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Halifax, Nova Scotia
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Item No. 15.1.4
Halifax Regional Council
January 24, 2023

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: January 16, 2023

SUBJECT: **Grant in Lieu of Taxes Agreement between HRM and HRWC**

ORIGIN

April 2, 2020, Halifax Regional Council motion (Item 7.2.1)

MOVED by Councillor Walker, seconded by Councillor Zurawski

THAT Halifax Regional Council:

2. That at least one-year prior to the renewal of the three-year Agreement HRM staff, in collaboration with HRWC staff, commence with the development of a long-term policy framework and formula to calculate payments of dividends and grants in lieu of taxes beyond the fiscal year 2022/2023.

MOTION PUT AND PASSED UNANIMOUSLY.

The existing three-year Agreement between the HRM and the Halifax Regional Water Commission (HRWC) expires on March 31, 2023.

LEGISLATIVE AUTHORITY

Section 92 of the Halifax Regional Municipality Charter:
(applicable to the Halifax Regional Municipality)

Taxation of property and assets of Regional Water Commission

92 (1) For greater certainty, the Council may levy commercial and business occupancy taxes against the property and assets of the Halifax Regional Water Commission situated within the geographical boundaries of the Municipality.

92 (2) Notwithstanding subsection (1) and the Assessment Act, the Municipality may enter into agreements with the Halifax Regional Water Commission providing for the payment of grants in lieu of commercial and business occupancy rates and taxes against the property and assets of the Halifax Regional Water Commission within the geographical boundaries of the Municipality in such amounts annually as shall be agreed upon between the Council and the Halifax Regional Water Commission.

Section 20, 21 and 22 of the Halifax Regional Water Commission Act:
(applicable to the Halifax Regional Water Commission)

Annual report and payment from surplus

20 (3) The amount or amounts to be paid by the Commission from the surplus of the Commission's undertaking or undertakings to the Regional Municipality for the general purposes of the Regional Municipality shall be such amount or amounts as are agreed upon by the Commission and the Council, and may be based on an amount denominated as a percentage of the Commission's rate base allocated to one or more of water, wastewater and stormwater systems or by reference to any other formula agreed to by the Commission and the Council.

20 (4) The amount or amounts in an agreement made pursuant to subsection (3) must be paid as
(a) a grant in lieu of taxes on taxable assets pursuant to Section 92 of the Charter regardless of whether the amount is calculated by reference to a formula that includes non-taxable assets;
or (b) a dividend.

21 Subject to any agreement made pursuant to Section 92 of the Charter, property that is owned or utilized by the Commission for the purpose of providing water service is liable to real property taxation.

22 Notwithstanding the Assessment Act or the Charter, a property that is owned or utilized by the Commission for the purpose of providing wastewater or stormwater services is not liable to real property taxation or any other municipal rate or tax.

RECOMMENDATION

It is recommended that Halifax Regional Council approve:

- 1) the annual payment of a Grant in Lieu of Taxes by Halifax Regional Water Commission (Halifax Water) be based on the assessed value of its properties as determined by the Property Valuation Services Corporation (PVSC) and the property tax rates approved by Halifax Regional Council annually, with a five-year transition as set out in the proposed Agreement (Attachment 1), and
- 2) the CAO is authorized and directed to execute the proposed Agreement between HRM and Halifax Water, shown in draft as Attachment 1 of this report, which may be further negotiated to the reasonable satisfaction of the CAO to achieve the key principles and GILT transition plan described herein, subject to the review and approval of certain amounts payable thereunder by the Nova Scotia Utility and Review Board (NSUARB).

BACKGROUND

The annual payment from Halifax Water (HW), then the Halifax Regional Water Commission (HRWC), originated shortly after amalgamation in 1997. At the time, the dividend was described as representing "a combination of the following: a grant in lieu of taxes to HRM, a payment to HRM for services rendered, and a return on equity for the Commission's shareholder, HRM" with the notation that "only the latter payment could be said to represent a true dividend."

