



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 15.1.9
Halifax Regional Council
July 11, 2023

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: June 26, 2023

SUBJECT: **Cost Sharing Agreement on the Paving of Subdivision ("J" Class) Streets
2023-012**

ORIGIN

This report originates as a result of a request from Nova Scotia Public Works.

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 His Majesty in right of the Province, the Minister of Public Works or any person.

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Mayor and the Municipal Clerk to sign the attached Cost Sharing Agreement No. 2023-012 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 Cost Sharing Agreement on the Paving of Subdivision (“J” Class) Streets, historically known as the Aid-to-Municipality Program, is an agreement between Nova Scotia Public Works 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 paving costs.

Historically, HRM’s portion was recovered in its entirety by levying LICs to the abutting properties on the relevant streets. However, on September 22, 2020, Regional Council adopted By-law S-449, an amendment to By-law S-400, whereby surveys of the property owners are no longer required; pursuant to this amendment HRM will continue to select the provincial “J” class gravel roads to be paved each year, and Nova Scotia Public Works will cover 50% of the costs related to paving, the property owners will be responsible to pay 33.33% of the costs, and HRM will fund the remaining 16.67% of costs. It is noted that Cost-Sharing Agreement No. 2023-012 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.

Since 2018, the Province has paved fourteen “J” Class streets at a total cost of \$1,611,290.31 plus net HST.

DISCUSSION

The attached Cost-Sharing Agreement No. 2023-012 is a three-year agreement and outlines the terms and conditions relating to paving or double chip sealing of “J” class gravel roads.

The program is cost-shared between the Province and the Municipality, each paying 50% of the total paving costs. The Municipality is responsible for any cost overruns. If the paving of a Subdivision Street requires that the Province perform “Additional Work” (e.g., adjust manholes, catch basins, or water valves), then the Province shall perform such additional work as part of the paving at the Municipality’s full cost. Where the Province conducts a tendering process and the total approved tender price exceeds the Province’s Cost Estimate by more than ten percent (10%), then the Province shall, before awarding a contract for Paving and any Additional Work, provide the Municipality with the details of the successful bid, including all details pertaining to the proponent’s pricing submission. The Municipality shall, within ten (10) Business Days of receipt of such bid details, provide the Province with written acknowledgment of its consent to the Province awarding the tender. If the Municipality withholds its consent to the award of the tender, then the subject Paving or Additional Work will not proceed.

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 Nova Scotia Public Works annually to be considered for paving. As noted in the September 22, 2020, Regional Council report (Amendments to By-law S-400 - Provincial Aid-to-Municipality Program), all “J” class roads within HRM will be considered for future paving and prioritized utilizing the same criteria as HRM’s current gravel road paving program (i.e., classification of the road, level of maintenance required (provided by Nova Scotia Public Works) and geographical proximity). With the recent provincial road transfer, there are approximately 78 remaining “J” class gravel roads owned by the Province within the boundaries of HRM, with one to four roads paved each year. The 78 “J” Class Streets are distributed throughout the Municipality as follows; 13 in District 1, 33 in District 2, 18 in District 11, 11 in District 13, and three in District 14. The streets selected and submitted to the Province each year, will be identified in HRM’s Roads and Active Transportation Capital Budget. Nova Scotia Public Works 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

With the amendments to By-law S-400, HRM currently funds 16.67% of the costs associated with the Cost-Sharing Agreement on the Paving of Subdivision (“J” Class) Streets. Based upon past program experience, HRM’s capital contributions would likely range between \$40,000 to \$170,000 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 time.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Council could choose to not approve the recommendation in this report which would result in HRM not participating in the Cost Sharing Agreement on the Paving of Subdivision (“J” Class) Streets Program over the next three years.

ATTACHMENTS

Attachment 1 – Cost Sharing Agreement No. 2023-012

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: Edmund Surette, Director, Project Planning & Asset Management, 902.490.7169



Public Works

COST SHARING AGREEMENT NO. 2023-012

THIS COST SHARING AGREEMENT ON THE PAVING OF SUBDIVISION (J-CLASS) STREETS (this “Agreement”) is effective as of the _____ day of _____, 2023 (the “Effective Date”).

