

HALIFAX

P.O. Box 1749
Halifax, Nova Scotia
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Item No. 17. 2
Halifax Regional Council
September 5, 2017

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: _____
Jacques Dubé, Chief Administrative Officer

DATE: September 1, 2017

SUBJECT: HRM-Halifax Water Contribution Agreement: Fall River Water Servicing

ORIGIN

June 21, 2016 – Halifax Regional Council approval for federal infrastructure funding applications.

August 16, 2016 release by the Government of Canada of federal–provincial bilateral agreements on infrastructure and list of approved projects and funding.

November 8, 2016 - Halifax Regional Council approval to authorize a sole source award and reimbursement of an amount up to \$800,000 to the Halifax Regional Water Commission for the preliminary and detailed design and cost estimation for central water services to the Fall River Village Centre Designation (Map 1 & 2 of the staff report dated September 30, 2016);

July 18, 2017 - That Halifax Regional Council:

1. Direct the Chief Administrative Officer to proceed immediately with the original scope of the Fall River water servicing project, as approved by Regional Council June 21, 2016, and approve the gross project budget in the amount of \$8,625,000 including net HST with the net municipal amount funded from a Local Improvement Charge, as described in the Financial Implications section of the supplementary staff report dated July 6, 2017, and approve the transfer of the required project funds to Halifax Water for the installation of the water service; and
2. Give First Reading to By-law L-137, respecting an amendment of By-law L-100, the Local Improvement By-law, as provided in Attachment 2 of the supplementary staff report dated July 6, 2017, to set the charges for the installation of water servicing in Fall River and adjoining lots along Fall River Road to the Fall River Village Centre, Lockview Road to the Lockview School access, and McPherson Road, and schedule a Public Hearing at the same time as the Public Hearing for the amendments to the Regional Subdivision By-law.

August 15, 2017 - That Halifax Regional Council:

1. Approve amendments to the Regional Subdivision By-law to extend the Water Service Area in Fall River, as set out in Attachment B of the staff report dated March 10, 2017;
2. Adopt By-law L-137, respecting an amendment of By-law L-100, the Local Improvement By-law, as provided in Attachment 2 of the supplementary staff report dated July 6, 2017, to set the charges for the installation of water servicing in Fall River and adjoining lots along Fall River Road to the

- Fall River Village Centre, Lockview Road to the Lockview School access, and McPherson Road;
3. Direct the Chief Administrative Officer (CAO) to negotiate a Contribution Agreement with Halifax Water for the transfer of the required project funds and to return to Council with the resulting Contribution Agreement for approval; and
 4. Direct the Chief Administrative Officer (CAO) to apply for funding for federal/provincial funding respecting the expansion of water services in Fall River, including the addition of services along Highway #2, from near Fall River Road to the Highway 102 Overpass, and connect the existing system at Ingram Drive to Fall River Road.

LEGISLATIVE AUTHORITY

Subsection 74(1) of the *Halifax Regional Municipality Charter* provides that “The Municipality may agree with one or more municipalities, villages, service commissions, the Government of the Province or of Canada or a department or agency of either of them or a band council pursuant to the *Indian Act (Canada)* to provide or administer municipal or village services.”

Clause 79(1)(am) of the *Halifax Regional Municipality Charter* provides that “The Council may expend money required by the Municipality for(am) water systems;”

RECOMMENDATION

It is recommended that Halifax Regional Council:

Authorize and direct the CAO to sign an agreement substantially similar as the attached Contribution Agreement with Halifax Water, allowing HRM to transfer up to \$8,625,000 to Halifax Water to construct the Fall River Water Servicing Project.

BACKGROUND

In August 2016, the Fall River Water Servicing project was approved for federal and provincial funding under the Clean Water and Wastewater Fund (CWWF). The project will receive \$3.96 million in federal and \$1.98 million in provincial funding. The remaining \$2.7 million will be covered by a Local Improvement Charge (“LIC”), funded by property owners along the water main. Regional Council has asked staff to identify how the Municipality could contribute \$100,000 toward the project. That request will be addressed in a separate report to the Audit & Finance Standing Committee.

The project will install water services along Fall River Road from the Windsor Junction Road to the Fall River Village Centre, along Lockview Road to the Lockview School access, and along McPherson Road, (see Attachment 2: Fall River Water Servicing Update – Map 1). Council approved the scope of the project on July 18, 2017.