Prior to April 1, 2007, HRM received an annual dividend payment from the HRWC based on HRWC water services revenues from the prior year. In May 2006, the NSUARB approved that the dividend formula reflect the Commission's water asset base and directed that the agreement be reviewed. The result of the review was a formula based on the HRWC "rate base" for water infrastructure. A three-year agreement was approved by the NSUARB in 2007. Since that time, the Agreement has been renewed for two five-year periods, April 1, 2010, to March 31, 2015 and April 1, 2015 to March 31, 2020. These three agreements applied a rate of \$1.56 per \$100 of "rate base" value of water service assets as provided by Halifax Water Corporate Services staff.

The current agreement – for the three year-period April 1, 2020 to March 31, 2023 – expanded the formula to include the wastewater and stormwater rate base, with a rate of \$0.25 per \$100 value applied to wastewater and stormwater assets. Increases to the total annual payments in 2021/22 and 2022/23 were limited to 1%, muting the relevance of the “rate base” and rates past the first year but protecting Halifax Water from significant increases forecast for their rate base.

A decision on Halifax Water’s rate application (Matter no. M10468) was received on October 31, 2022. The approved rates included a revenue requirement to pay a Dividend/Grant-in-Lieu to HRM.

DISCUSSION

By 2020, it had become clear that the purpose of the dividend and the setting of the annual dividend amount has not been established in HRM or HW policy but has carried forward from previous agreements. This report sets out to establish a principle-based approach.

From March 2022 through August 2022, a working group of HRM Finance staff and Halifax Water Corporate Services staff met regularly to discuss a new payment agreement that was principle-based and met the needs and objective of both parties. Below is a summary of key principles discussed:

- ✓ **Stability** (of HRM funding) and **Predictability** (of HW payment)
 - Links to (supports) cost containment;
- ✓ **Limited impact on rate payers** (HW customers and HRM taxpayers);
- ✓ **Equity / Comparability** (similar to approaches used by or for other organizations);
- ✓ **Transparency** (of the process to determine payment);
- ✓ **Simplicity** (easy to explain and not administratively burdensome)

During the discussions, it became clear that predictability and stability of the annual payment amounts were a priority for both HRM and Halifax Water. HRM’s objectives included a dependable level of revenue and a fair growth potential, to reflect the growth in cost of HRM services. Halifax Water’s objectives included cost containment (low to moderate growth of annual payments) and minimal impact on rate payers (Halifax water customers). The current rates – 1.56% on the water asset base and 0.25% on the wastewater and stormwater asset base – were used as a means of providing a reasonable dividend to HRM but didn’t have a specific basis for their establishment or reference for their setting, which poses a risk for HRM and Halifax Water, since they could become a point of debate/negotiation at a future date.

Looking for best practice and considering equity, the working group sought out comparable Municipality-Utility relationships in other Canadian jurisdictions. Very few were found. The closest comparator was the City of Moncton and its water utility fund. In the case of Moncton, the municipality receives a monthly payment in lieu of taxes from the utility fund via it’s remittance to the Province based on its assessed value as determined by the provincial assessment agency. This option was investigated for HRM and Halifax Water as a reasonable approach for establishing the total payment required by Halifax Water.

This option achieves the predictability and stability desired, from a variety of perspectives:

- ✓ The assessment base valued by PVSC includes only a portion of the Halifax Water “rate base” used in the current calculation and the PVSC assessment base is expected to grow at a much slower rate (than the overall “rate base”).
- ✓ This change will essentially eliminate the risk of “rate shock” on Halifax Water customers, from the impact of planned investment in Halifax Water assets included within their “rate base”.
- ✓ The federal Payment in Lieu of Taxes (PILT) or provincial Grant in Lieu of Taxes (GILT) approach – using PVSC values and HRM tax rates – is used for provincial and federal properties in HRM and the process is well understood by HRM, Halifax Water and the NSUARB.
- ✓ This standard approach could be used going forward without the need to renegotiate the agreement

every three to five years.

