

HALIFAX

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Halifax, Nova Scotia
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Item No. 11.1.6
Halifax Regional Council
July 21, 2020

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: June 23, 2020

SUBJECT: **Cost Shared Agreement for the Paving of “J” Class Subdivision Streets
2020-012**

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter, subsection 73(a): The Municipality may enter into and carry out agreements for highway construction, improvement and maintenance and other purposes pursuant to the *Public Highways Act*.

HRM Charter, clause 104(1)(f): The Council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for laying out, opening, constructing, repairing, improving and maintaining streets, curbs, sidewalks, gutters, bridges, culverts and retaining walls, whether the cost is incurred by the Municipality directly or by, or pursuant to, an agreement with Her Majesty in right of the Province, the Minister of Transportation and Infrastructure Renewal or any person.

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Mayor and the Municipal Clerk to sign the attached Cost Share Agreement No. 2020-012 with the Province of Nova Scotia to cost-share on the paving of certain village and subdivision streets under the jurisdiction of the Province and located within the Municipality.

BACKGROUND

The Aid-to-Municipality Program is an agreement between Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) and other Nova Scotia municipalities (including HRM) to upgrade provincially owned and maintained “J” class 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 “J” classification refers to local residential streets. The program is cost-shared between the Province and the Municipality, each paying 50% of the total construction costs.

Historically HRM’s portion was recovered in its entirety by levying LICs to the abutting properties on the relevant streets. However on June 9, 2020 Regional Council directed the CAO to prepare the necessary amendments to By-Law S-400 that would eliminate the surveying process, reduce the residents portion of the LIC to 33.33%, and institute the requirement for HRM to pay 16.67% of the total construction costs. These amendments will be presented to Council for approval in the near future. It is noted that Cost Share Agreement No. 2020-012 does not restrict how a municipality covers the 50% cost shared amount, and it leaves the decision to the municipality as to whether a survey is required or not.

DISCUSSION

The attached Cost Share Agreement No. 2020-012 is a three-year agreement, and outlines the terms and conditions relating to paving and double chip sealing of “J” class 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. Under the Agreement, HRM will have the opportunity to submit a list of streets to NSTIR annually to be considered for paving. As noted in the June 9, 2020 Regional Council report (Recommendations to the Current Provincial Aid-to-Municipality Program) there are approximately 93 “J” class gravel roads with approximately 2 to 4 roads paved each year. If amendments to Bylaw S-400 are approved by Council all “J” class roads within HRM will be considered for future paving, and prioritized utilizing the same criteria as HRM’s gravel road paving program (i.e., classification of the road, level of maintenance required and geographical proximity). The streets selected and submitted to the Province each year will be identified in HRM’s Road and Active Transportation Capital Budget. NSTIR will then notify HRM as to which streets can be paved relative to their approved funding levels. If there is a change from the original submission, HRM staff will submit an Information Report to Council for an update.

FINANCIAL IMPLICATIONS

Prior to June 9, 2020 there was no net cost to HRM as 50% of the total construction costs were paid by the Province, and the remaining 50% was recovered from the residents through LIC’s. However if Regional Council approves the amendments to Bylaw S-400, those modifications will result in the requirement of HRM funding 16.67% of the costs. Based upon past program experience, HRM’s capital contributions would likely range between \$40K to \$170K annually, and would be requested as part of HRM’s annual capital budget process.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate low.

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.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

Council could choose to not approve the recommendation in this report which would result in HRM not participating in the Aid-to-Municipality Program over the next three years.

ATTACHMENTS

Attachment 1 – Cost Share Agreement No. 2020-012

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: David Hubley, Manager, Project Planning and Design, 902.490.4845



**Transportation and
Infrastructure Renewal
Province of Nova Scotia**

COST SHARE AGREEMENT NO. 2020-012

THIS AGREEMENT made this _____ day of _____, 2020.

BETWEEN:

HER MAJESTY THE QUEEN in Right of the Province of Nova Scotia, represented in this behalf by the Minister of Transportation and Infrastructure Renewal for the Province of Nova Scotia (hereinafter called the "**Province**"),

OF THE ONE PART

- and -

HALIFAX REGIONAL MUNICIPALITY a body corporate under the laws of the Province of Nova Scotia (hereinafter called the "**Municipality**").

