year in question.

3.5 The parties acknowledge that the extent to which the Province can accept streets for paving in any Fiscal Year is contingent upon the amount of funding the Paving program receives for the Fiscal Year and the number of municipalities that wish to participate in the Paving program.

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

4.1 The Municipality may request, in writing, that the Province make adjustments to manholes, catch basins or water valves as part of its request for Paving (“**Additional Work**”). If the Province, in its 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 Province within 10 Business Days from the receipt of the unit price 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 Province and its officers, employees and agents from all liabilities, fines, suits, claims, demands and actions, of any kind and nature for which the Province or its 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. PROVINCE’S OBLIGATIONS**

6.1 Where the Municipality has accepted the list of approved street and the related Cost Estimate under section 3.3, the Province 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 Province 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 Province 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 Province, within 60 days of submission of accounts by the Province 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

Mr. Richard Butts  
Chief Administrative Officer  
Halifax Regional Municipality  
P.O. Box 1749  
Halifax, NS  
B3J 3A5

- (b) to the Province at

Attention: Carol McKee  
Acting Capital Program Administration Officer  
Johnston Building  
1672 Granville St.  
P.O. Box 186  
Halifax, NS  
B3J 2N2  
Fax (902) 424-0571

- (c) 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 Province has hereunto subscribed its hand and affixed its 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

# Resolution of Council

The following Resolution was passed at a meeting of the Council of the Halifax Regional Municipality on the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2011.

Moved by

Seconded by

■That the Mayor and myself be authorized to sign Construction Agreement No. 2012-012 for the paving of the paving of subdivision streets.

dated the \_\_\_\_ day of \_\_\_\_\_ A.D., 2011.●

Motion Carried.

I certify that the above Resolution was passed at the duly called meeting of the Council of the Halifax Regional Municipality Council on \_\_\_\_\_ A.D., 2011.

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Municipal Clerk