Another advantage of the PILT/GILT approach is increased simplicity and transparency. The PVSC assessment values are available publicly and can be appealed by any real property owner in Nova Scotia. Similarly, the rates applied to the GILT are approved annually by Halifax Regional Council and are public.

Transition to Full Grant in Lieu of Taxes

In 2021/22, Halifax Water made a Grant in Lieu of Taxes payment in the amount of \$6,466,171. For 2022/23 the payment is estimated to be approximately \$6,524,000.

Estimating the Grant in Lieu of Taxes amount for 2022/23 based on of PVSC 2022 assessment values (for all Residential, Commercial and Resource property owned by Halifax Water in the Halifax region) and applicable, approved 2022/23 HRM tax rates, the GILT payment would be approximately \$7,080,000.

The current estimated payment for 2022/23 represent only 92% of the GILT amount. It is therefore proposed that future Halifax Water payments would be phased in over a five-year period to the full GILT, with the first year starting at 92% of the PVSC assessed value and move up to 100%. See the proposed schedule in the table below.

GILT Transition Plan					
Fiscal Year	2023/24 GILT	2024/25 GILT	2025/26 GILT	2026/27 GILT	2027/28 GILT
Percent of PVSC Market Value Used	92%	94%	96%	98%	100%

This phase-in provides a graduated approach to reaching the 100% GILT payment, after which time a standard GILT calculation can be done. The phase-in is described in the proposed Agreement (Attachment 1) in Section 3. The proposed agreement would take effect April 1, 2023. The estimated 2023/24 GILT amount would not exceed Halifax Water's payment estimate of \$6,871,000 provided in their February 2022 rate submission.

However, as the upcoming Halifax Water 2023/24 budget has been based on the current agreement with a 1% maximum annual increase, Halifax Water has proposed a maximum dividend payable of \$6,589,000 for the fiscal year of 2023/24. This has been added as Section 5 of the proposed Agreement. This will not impact payments in subsequent years of the agreement.

Also, for the purpose of Halifax Water rate setting, Halifax Water has included a methodology in the proposed Agreement (Section 6) to allocate the annual payment to its water, wastewater and stormwater services. The methodology will not impact the amount paid to the HRM.

The proposed Agreement will require the approval of Halifax Regional Council and the Halifax Regional Water Commission. The NSUARB will also need to approve the Agreement with respect to the cost impact on Halifax Water and its future rates.

FINANCIAL IMPLICATIONS

HRM revenues from the Halifax Water GILT are expected to grow modestly in future years, in line with other commercial properties in the region. During the phase-in period, the growth should be 2% above the commercial trend.

RISK CONSIDERATION

Risks are low. The recommended approach has been used by HRM for other publicly owned property and has functioned well for decades.

COMMUNITY ENGAGEMENT

No community engagement was required.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Regional Council could choose to:

1. Extend the current HRM-HRWC agreement with a 1% cap on annual payment increases.

ATTACHMENTS

Attachment 1 – Proposed HRM-HRWC Grant in Lieu Agreement, 2023/24 to 2027/28

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: Angie Spinney, Senior Financial Consultant, Finance & Asset Management, 782.641.4296
 Andre MacNeil, Senior Financial Consultant, Finance & Asset Management, 902.292.4556

THIS AGREEMENT made as of the Effective Date.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate (HRM)

OF THE FIRST PART

- and -

HALIFAX REGIONAL WATER COMMISSION, a body corporate (Halifax Water)

OF THE SECOND PART

WHEREAS HRM and Halifax Water entered into an agreement dated the 29th day of August 2001, as amended by an agreement dated the 15th day of May 2007, on the subject of dividends and grants in lieu of taxes payable by Halifax Water to HRM. The parties then entered into two successive five-year agreements. On the 20th day of October 2020, the parties entered into the most recent agreement, which will expire on March 31, 2023;

AND WHEREAS the parties wish to enter into a new agreement (this “Agreement”) with respect to the payment by Halifax Water to HRM of an amount calculated in accordance with section 3 below (per section 92(1) and 92(2) of the *HRM Charter* and sections 20(3), 20(4), 22 and 23 of the *Halifax Regional Water Commission Act*), which amount represents:

- (i) grants in lieu of taxes on taxable assets against the property and assets of Halifax Water within the geographical boundaries of HRM, related to the water service, and
- (ii) dividends, paid from the surplus of Halifax Water’s undertaking for the general purposes of HRM, related to stormwater and wastewater services.