A public hearing for the LIC was held on August 15, 2017, after which Council adopted LIC By-law L-137, with an estimated charge of \$11,500 per home; the exact amount will be calculated at the end of the project. The project completion deadline is October 31, 2018.

DISCUSSION

Fall River is beyond Halifax Water's service boundary and therefore the construction of any central water system is the responsibility of HRM.

In November 2016, Council approved a sole source award for Halifax Water to oversee the planning and design of the water system, on HRM's behalf. In August, 2017, Council directed the CAO to negotiate a Contribution Agreement with Halifax Water to transfer the required project funds for the construction phase of the project. That Contribution Agreement is attached to this report for Council's approval.

The Contribution Agreement allows HRM to reimburse Halifax Water for 100% of project costs, and enables Halifax Water to proceed with construction, within the cost and deadlines set out under the CWWF agreement. It also outlines the roles and responsibilities of both parties for the duration of the construction period, and clarifies that the asset will be transferred to Halifax Water upon completion to be run on a full cost-recovery basis.

Halifax Water has reviewed the attached Agreement and has approved its terms. Once the agreement is signed by both parties, Halifax Water can award the contract to enable construction to commence. A quick turnaround time is necessary to ensure the project will meet the deadline of October 31, 2018, although a request for an additional extension to March 31, 2019 is pending. The tight timelines are the reason for the recommendation to delegate authority to the CAO to sign a substantially similar agreement, in the case of any minor and non-substantive amendments that may be required.

FINANCIAL IMPLICATIONS

There are no cost implications of this report. The contribution amount in the Contribution Agreement reflects the gross project budget of \$8,625,000 approved by Halifax Regional Council on July 18, 2017. The establishment and execution of the Agreement provide a formal acceptance of the service and financial agreements required for this project.

RISK CONSIDERATION

The Federal Infrastructure program requires the Fall River project to be completed by October 31, 2018. There is a low risk that the project could have difficulty in meeting the infrastructure program deadline. Any costs incurred after the deadline are the sole responsibility of the Municipality.

COMMUNITY ENGAGEMENT

A public information meeting on the project was held on February 27, 2017 in Fall River. A public hearing on the expansion of the water service area and the LIC for the project was held on August 15, 2017.

ENVIRONMENTAL IMPLICATIONS

N/A

ALTERNATIVES

Council could choose not to approve the Contribution Agreement. If this occurs, staff recommend Council provide direction on what terms of the agreement Council would like changed. Halifax Water would need to review and approve any such changes which could delay the project.

ATTACHMENTS

Attachment 1 Fall River Contribution Agreement: Halifax Regional Water Commission and Halifax Regional Municipality

Attachment 2 Fall River Water Servicing Update – Map 1

**HRM-Halifax Water Contribution Agreement:
Fall River Water Servicing
Council Report**

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September 5, 2017

Report Prepared by: Anne Totten, Intergovernmental Affairs Advisor, 902.490.5623
Andre MacNeil, Senior Financial Consultant, 902-490-5529

Original Signed by



Report Approved by: _____
John Traves, Q.C., Director, Legal, Municipal Clerk & External Affairs
902-490-4226

Original Signed

Financial Approval by: _____
Amanda Whitewood, Director of Finance and Asset Management/CFO, 902.490.6308

CONTRIBUTION AGREEMENT (“Agreement”)

BETWEEN

HALIFAX REGIONAL WATER COMMISSION
(Hereinafter called “**HRWC**”)

AND

HALIFAX REGIONAL MUNICIPALITY
(hereinafter called the “**HRM**”)

SUBJECT: Fall River Water Servicing Project

BACKGROUND

HRM would like to extend water services in Fall River, along Fall River Road from the Windsor Junction Road to the Fall River Village Centre, along Lockview Road to the Lockview School access and along McPherson Road (the “**Project**”).

In 2016, HRM applied for and received approval for partial funding of the Project from the Federal and Provincial governments under the Clean Water & Wastewater Fund (the “**CWWF Funding Agreement**”). The remainder of the Project funding will be paid for through funds raised by HRM via a Local Improvement Charge against abutting properties.

HRWC is responsible for constructing, maintaining and operating water infrastructure in the Municipality. The parties intend for HRWC to complete the Project, with HRM reimbursing HRWC for the cost of the Project. The purpose of this agreement is to set out the mutual understanding of the parties.

HRM and HRWC therefore agree as follows:

Article 1 – Obligations of the Parties

1.1 Contribution by HRM

- a) HRM shall reimburse HRWC for 100% of the Project costs, to a maximum of \$8,625,000 including net HST (the “**Contribution Amount**”).
- b) HRM shall pay the Contribution Amount to HRWC in progress payments in accordance with the terms and conditions of this agreement.
- c) The parties acknowledge that HRM’s role in the Project is limited to making a financial contribution to HRWC for the Project and that HRM will not have any

involvement in the implementation of the Project or its operation. HRM is not a decision-maker nor administrator of the Project.

1.2 Changes in Project Scope

- a) HRWC shall inform HRM promptly of any planned or required changes to the scope of the Project, and agrees that any changes to the Project scope require HRM's written consent.
- b) If, at any time during the term of this agreement, either party determines that it will not be possible to complete the Project unless HRWC expends amounts in excess of the Contribution Amount, that party will immediately notify the other party of that determination.

1.3 HRWC's Commitments

- a) HRWC shall complete the Project in a diligent and timely manner, within the costs and deadlines specified in this agreement and in accordance with the terms and conditions of this agreement.
- b) HRWC understands that HRM's funding from the Federal and Provincial governments for the Project is subject to the CWWF Funding Agreement. HRWC shall complete the Project and conduct its activities in a manner consistent with HRM's obligations under the CWWF Funding Agreement.
- c) HRWC shall use or engage qualified project managers and contractors for the duration of the Project.
- d) HRWC shall provide HRM and its representatives with reasonable and timely access to each Project site and any documentation for the purpose of audit, inspection, monitoring, evaluation and ensuring compliance with this agreement.
- e) HRWC shall ensure that the Project is completed by October 31, 2018, or such later date as agreed to by HRM.
- f) HRWC shall implement, operate, maintain, and repair the assets and infrastructure that is the subject of this agreement, in accordance with appropriate standards, for its full lifecycle.
- g) HRWC shall inform HRM immediately of any fact or event that may compromise wholly, or in part, the Project.

Article 2 – Contracting Procedures

2.1 Awarding of Contracts

HRWC shall follow an open, fair and transparent tendering process in all circumstances and ensure that all transactions represent fair market value, and are completed in accordance with applicable legislation and trade agreements for public procurement.

Article 3 – Payment of Contribution Amount

3.1 Progress Payments

- a) HRM shall pay the Contribution Amount to HRWC in progress payments upon the receipt of detailed invoices from HRWC to the satisfaction of HRM.
- b) Payments made by HRM during the Project will not exceed 90% of the Contribution Amount. Progress payments made by HRM are subject to a financial holdback of 10% until the Project is completed to the satisfaction of HRM.

Article 4 – Indemnification

4.1 Indemnification

HRWC shall indemnify and save harmless HRM from and against any and all claims, costs, charges, losses, liabilities, damages, demands, legal actions, legal fees and expenses of whatever nature, source and kind in any manner, including those of third parties and injury and death, in connection with this agreement, except if same are caused by HRM's negligence.

Article 5 – Ownership and Disposal of Assets

5.1 Ownership of Assets

Upon the completion of the Project, HRWC shall be the owner of all water assets and infrastructure related to the Project.

5.2 Disposal of Assets

Unless otherwise agreed to by HRM, HRWC shall retain title to and ownership of the water assets and infrastructure related to the Project for five (5) years after the completion of the Project.

Article 6 - General

6.1 Survival

The parties' rights and obligations, which by their nature, extend beyond the termination of this agreement, will survive any termination of this agreement.

6.2 Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

6.3 Governing Law

This agreement shall be governed and construed in accordance with the laws of the Province of Nova Scotia, and all applicable federal laws and regulations.

6.4 Assignment

Neither party may assign its rights or obligations under this agreement without the written consent of the other party.

6.5 Amendments

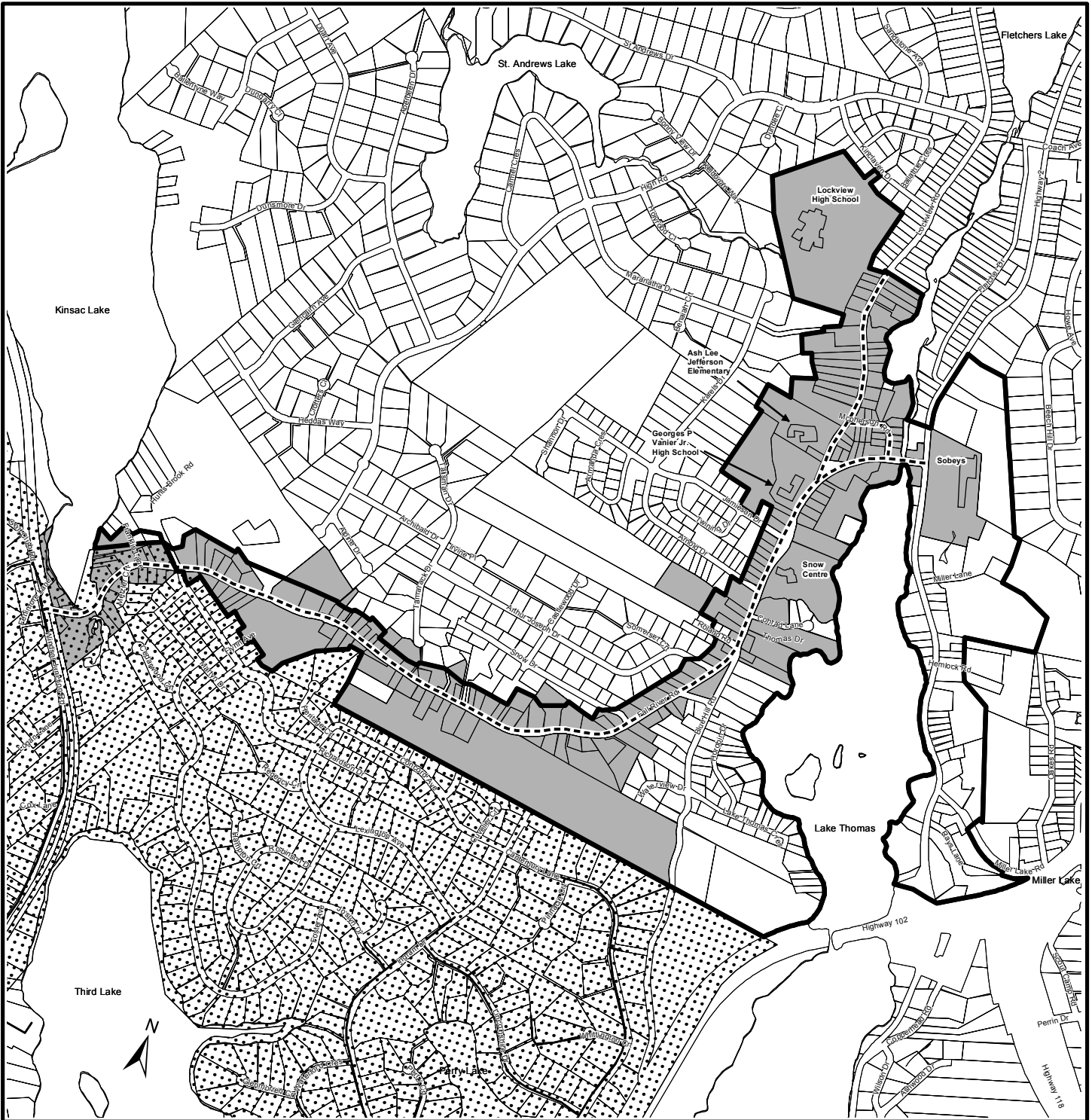
This agreement may only be amended by the execution of a written amending agreement between the parties.

We have understood, consented to and signed this Agreement in two original copies.

HALIFAX REGIONAL WATER COMMISSION	
Signature:	
Name:	
Title:	
Location:	
Date:	






HALIFAX REGIONAL MUNICIPALITY	
Signature:	
Name:	
Title:	
Location:	
Date:	

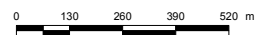
I have the authority to bind the corporation. I have the authority to bind the corporation.



Map 1
Fall River Village Water Service Extension Proposed Scope

HALIFAX

-  Existing Water Service Area
-  Existing Water Mains
-  Water Service Area Extension
-  New Water Mains
-  Local Improvement Charge (LIC) Area



The accuracy of any representation on this plan is not guaranteed.