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Public Works (the “Province”)

-and-

HALIFAX REGIONAL MUNICIPALITY, a municipal corporation incorporated pursuant to the *Municipal Government Act.*, S.N.S. 1998, c. 18 (the “Municipality”)

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BACKGROUND:

1. Section 308 of the *Municipal Government Act*, S.N.S. 1998, c. 18 (the “**Act**”), provides that all streets in a municipality are vested absolutely in the municipality. Section 307 of the Act provides that this does not include streets that are vested in His Majesty in Right of the Province.
2. The parties agree that it is in the best interests of the public to cooperate with each other on the construction, improvement, alteration, repair, cleaning and clearing of Village and Subdivision Streets (as hereinafter defined).
3. By Order in Council dated May 12, 1988, the Province’s Executive Council approved a paving and cost-sharing program for these Village and Subdivision Streets.
4. The *1996 Provincial-Municipal Service Exchange Agreement* (the “**Service Exchange Agreement**”) specifies that cost-sharing on Village and Subdivision Streets is to be apportioned between the Province and the participating municipalities on a uniform 50-50% basis.
5. This Agreement outlines the parties’ joint understandings, commitments, and terms and conditions associated with the paving and cost-sharing of Village and Subdivision Streets, all in accordance with the Service Exchange Agreement, the *Public Highways Act*, R.S.N.S. 1989, c. 371 and the *Municipal Government Act*, S.N.S. 1998, c. 18.

AGREEMENT:

In consideration of the mutual covenants and agreements in this Agreement, the receipt and sufficiency of which are acknowledged by the parties, and subject to the terms and conditions of this Agreement, the parties, intending to be bound, agree as follows:

1. **Definitions.** In this Agreement, unless something in the subject matter or context is inconsistent therewith, the following terms have the meanings set forth below:
 - (a) “*Additional Work*” has the meaning given to it under Section 5 (*Additional Works*).
 - (b) “*Agreement*” means this Agreement.
 - (c) “*Business Day*” means any day other than a Saturday, Sunday or a holiday as defined in the *Interpretation Act*, R.S.N.S. 1989, c. 235.
 - (d) “*Confidential Information*” has the meaning given to it in Section 15 (*Confidentiality*).
 - (e) “*Cost Estimate*” has the meaning given to it in Subsection 3.3.
 - (f) “*Fiscal Year*” means the 12-month period beginning on April 1 and ending on March 31.
 - (g) “*Force Majeure Event*” has the meaning given to it in Section 16 (*Force Majeure*).
 - (h) “*Notice of Acceptance*” has the meaning given to it in Subsection 3.4.
 - (i) “*Paving*” means: (i) the work of grading, gravelling, culvert repair and required upgrading of Village and Subdivision Streets to meet industry-standard specifications; (ii) paving, repaving, or double chip sealing of Village and Subdivision Streets; and (iii) pre-engineering, design, on-site engineering supervision and inspection, and incidental services that are required from the edge of the roadway to the limit of the right of way. For greater certainty, “*Paving*” does not include feasibility studies, 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 on infrastructure that accompanies a Village and Subdivision Street.
 - (j) “*Village and Subdivision Street(s)*” means streets located in the Municipality that are: (i) constructed prior to April 1, 1995; and (ii) under the administration and control of the Province.
2. **Term of Agreement.** This Agreement shall be effective from the Effective Date to the earlier of: (i) the date on which the Service Exchange Agreement expires or is terminated; or (ii) March 31, 2027. This Agreement applies to Fiscal Years 2024-25, 2025-26 and 2026-27.
3. **Designation and Acceptance of Streets.**
 - 3.1 In order to have the Paving of one or more Village and Subdivision Streets cost-shared under this Agreement for a Fiscal Year, the Municipality must first provide the Province with advance notice of its intention to participate in the Province’s Paving program. This notice must be provided to the Province on or before October 31 of each year (commencing in the year prior to the first Fiscal Year to which this Agreement applies).

- 3.2 If the Municipality provides notice to the Province in accordance with Subsection 3.1, then the Municipality shall, at the same time, submit a list of the Village and Subdivision Streets it proposes be considered by the Province for Paving (the “**Road Submission List**”).
 - 3.3 After receiving the Road Submission List, the Province shall review the Road Submission List and notify the Municipality of: (i) the Village and Subdivision Streets that the Province accepts for Paving; and (ii) the anticipated costs for such Paving (the “**Cost Estimate**”).
 - 3.4 After receiving the Cost Estimate (but in no event later than twenty 20 Business Days from the date of its receipt), the Municipality shall notify the Province whether it accepts the Province’s list of approved Village and Subdivision Streets and the related Cost Estimate for Paving such streets (the “**Notice of Acceptance**”).
 - 3.5 If the Municipality does not provide a notice to the Province under Subsection 3.1 or a Notice of Acceptance under Subsection 3.4 by the specified times, the Municipality will be deemed to have elected not to participate in the Province’s paving and cost-sharing program for the Fiscal Year in question.
 - 3.6 After receipt of the Municipality’s Notice of Acceptance, the Province shall perform the Paving and any Additional Work that may be required for the identified Village and Subdivision Streets. As between the parties, the Province shall be responsible for all construction oversight and management of work required for Paving and any Additional Works.
4. **Payment of Construction Costs.** The Municipality shall pay: (i) fifty percent (50%) of the costs related to Paving performed by the Province, plus applicable taxes; and (ii) one hundred percent (100%) of the costs related to any Additional Work performed by the Province, plus applicable taxes. These payments must be made within sixty (60) days of the Municipality’s receipt of the Province’s applicable invoice(s).
 5. **Additional Works.** If the Paving of a Village and Subdivision Street requires that the Province adjust manholes, catch basins, or water valves, then the Province shall perform such adjustments as part of the subject street’s Paving (“**Additional Work**”). Additional Work will be performed at the Municipality’s full cost, in accordance with Section 4 (*Payment of Construction Costs*). The Municipality will be invoiced by the Province at the standard unit price for the required Additional Work, and the Municipality shall pay the Province promptly (and in no event later than sixty (60) days) after its receipt of any such invoice.
 6. **Work May be Subcontracted.** The Province may conduct a competitive tendering process for the selection of one or more contractors capable of completing the Paving and any Additional Work contemplated by this Agreement, in accordance with the Province’s *Procurement Policy*.
 7. **Costs Over Estimate.** Where the Province conducts a tendering process pursuant to Section 6 (*Work May be Subcontracted*), then if the total approved tender price exceeds the Province’s Cost Estimate by more than ten percent (10%), then the Province shall, before awarding a contract for Paving and any Additional Work, and subject to any confidentiality requirements outlined in its tender document and the proponent’s bid submission, provide the Municipality with the details of

the successful bid, including all details pertaining to the proponent's pricing submission. The Municipality shall, within ten (10) Business Days of receipt of such bid details, provide the Province with written acknowledgment of its consent to the Province awarding the tender, which consent will not be unreasonably withheld. If the Municipality reasonably withholds its consent to the award of the tender, then the subject Paving or Additional Work will not proceed.

8. **Cost Overruns.** Subject to Section 7 (*Costs Over Estimate*), the Municipality shall pay for any cost overruns associated with the Paving of the Village and Subdivision Streets or any Additional Work. Cost overruns (if any) will be reflected on the Province's invoice(s) to the Municipality.
9. **Appropriation of Future Funds.** Notwithstanding anything else contained in this Agreement, in the event this Agreement extends into a Fiscal Year subsequent to its execution, continuation of this Agreement is conditional upon an appropriation of sufficient monies under the *Finance Act* (Nova Scotia) to enable the Province to make the payments committed to the Municipality. In the event that sufficient monies are not available as a result of: (i) non-appropriation for the Fiscal Year in which payment becomes due; and (ii) the payment being neither charged nor chargeable to an appropriation for a previous Fiscal Year, the Province may terminate this Agreement, without any further liability, cost or penalty whatsoever, upon giving thirty (30) days' notice to the Municipality. Termination will become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.
10. **Permits and Approvals.** The Municipality shall obtain all material permits, approvals, authorizations and consents that may be required in order for the Province to perform its duties and obligations under this Agreement. The Municipality acknowledges and agrees that the Province shall not be obligated to perform any Paving or any other duty until such permits, approvals, authorizations and consents are obtained. For greater certainty, this includes any leases to or licences over land that may be required to perform Paving of the Village and Subdivision Streets.
11. **Indemnification by the Municipality.** 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.
12. **Release from Liability.** The Municipality hereby releases the Province from any claim that may arise from construction delays or cost overruns in relation to the Paving of Village and Subdivision Streets.
13. **Disclaimer of Consequential or Indirect Damages.** Neither party will be liable to the other for any special, incidental, punitive, indirect or consequential damages arising out of or in connection with this Agreement, including lost revenue or lost profits, even if foreseeable or if a party has been advised of the possibility of such damages, and regardless of the basis on which a party is entitled to claim (including fundamental breach, negligence, misrepresentation, or other contract

or tort claim).

14. **Construction Warranty.** The Province shall obtain a contractual warranty under its contract with the contractor(s) for the Work. This warranty will be in accordance with the requirements under the *Standard Specification – Highway Construction and Maintenance*. The Province makes no other warranties whatsoever with respect to the Work, express or implied, including warranties of merchantability and warranties of fitness. The Municipality acknowledges that all such warranties are disclaimed by the Province.
15. **Confidentiality.** The Municipality acknowledges and agrees that all Confidential Information will be received in the strictest confidence and will be held and used only in accordance with and subject to the terms of this Agreement. The Municipality shall retain such information in confidence and shall treat such information with a degree of care no less than the degree of care that the Municipality employs for the protection of its own information of a similar nature. “**Confidential Information**” means any and all information identified as confidential or marked as confidential Information by the Province or is clearly recognizable as confidential information to a prudent person with no special knowledge of the Province’s business, that has or will come into the possession or knowledge of the Municipality, or to which the Municipality has access in connection with or as a result of this Agreement. “Confidential Information” does not include information that is: (a) publicly available when it is received by or becomes known to the Municipality; (b) is already known to the Municipality at the time of its disclosure to the Municipality and is not known by the Municipality to be the subject of an obligation of confidence of any kind; (c) independently developed or obtained by the Municipality; or (d) received by the Municipality in good faith without an obligation of confidence of any kind from a third party who the Municipality had reason to believe was lawfully in possession of such information free of any obligation of confidence of any kind.
16. **Force Majeure.** No party is responsible for a failure to fulfil its obligations under this Agreement or for delay in doing so if such failure or delay is due to a Force Majeure Event. If either party is prevented from or delayed in performing any of its obligations under this Agreement because of a Force Majeure Event, then the party claiming the Force Majeure Event shall promptly notify the other party which outlines the particulars of the Force Majeure Event including details of the nature of the event, its expected duration and the obligations under this Agreement that will be affected by the Force Majeure Event. A “**Force Majeure Event**” means the occurrence of one or more of the following events or any other event that is beyond the reasonable control of a party, and that interferes with, delays or prevents performance of the obligations of a party under the Agreement, provided that the nonperforming party is without fault in causing or failing to prevent such occurrence: (a) catastrophic weather conditions or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; and (c) other events which the parties expressly agree in writing as constituting a “Force Majeure Event”.
17. **Interpretation.** In this Agreement, unless something in the subject matter or context is inconsistent therewith, words importing the singular number include the plural and *vice versa*; words importing a gender include the masculine, feminine and neutral genders; and words importing persons include individuals, partnerships, companies, associations, trusts, government agencies and any other form of organization or entity whatsoever.

18. **Governing Laws.** This Agreement will be governed by and construed in accordance with the laws of the Province of Nova Scotia.
19. **Entire Agreement.** 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.
20. **Amendments.** No amendment of this Agreement will be binding unless in writing and signed by all the parties hereto.
21. **Waiver.** No waiver by any party hereto of any breach of any of the provisions of this Agreement will take effect or be binding upon such party unless in writing and signed by such party. Unless otherwise provided therein, such waiver will not limit or affect the rights of such party with respect to any other breach.
22. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision will be deemed to be severed from this Agreement and the remaining provisions will nevertheless remain in full force and effect.
23. **Further Assurances.** The parties agree to execute and deliver all such further documents and instruments and do, or cause to be done, all such acts and things as either party may reasonably consider necessary to evidence the intent and meaning of this Agreement.
24. **Counterparts; Electronic Execution.** This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute one and the same instrument. The parties agree that signatures transmitted, received and reproduced via electronic transmission, email or electronic signatures will be treated for all purposes of this Agreement as original signatures and will be deemed valid, binding and enforceable by and against all parties.
25. **Notices.** All notices, demands or other communications to be given in connection with this Agreement will be in writing and will be given by personal delivery, registered mail or by electronic means of communication addressed to the recipient as follows:

(a) to the Municipality at

Ms. Cathie O'Toole
Chief Administrative Officer
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5
Tel (902) 490-4026
Email: cathie.otoole@halifax.ca

(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
Email: 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 will be conclusively deemed to be given on the day of actual delivery thereof and, if given by registered mail, on the fifth (5th) 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 will not be mailed but will be given by personal delivery or by electronic communication.

[signature page follows]

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:

His Majesty the King in Right of the Province of Nova Scotia, as represented by the Minister of Public Works

Witness

Kim Masland, Minister of Public Works

Date (Day-Month-Year)

Halifax Regional Municipality

Witness

Mike Savage, Mayor

Witness

Resolution of Council Designate



Provincial Seal



Municipal Seal