OF THE OTHER PART

WHEREAS the Province 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 program on these Village and Subdivision Streets;

AND WHEREAS the April 1996 Provincial-Municipal Service Exchange Agreement specified cost-sharing on Village and Subdivision Streets is set at a uniform 50-50% basis.

NOW THIS AGREEMENT WITNESSETH that in consideration of 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 Day**” 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.
- (d) “**Paving**” means the work of grading, gravelling, culvert work and required upgrading of Village and Subdivision Street to meet paving standard specifications. “Paving” also means the paving, repaving, or double chip sealing of the Village and Subdivision Streets. “Paving” shall also include pre-engineering, and/or design costs on site engineering supervision and inspection and incidental costs from the edge of the roadway to the limit of the right of way. The work DOES NOT INCLUDE feasibility studies, the construction, reconstruction, relocation, repairs or adjustments of sidewalks, water lines, fire hydrants, sanitary sewers, sanitary sewer manholes, catch basins, water valves, utility poles, street lighting or similar work.
- (e) “**Village and Subdivision Street**” means the village and subdivision streets constructed prior to April 1, 1995 under the administration and control of the Province.

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, constitutes the entire Agreement between 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 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) 2021-22

(b) 2022-23

(c) 2023-24

3. DESIGNATION AND ACCEPTANCE OF STREETS

3.1 If the Municipality chooses to participate in the program and uses a petitioning process to determine which Village and Subdivision Streets will be cost shared under this Agreement, the petition must be completed prior to submitting the road list, as per the timelines noted in 3.2. If the Municipality requires a high-level estimate (i.e. dollar per kilometre (\$/KM)), the Municipality may request from the Province such an estimate to complete the petitioning process. Only roads that have a successful petition are to be submitted to the Province.

3.2 On or before October 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 streets it wishes to be considered for Paving.

3.3 If the Province receives a notice under section 3.1 or 3.2 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**").

3.4 Within 20 Business Days from the time of receipt of the Cost Estimate to the Municipality, the Municipality shall notify the Province whether it accepts the list of approved streets and the related Cost Estimate via the Notice of Acceptance document.

3.5 If the Municipality does not provide a notice to the Province under sections 3.1 or 3.2 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.

3.6 The parties acknowledge that the extent to which the Province can accept streets for the program 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 If an approved street for the Paving program requires that the Province adjust manholes, catch basins or water valves, the Province shall make these adjustments as part of the Municipalities request for Paving (“**Additional Work**”). Additional Work will be undertaken at the cost of the Municipality for which it agrees to make payment to the Province. The Municipality will be invoiced by the Province at the standard unit price for the required 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 licenses 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.

5.3 The Municipality must notify to the Province of their acceptance of cost overruns within 30 Business Days of receipt of the Cost Overruns from the Province.

6. PROVINCE’S OBLIGATIONS

6.1 Where the Municipality has accepted the list of approved streets under section 3.5 and the related Cost Estimate under section 3.4, the Province shall be responsible for tendering the Paving and any Additional Work and for all construction oversight and management of the Paving and any 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. The Municipality shall notify the Province at its earliest convenience if they wish to proceed with the work based on the new Cost Estimate.

6.3 The Province shall provide the Municipality with statements of account for Paving and any Additional Work upon completion of the contract (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. Jacques Dube
Chief Administrative Officer
Halifax Regional Municipality
P.O. Box 1749
Halifax, NS B3J 3A5
Tel (902) 490-4026
Fax (902) 490-4044

- (b) to the Province at
Laura Cunningham
Capital Program Administration Officer
Johnston Building, 1672 Granville St.
P.O. Box 186
Halifax, NS B3J 2N2
Tel (902) 424-0897
Fax (902) 424-0571
laura.cunningham@novascotia.ca

- (c) or, to such other address, individual or electronic communication number as may be 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 witness hereunto duly authorized.

SIGNED, SEALED and DELIVERED in
The presence of:

Her Majesty the Queen, in Right of the
Province of Nova Scotia as represented
by the Minister of Transportation and
Infrastructure Renewal

Witness

Lloyd P. Hines, Minister
Department of Transportation & Infrastructure
Renewal

Halifax Regional Municipality

Witness

Mike Savage, Mayor

Witness

Resolution of Council Designate



Municipal Seal



TIR Seal