NOW THEREFORE WITNESSETH in consideration of one dollar (\$1.00) and for other good and valuable consideration as hereinafter set forth the parties do agree as follows:

1. This Agreement is effective on April 1, 2023 (the “Effective Date”).
2. This Agreement will be in effect from the Effective Date to the end of fiscal year 2027/28 and shall renew annually on April 1 thereafter, unless notice is given by one party at least 90 days prior to renewal. A fiscal year runs from April 1 of a year to March 31 of the following year.
3. For each fiscal year of the Agreement, Halifax Water shall pay to HRM a payment calculated as follows:

$\Sigma [(A-B) \times C = D]$	
A.	The assessed value of Halifax Water properties
Less	
B.	8% of A in 2023/24 6% of A in 2024/25 4% of A in 2025/26 2% of A in 2026/27 0% in 2027/28 and each fiscal year thereafter
Multiplied by	
C.	Property tax rates set by HRM each fiscal year applicable to each property
Equals	
D.	Payment from Halifax Water to HRM

4. For the purposes of this Agreement, the assessed value of Halifax Water properties will include the value of all Halifax Water residential, commercial and resource properties within the geographic boundaries of HRM, taxable and exempt, as determined by the Property Valuation Service Corporation (PVSC) for that fiscal year. Halifax Water and HRM have the ability to appeal the valuations set by PVSC, as prescribed by PVSC's appeal procedures. Changes to the valuation of Halifax Water property resulting from appeals shall be applied to the annual amounts payable pursuant to this Agreement.
5. Notwithstanding Section 3, the amount payable by Halifax Water to HRM in fiscal year 2023/24 shall not exceed \$6,589,000.
6. For the purpose of Halifax Water calculating its rates, Halifax Water shall allocate payments made pursuant to this Agreement to each service as follows:
 - (i) no more than 1.56% times the water rate base,
 - (ii) at least 0.25% times the wastewater rate base,
 - (iii) at least 0.25% times the stormwater rate base,in amounts sufficient to fund the payment in each fiscal year as calculated pursuant to section 3 of this Agreement.
7. This Agreement, and the amounts payable by Halifax Water to HRM hereunder are subject to the review and approval of the Nova Scotia Utility and Review Board (NSUARB). Halifax Water will use good faith efforts and take all feasible steps to disclose all necessary evidence and present cogent submissions to the NSUARB to obtain approval for the execution of this Agreement in advance of March 31, 2023.
8. HRM covenants and agrees, as and when appropriate, to nominate Halifax Water projects for:
 - (i) funding programs sponsored by the federal and/or the provincial government that are tailored to water, wastewater and stormwater assets; and
 - (ii) other funding programs sponsored by the federal and/or provincial government in recognition of the existing infrastructure deficit faced by both HRM and Halifax Water, as part of HRM's infrastructure list.

[intentionally left blank]

9. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original for all purposes. This Agreement may be executed by facsimile or reproduction signature and the Parties shall recognize such execution as valid and binding execution.

HRM and Halifax Water have caused this Agreement to be signed by their duly authorized representatives on the dates set forth below.

HALIFAX REGIONAL MUNICIPALITY

Witness

name:

for Halifax Regional Municipality

name:

title:

date:

HALIFAX REGIONAL WATER COMMISSION

Witness

name:

for Halifax Regional Water Commission

name:

title:

date:

Witness

name:

for Halifax Regional Water Commission

name:

title:

date: