TO: Bert Meunier, Chief Administrative Officer
FROM: Terry Willing, Acting Commissioner
PREPARED BY: Kim Leonard, Acting Manager, Building & Licensing
DATE OF MEETING: May 18, 2004
SUBJECT: Application For Noise Exemption – The Ministry of Transportation

RECOMMENDATION TO:

WHEREAS The Ministry of Transportation has requested an exemption to the City of Kingston Noise Control By-Law 2004-52 Schedule “B” to permit Highway 401 Widening and Median Tall Wall construction, and;

WHEREAS the applicant has requested that the exemption cover operations between the hours of 7:00 p.m. and 7:00 a.m., the applicant will be prohibited from the operations of rock removal by Hoe ramming, installation of culverts by pipe ramming and removal of concrete by chip hammers during the hours of 11:00 p.m. and 6:00 a.m. and;

WHEREAS the applicant anticipates that this contract will require construction materials to be provided from pits, quarries, asphalt plants and concrete plants within the City of Kingston and;

WHEREAS the public has been notified and consulted regarding this event and there are no unresolved objections;

THEREFORE, BE IT RESOLVED, THAT the Ministry of Transportation be allowed an exemption from the normal 19:00 (7pm) to 07:00 (7 am) restriction under the City of Kingston Noise Control By-Law 2004-52 Schedule “B”, in order to allow for Highway 401 Widening and Median Tall Wall to be constructed between the east and west bound lanes, west of County Road 38 to Sydenham Road, and placement of Temporary Concrete Barrier in the median from Sydenham Road to Montreal Street and the Highway 401 corridor from 4 km west of County Road 38 to Sydenham Road from Monday, June 28th, 2004 and continuing from Monday to Friday until December 15, 2006, but not on any weekend or Statutory Holiday.
ORIGIN/PURPOSE:

The Ministry of Transportation has made an application for exemption to City of Kingston Noise Control By-Law 2004-52 Schedule “B” to permit Highway 401 Widening and Median Tall Wall to be constructed between and east and west bound lanes west of County Road 38 to Sydenham Road and placement of Temporary Concrete Barrier in the median from Sydenham Road to Montreal Street and related work along the Highway 401 corridor from 4 km west of County Road 38 to Sydenham Road.

OPTIONS/DISCUSSION:

The Ministry of Transportation proposes extended hours for construction. The extended construction hours associated with this project is prohibited under City of Kingston Noise Control By-Law 2004-52 Schedule “B” (1) between 19:00 hours (7:00 p.m.) of one day to 07:00 (7:00 a.m.) hours the next day as well as all day Sundays and Statutory Holidays. The by-law also allows Council to grant an exemption, by resolution, where it is deemed appropriate.

The Ministry of Transportation has also advised the public of the project and this was done through a Design and Construction Report (DCR) which was advertised for environmental clearance and was cleared following the 30-day public review period.

An advertisement of this request for exemption was placed in the Kingston Whig Standard on Saturday, May 1st, 2004 and Saturday, May 8th, 2004. The advertisement was also placed in Kingston This Week and the Heritage on Friday, April 30th, 2004 and Friday, May 7th, 2004 and there have been no unresolved objections submitted to this request.

The construction will consist of the use of a grader for the excavation of the median, backhoes for loading dump trucks with excavated granular materials, the spreading of new granular material, and flatbeds trucks for the delivery of concrete barriers. No prolonged banging of tailgates; no cement trucks; no blasting is anticipated during the evening. The applicant has agreed that they will be prohibited hoe ramming, installation of culverts by pipe ramming and removal of concrete by chip hammers during the hours of 11:00 p.m. and 6:00 a.m.

The applicant anticipates that this contract will require construction materials to be provided from pits/quarries, asphalt plants and concrete plants within the City of Kingston.

The Ministry of Transportation is currently conducting a noise study for the Montreal Street interchange, the remainder of the project had noise studies completed as part of the approved Transportation Environmental Study Report.
These improvements will provide increased highway capacity and safety enhancements.

The Ministry would, of course, be available to handle initial complaints. It is noted, that, while the construction spans a long period, activity within the current noise prohibitions will only occur when absolutely necessary and mainly for safety reasons. Ministry staff confirms that they have met with residents in the area and there have been no concerns raised regarding this project.

EXISTING POLICY/BY-LAW:

Council has granted exemptions to the Noise Control By-law in order to accommodate one time construction events such as the round the clock exemption granted for three days at the train trestle near Commodore’s Cove on Front Road in the summer of 1999. Council also authorized that the Ministry of Transportation be allowed an exemption from 6:00 p.m. to 2:00 p.m. Wednesday, October 9th, 2002 to December 16th, 2002 to complete the first leg of this project.

The authority to authorize such exemptions is specifically granted to Council under the Municipal Act. The Act was changed recently to allow a Council to grant exemptions for extended durations, and no longer limits Council to a maximum exemption period of six months.

LINK TO STRATEGIC PLAN:

N/A

FINANCIAL CONSIDERATIONS:

There are no financial considerations, as advertisements were placed at the expense of the Ministry of Transportation.

CONTACTS:

Kim Leonard, Acting Manager, Building & Licensing Division 384-1770 ext. 3222
Steve Murphy, Supervisor, Building & Licensing Division 384-1770 ext. 3225
Earl Rose, Senior Project Manager, Ministry of Transportation 545-4815

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:

Bob Brooks, Construction Supervisor, Engineering Services 384-1770 ext. 3139
NOTICE PROVISIONS:

Public Notice has been given in accordance with By-Law 2004-52

APPENDICES:

N/A
TO: Bert Meunier, Chief Administrative Officer
FROM: Mark Segsworth, Commissioner of Operations
PREPARED BY: Lorraine Thibadeau, Leasing Consultant
DATE OF MEETING: May 18, 2004
SUBJECT: Lease Agreement between the Corporation of the City of Kingston and Imperial Oil

RECOMMENDATIONS TO COUNCIL:

1. That City Council approve a lease between The Corporation of the City of Kingston and Imperial Oil, a Partnership of Imperial Oil Limited and McColl Frontenac Petroleum Inc., for the rental of 396 Square Meters of Land at the Kingston (Norman Rogers) Airport, for a ten (10) year term commencing July 1, 2003, and expiring June 30, 2013, with the tenant having an option to renew for a further period of five years, provided that the terms of the lease are in a form satisfactory to the City Solicitor.

2. That the Mayor and City Clerk be authorized to sign the said lease.

ORIGIN/PURPOSE:

The tenant has leased land at the Norman Rogers Airport since July 1988 for underground aviation fuel storage tanks. The tenant requested an extension of the most recent lease which expired June 30, 2002; however, City Administration has chosen to enter into a new lease using an updated form of lease.

The purpose of this report is to recommend that the lease with Imperial Oil as described herein be approved.
OPTIONS/DISCUSSION:

The Option to Renew is afforded the tenant provided that the tenant is not in default and provided that the City wishes to continue the current use of the land.

Upon the expiration or termination of the lease, and prior to any renewal of the lease, and upon the expiration or termination of any renewal, the tenant is obligated to provide the City with an Environmental Report with costs of obtaining the report to be borne by the tenant. In the event the report indicates there is any form of contamination which could be attributable to the tenant’s use of the land, the tenant is responsible for restoring the land to an environmentally clean and wholesome state to the satisfaction of the City in its sole discretion.

Both parties have an option to terminate the lease at any time, when not in default, upon giving the other party six months’ written notice.

FINANCIAL CONSIDERATIONS:

The annual rental rate is $1,200.00 and is subject to an adjustment annually on July 1 in each year of the Term to reflect any increase in the Consumer Price Index for the Province of Ontario in the immediately preceding twelve months.

EXISTING POLICY/BY-LAW:

By-Law No. 98-1, Council Procedural By-Law, provides authority for the Mayor and Clerk to sign all agreements that are approved by Council.

By-Law No. 2000-119, a By-Law to Establish a User Fee Structure at the Kingston (Norman Rogers) Airport

LINK TO STRATEGIC PLAN:

This is not directly linked to the Priority Action Items in the Strategic Plan.

CONTACTS:

Brad Finch, Airport Manager – 389-6404, Ext. 101
Lorraine Thibadeau – 546-4291, Ext. 1602
DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:

Alan McLeod, Legal Division – Ext. 1237

NOTICE PROVISIONS:
N/A

APPENDICES:
N/A

Mark Segsworth
Commissioner of Operations

Bert Meunier
Chief Administrative Officer
REPORT TO COUNCIL

TO: Bert Meunier, Chief Administrative Officer

FROM: Denis Leger, Commissioner of Corporate Services

PREPARED BY: Derek Hart, Capital Budget Analyst
Gerard Hunt, Manager of Finance

DATE OF MEETING: 2004-05-18

SUBJECT: Capital Budget Status Report – 1st Quarter Report 2004

RECOMMENDATION TO COUNCIL:


   -and further-

2. That Council approve the financing of unfinanced capital projects, or (return of funds) as outlined in Appendix ‘A’ – 2001 Budget Year, ‘B’- 2002 Budget Year and ‘C’ – 2003 Budget Year of this report as follows:

<table>
<thead>
<tr>
<th>Source of Financing</th>
<th>Appendix ‘A’ $</th>
<th>Appendix ‘B’ $</th>
<th>Appendix ‘C’ $</th>
<th>Total $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Capital Reserve Fund</td>
<td>(1,216)</td>
<td>31,317</td>
<td>91,038</td>
<td>121,139</td>
</tr>
<tr>
<td>Other Reserve Funds</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development Charges Reserve Fund</td>
<td></td>
<td>114,066</td>
<td></td>
<td>114,066</td>
</tr>
<tr>
<td>Facility Repair Reserve Fund</td>
<td>(29,829)</td>
<td>29,093</td>
<td>(736)</td>
<td></td>
</tr>
<tr>
<td>Fire Capital Reserve Fund</td>
<td>(314)</td>
<td>(125)</td>
<td>(439)</td>
<td></td>
</tr>
<tr>
<td>Municipal Equipment Reserve Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilities Equipment Reserve Fund</td>
<td></td>
<td></td>
<td>(1,965)</td>
<td>(1,965)</td>
</tr>
<tr>
<td>Rideaucrest Facility Reserve Fund</td>
<td></td>
<td></td>
<td>110</td>
<td>110</td>
</tr>
<tr>
<td>Total:</td>
<td>83,923</td>
<td>65,899</td>
<td></td>
<td>149,822</td>
</tr>
</tbody>
</table>


3. That Council approve the reduction of approved debenture financing with reference to specific projects as outlined in Appendix ‘A’, ‘B’, ‘C’, ‘D’ and ‘E’ of this report as follows:

<table>
<thead>
<tr>
<th>Source of Financing</th>
<th>Appendix ‘A’</th>
<th>Appendix ‘B’</th>
<th>Appendix ‘C’</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debenture (reduction)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funding from:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipal Capital Reserve Fund</td>
<td>(5,168)</td>
<td>(188,388)</td>
<td>(193,556)</td>
<td></td>
</tr>
<tr>
<td>Fire Capital Reserve Fund</td>
<td>(421)</td>
<td>(421)</td>
<td>(421)</td>
<td></td>
</tr>
</tbody>
</table>

4. That, as identified in Appendix ‘B’, additional financing be approved in the amount of $123,985 for the Centennial Drive Project - "Costco to Crossfield", funded from the Development Charges Reserve Fund in the amount of $114,066 and from the Municipal Capital Reserve Fund in the amount of $9,919.

5. That, as identified in Appendix ‘H’, the source of funding in the amount of $20,000 for the project - "Replace Info 2000 Software" be changed from the Development Charges Reserve Fund to the Municipal Capital Reserve Fund.

ORIGIN/PURPOSE:

This report is to provide Council with information on the status of capital works in progress for the period ending March 31, 2004. It includes authorization for the financing or return of unspent funds for certain capital projects and reduced debenture financing requirements related to projects completed and available to be closed for accounting purposes. The 2004 approved capital projects are not listed in this report as they are only commencing.

OPTIONS/DISCUSSION:

The Finance Division is providing this information compiled from the financial records of the Corporation and from consultation with City departments and divisions. Quarterly capital status reports are a regular practice of the Finance Division.

The information in this report has been separated into project summaries as follows:

- **Appendix ‘A’**: 2001 Capital Budget Project List provides information for the purposes of securing additional financing (return of unspent funds) for capital projects approved and ongoing, which are now complete and ready to be closed.

- **Appendix ‘B’**: 2002 Capital Budget Project List provides information for the purposes of securing additional financing (return of unspent funds) for capital projects approved and ongoing, which are now complete and ready to be closed.

- **Appendix ‘C’**: 2003 Capital Budget Project List provides information for the purposes of securing additional financing (return of unspent funds) for capital projects approved and ongoing, which are now complete and ready to be closed.
Appendix ‘D’: Reflects the status of capital projects approved in 1999 and prior budget years, which remain ongoing.

Appendix ‘E’: Reflects the status of capital projects approved in the 2000 budget year, which remain ongoing.

Appendix ‘F’: Reflects the status of capital projects approved in the 2001 budget year, which remain ongoing.

Appendix ‘G’: Reflects the status of the capital projects approved in the 2002 budget year, which remain ongoing.

Appendix ‘H’: Reflects the status of the capital projects approved in the 2003 budget year, which remain ongoing.

Appendix ‘A’: 2001 Capital Budget Projects to be Closed
The projects listed in Appendix ‘A’ represent 2001 budgeted projects, which have been reviewed with the appropriate staff, and that the Finance Division now recommends should be closed and financed or funds returned in order to complete the accounting. This appendix includes specific project detail and, in summary, requires funds to be returned to the Municipal Capital Reserve Fund in the amount of $1,216. A reduction in debenture requirements of $5,168 results as well.

Appendix ‘B’: 2002 Capital Budget Projects to be Closed
The projects listed in Appendix ‘B’ represent 2002 budgeted projects, which have been reviewed with the appropriate staff, and that the Finance Division now recommends should be closed and financed or funds returned in order to complete the accounting. This appendix includes specific project detail and, in summary, requires additional funds from the Municipal Capital Reserve Fund in the amount of $31,317; and from the Development Charges Reserve Fund in the amount of $114,066. Funds will be returned to the Facility Repair Reserve Fund in the amount of $29,829; and to the Fire Capital Reserve Fund in the amount of $314. A reduction in debenture requirements of $188,388 results as well. It is recommended that the over-expenditure be funded from Development Charges Reserve Fund and the Municipal Capital Reserve Fund as the original approved financing. Thus 92% or $114,066 would be funded by Development Charges and 8% or $9,919 funded from the Municipal Capital Reserve.

Appendix ‘C’: 2003 Capital Budget Projects to be Closed
The projects listed in Appendix ‘C’ represent 2003 budgeted projects, which have been reviewed with the appropriate staff, and that the Finance Division now recommends should be closed and financed or funds returned in order to complete the accounting. This appendix includes specific project detail and, in summary, requires additional funds from the Municipal Capital Reserve Fund in the amount of $91,038; from the Facility Repair Reserve Fund in the amount of $29,093; from the Municipal Equipment Reserve Fund in the amount of $38,786 and from the Rideaucrest Facility Reserve Fund in the amount of $110. Funds will be returned to the Utilities Equipment Reserve Fund in the amount of $1,965 and to the Fire Capital Reserve Fund in the amount of $125. A reduction in debenture requirements of $421 results as well.
Appendix ‘D’: 1999 and Prior Capital Projects Ongoing
The projects listed in Appendix ‘D’ represent a status report of pre-2000 projects approved by Council. This report does not show the corresponding financing, but is intended to provide Council with a snapshot of the status of the 1999 and prior approved capital budget projects that remain as works in progress.

Appendix ‘E’: 2000 Capital Projects Ongoing
The listing in Appendix ‘E’ provides a budget to actual comparison of 2000 capital budget expenditure estimates. This report does not show the corresponding financing, but is intended to provide Council with a snapshot of the status of the approved 2000 capital budget projects that remain as works in progress.

Appendix ‘F’: 2001 Capital Projects Ongoing
The listing in Appendix ‘F’ provides a budget to actual comparison of 2001 capital budget expenditure estimates. This report does not show the corresponding financing, but is intended to provide Council with a snapshot of the status of the approved 2001 capital budget projects that remain as works in progress.

Appendix ‘G’: 2002 Capital Projects Ongoing
The listing in Appendix ‘G’ provides a budget to actual comparison of 2002 capital budget expenditure estimates. This report does not show the corresponding financing, but is intended to provide Council with a snapshot of the status of the approved 2002 capital budget projects.

Appendix ‘H’: 2003 Capital Projects Ongoing
The listing in Appendix ‘H’ provides a budget to actual comparison of 2003 capital budget expenditure estimates. This report does not show the corresponding financing, but is intended to provide Council with a snapshot of the status of the approved 2003 capital budget projects. The project to "Replace Info 2000 Software" was originally approved for financing from Development Charges in error. It is recommended that the $20,000 be funded from the Municipal Capital Reserve Fund.

Staff is currently undertaking a review of works in progress and/or unspent capital expenditures and will be presenting in the latter part of 2004 a recommendation to close off accounts that have remained unspent for many years.

EXISTING POLICY/BY-LAW:
Capital budget by-laws for all years up to and including 2003 with capital budget amendments as approved by Council.

LINK TO THE STRATEGIC PLAN:
Not Applicable
FINANCIAL CONSIDERATIONS:
Recommendations on specific funding sources or return of funds are in accordance with the intent of the original budget approved sources of financing.

CONTACTS:

Gerard Hunt  Manager of Finance  546-4291  2205
Derek Hart  Capital Budget Analyst  546-4291  2370

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:
All

NOTICE PROVISIONS:
Not Applicable

APPENDICES:
Appendix ‘A’ - Projects to be Closed – 2001
Appendix ‘B’ - Projects to be Closed – 2002
Appendix ‘C’ - Projects to be Closed – 2003
Appendix ‘D’ - Capital Work in Progress – 1999 and Prior
Appendix ‘E’ - Capital Work in Progress – 2000
Appendix ‘F’ - Capital Work in Progress – 2001
Appendix ‘G’ - Capital Work in Progress – 2002
Appendix ‘H’ - Capital Work in Progress – 2003
TO: Bert Meunier, Chief Administrative Officer

FROM: Terry Willing, Acting Commissioner

PREPARED BY: Robert Brooks, Construction Supervisor, Engineering

DATE OF MEETING: May 18, 2004

SUBJECT: AWARD OF TENDER – CONTRACT 2004-01W RECONSTRUCTION OF SIDEWALKS AND SIDEWALK RAMPS

RECOMMENDATION TO COUNCIL:

THAT the tender of Sousa Ready Mix for Contract 2004-01W Reconstruction of Sidewalks and Sidewalk Ramps, in the amount of $258,121.50, be accepted, it being the lowest tender received.

ORIGIN/PURPOSE:

To award the tender for Contract 2004-01W, Reconstruction of Sidewalks and Sidewalk Ramps.

OPTIONS/DISCUSSION:

On Wednesday, April 21, 2004, tenders for Contract 2004-01W were received as follows (prices exclude GST)

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sousa Ready Mix</td>
<td>$258,121.50</td>
</tr>
<tr>
<td>Morven Construction Limited</td>
<td>$313,141.00</td>
</tr>
</tbody>
</table>

Sousa Ready Mix is a reputable Contractor and has completed similar contracts for the City in the past. The bid received from Sousa Ready Mix is within the amount budgeted by the City for the completion of the project. Reference Program 94033.

EXISTING POLICY/BY-LAW:

The purchasing by-law allows for a tender to be awarded to the lowest bid by staff when three bids have been received. Only two bids were received in this case, so the by-law requires that Council approval be obtained before the work is awarded. Council awards the tender to the lowest bidder unless there is sufficient reason to do otherwise.
LINK TO STRATEGIC PLAN:
N/A

FINANCIAL CONSIDERATIONS:
There are sufficient funds allocated to complete this project.

CONTACTS:
Speros Kanellos, Manager, Engineering, Planning & Development Services (384-1770 ext. 3133)
Robert Brooks, Construction Supervisor, Engineering Division, Planning & Development Services (384-1770 ext. 3139)

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:
N/A

NOTICE PROVISIONS:
N/A

APPENDICES:
None

Terry Willing, Acting Commissioner
Planning and Development Services

Bert Meunier
Chief Administrative Officer
TO: Bert Meunier, Chief Administrative Officer

FROM: Terry Willing, Acting Commissioner

PREPARED BY: Robert Brooks, Construction Supervisor, Engineering

DATE OF MEETING: May 18, 2004

SUBJECT: AWARD OF TENDER - CONTRACT 2004-06W ASPHALT OVERLAY ON BATH ROAD AT VARIOUS INTERSECTIONS

RECOMMENDATION TO COUNCIL:

THAT the tender of Dibblee Construction Limited for Contract 2004-06W Asphalt Overlay on Bath Road at Various Intersections, in the amount of $322,222.00, be accepted, it being the lowest tender received. This contract consists of asphalt overlay on Bath Road on the various intersections:

Bath Road - from Palace Road to Princess Street
Bath Road - at Portsmouth Avenue Intersection

ORIGIN/PURPOSE:

To award the tender for Contract 2004-06W, Asphalt Overlay on Bath Road at Various Intersections.

OPTIONS/DISCUSSION:

On Wednesday, April 14, 2004, only two bids for Contract 2004-06W were received as follows (prices exclude GST).

Dibblee Construction Limited $322,222.00
Cruickshank Construction Limited $338,196.41

Therefore, Council’s approval of the lowest tender is required under the purchasing by-law. Dibblee Construction Limited is a reputable Contractor and has completed similar contracts for the City in the past. The bid received from Dibblee Construction Limited is within the amount budgeted by the City for the completion of the project. Reference Program 94002.
EXISTING POLICY/BY-LAW:

The purchasing by-law allows for a tender to be awarded to the lowest bid by staff when three bids have been received. Only two bids were received in this case, so the by-law requires that Council approval be obtained before the work is awarded.

Council awards the tender to the lowest bidder unless there is sufficient reason to do otherwise.

LINK TO STRATEGIC PLAN:

N/A

FINANCIAL CONSIDERATIONS:

There are sufficient funds allocated to complete this project.

CONTACTS:

Speros Kanellos, Manager, Engineering, Planning & Development Services (384-1770 ext. 3133)
Robert Brooks, Construction Supervisor, Engineering Division, Planning & Development Services (384-1770 ext. 3139)

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:

Department of Operations, Roads, Damon Wells, Manager
Technical Services, Utilities Kingston, Chris Phippen, Utilities Engineer

NOTICE PROVISIONS:

All road closures and traffic delays are advertised in the local paper prior to the closings and delays.

APPENDICES:

None

Terry Willing, Acting Commissioner Planning and Development Services

Bert Meunier
Chief Administrative Officer
To: Bert Meunier, Chief Administrative Officer

From: Terry Willing, Acting Commissioner, Planning and Development Services

Prepared by: Speros Kanellos, Manager, Engineering Division

Date of Meeting: May 18, 2004

Subject: Signing Authority for Construction & Future Maintenance of Centennial Drive CN Rail Overpass Structure with Canadian National Railway

Recommendation to Council:

That Council authorize the Mayor and Clerk to sign a Construction and Future Maintenance Agreement with Canadian National Railway Company, to the satisfaction of Legal Services, so that the City may construct the Centennial Drive CN Rail overpass structure.

Origin/Purpose:

The purpose of the Construction and Future Maintenance Agreement with Canadian National Railway is to grant the City access to CN Rail right-of-way for the purpose of constructing the Centennial Drive CN Rail Overpass structure and grade separation.

Options/Discussion:

The City of Kingston Engineering Division is scheduled to call for tenders in May, 2004 for the construction of the Centennial Drive CN Rail Overpass structure located within the CN Rail right-of-way.

The Canadian National Railway Company will not allow the structure to be built within their right-of-way unless the City agrees to pay for the cost of designing, constructing and maintaining the structure and grade separation. The City must further agree to reimburse CN Rail for all direct and indirect costs, including those associated with a temporary railway by-pass and any railway traffic diversion incurred by CN Rail, in association with the structure and grade separation and undertaken by CN Rail or its designated agents.

Existing Policy/By-Law:

Capital Budget approval.
LINK TO STRATEGIC PLAN:

Centennial Drive is identified as an arterial in the draft Transportation Master Plan. The Transportation Master Plan is a planning initiative in the FOCUS Kingston 2000-2010 document.

FINANCIAL CONSIDERATIONS:

This agreement obligates the City to be fully responsible for the future operation and maintenance of the structure and grade separation and associated costs.

CONTACTS:

Speros Kanellos, P.Eng., Manager, Engineering Division, 384-1770 ext. 3133

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:

Department of Corporate Services, Hal Linscott, Director of Legal Services, 546-4291 ext. 1296

NOTICE PROVISIONS:

None required.

APPENDICES:

A copy of the Canadian National Railway Agreement is attached as Appendix ‘A’.

Terry Willing
Acting Commissioner, Planning & Development Services

Bert Meunier
Chief Administrative Officer
STANDARD NEW GRADE SEPARATION AGREEMENT

THIS AGREEMENT effective as of the _____ day of _________, TWO THOUSAND AND FOUR.

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY
(hereinafter called the "Railway")

- and -

THE CITY OF KINGSTON
in the Province of Ontario
(hereinafter called the "Road Authority")

WHEREAS it is the Road Authority’s intent to construct a “highway”, namely Centennial Drive, across and over the right-of-way and track of the Railway at mileage 177.10 on the Kingston Subdivision, (hereinafter the grade separation) in the City of Kingston in the Province of Ontario as shown on Plan No. 1 dated October 2003 (hereinafter the Plan);

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this agreement, the parties agree as follows:

1. The Road Authority will carry out the work as shown on the Plan, and in accordance with Railway requirements respecting railway operations. Prior to the commencement of construction, the Road Authority or any agent acting on its behalf will sign the Railway’s standard indemnity form as it pertains to the construction.

2. The parties are required to fulfill their respective obligations under the Railway Safety Act. For the purposes of the Railway Safety Act, the Road Authority is considered to be the proposing party (hereinafter the “proponent”) of this project.

3. The cost of constructing and maintaining the grade separation shall be paid by the Road Authority. The Road Authority agrees to reimburse the Railway for all direct and indirect costs, including those associated with a temporary railway by-pass and any railway traffic diversion, incurred by the Railway in association with the grade separation and undertaken by the Railway or its designated agents.

4. The Railway shall prepare all accounts on a monthly basis for work performed by the Railway using rates as stipulated in the latest Guide to Railway Charges for Crossing Maintenance and Construction effective January 1, 2004 as issued by the Canadian Transportation Agency. In the event that the Canadian Transportation Agency should discontinue publishing same, the accounts shall be prepared in accordance with standard rates adopted by the railway industry in Canada, or in their absence, in accordance with standard rates adopted by the Railway. If there should be no

Initials: CN _____________

RA _____________
standard rates in effect for work done by the Railway, the accounts shall be based on actual costs plus allowances for the Railway's overhead.

5. The Road Authority shall be responsible for the design and construction of the grade separation. The Road Authority will ensure that detailed plans for the grade separation, any subsequent revisions and construction methodologies, are submitted to and approved by the Railway prior to the commencement of construction.

6. The Road Authority shall construct and maintain all fencing and drainage systems required as a result of the grade separation at their cost.

7. Upon completion of the project the Road Authority agrees to leave the Railway's land in a clean and tidy condition, free of any environmental contamination resulting from or occurring during construction. Any required remedial actions will be at the Road Authority's cost.

8. If at any time during the continuance of this agreement either party wishes to widen, relocate, make more narrow or otherwise upgrade (the "reconstruction") the grade separation, the terms associated with the reconstruction will be agreed to by the parties by means of a written agreement between them.

9. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and all applicable federal laws and regulations.

10. This agreement is not assignable without the prior written consent of both parties which consent will not be unreasonably withheld. Notwithstanding the above, in the event of the transfer of its line for continued operations, the Railway will have the right to assign this agreement to any subsequent owner.

11. This agreement shall become effective on the date appearing on page 1 of this agreement and shall continue until either the Railway discontinues its operations, or the Road Authority closes the Highway, at this location, or upon the written consent of both parties.

12. Upon termination of this agreement, unless terminated by a relocation or reconstruction, the terms of which are to be set out in a subsequent agreement, the Road Authority, as the initiator of this project, shall be responsible for all future costs associated with the existence of the grade separation, including the cost of maintaining, or dismantling the grade separation and restoring the Railway and Road Authority property to its original or mutually agreed upon condition.

13. Notwithstanding the termination of this agreement, unless terminated by a relocation or reconstruction, the obligations of the Road Authority as to clause 12 set forth in this agreement shall survive any such termination and shall remain in force until discharged.

14. Upon execution, the Railway may file this agreement with the Canadian Transportation Agency.

15. Subject to clause 14 this agreement is confidential and the agreement or any of its terms and conditions shall not be disclosed to any third party, person or association except and to the extent as may be required by law or upon the prior written consent of all parties hereto.

Initials: CN ____________  RA ____________

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16. If the either party fails, at any time, to fulfill its obligations provided in the present agreement, the other party, at its option, may upon reasonable notice, undertake the necessary measures to ensure safety, at the risk and expense of the responsible party as defined in clauses 3, 4, 5 and 6.

17. Any dispute relating to the wording and interpretation of the clauses in this agreement will be resolved in accordance with the arbitration act of the province in which the grade separation is located.

18. The preamble to this agreement forms an integral part of the agreement.

IN WITNESS WHEREOF, the parties have caused the agreement to be executed by their respective representatives hereunto duly authorized, as they declare, as of the date first above written.

CANADIAN NATIONAL RAILWAY COMPANY

General Manager

(Witness)

(Date)

THE CITY OF KINGSTON

(Title)

(Witness)

(Date)

Initials: CN __________ RA __________
CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 04-175

TO: Bert Meunier, Chief Administrative Officer

FROM: Mark Segsworth, Commissioner of Operations

PREPARED BY: Lorraine Thibadeau, Properties Division

DATE OF MEETING: May 18, 2004

SUBJECT: Judith Pearse, Robert Wolsey, and James Wolsey – Request for Stop Up, Closure and Conveyance of Unopened Road Allowance between Lots 17 and 18, Concession 5, City of Kingston, Geographic Township of Kingston, Designated as Part 2 on Reference Plan 13R-17314

RECOMMENDATION TO COUNCIL:

WHEREAS in accordance with the Municipal Act 2001, c. 25, s.34(1) and By-Law No. 2003-15 “A By-Law to Provide for Notice Provisions as Required Under The Municipal Act, 2001”, notice has been given of Council’s intention to stop up and close the above-noted unopened road allowance.

AND WHEREAS as of May 14, 2004 no requests to be heard have been received by the City as provided for in the notice.

It is recommended that:

1. City Council pass a by-law to declare surplus to municipal need the unopened road allowance between Lots 17 and 18, Concession 5, City of Kingston, Geographic Township of Kingston, designated as Part 2 on Reference Plan 13R-17314.

2. City Council pass a by-law to authorize the stop up and closure of the said unopened road allowance and to transfer the title therein to Judith Pearse, Robert Charles Wolsey and James Arthur Wolsey.

3. The Mayor and Clerk be authorized and directed to sign the necessary agreements to give effect thereto.

4. And further, that the rules of By-Law 98-1 be waived and that the By-law receive three readings this evening.
ORIGIN/PURPOSE:

This report originates from an application by Judith Pearse on behalf of herself and Robert Wolsey and James Wolsey, the owners Lots 17 and 18, Concession 5, City of Kingston, Geographic Township of Kingston designated as Part 2 on Reference Plan 13R-17314 to stop and up and close the unopened road allowance which runs between the two lots.

OPTIONS/DISCUSSION:

A resolution approved by City Council on April 21, 2004, being Clause (c) of Report 40, authorized the City Clerk to give notice of Council’s intention to stop up and close the unopened road allowance in accordance with the Municipal Act 2001, c. 25, s. 34(1) and By-law No. 2003-15.

EXISTING POLICY/BY-LAW:

A by-law must be passed declaring the land surplus to municipal need.

A by-law must be passed to stop up, close and authorize the transfer of ownership of the unopened road allowance after the notice requirements prescribed by the Municipal Act have been met.

LINK TO STRATEGIC PLAN: N/A

FINANCIAL CONSIDERATIONS:

No financial implications are to be considered with this report. The applicants are responsible for assuming all costs incurred by the City.

CONTACTS: Lorraine Thibadeau, Ext. 1602
DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:

Kim Brown, Engineering Services, 384-1770, Ext. 3132
Hal Linscott, Director, Legal Services, Ext. 1296
Kristine Hebert, Planning Co-ordinator, Cultural Services, Ext. 1256
George Wallace, Planning Division, 384-1770 Ext. 3219
Paul MacLatchy, Environmental Services, 384-1770, Ext. 3134

NOTICE PROVISIONS:  N/A

APPENDICES:  N/A

Mark Segsworth
Commissioner of Operations

Bert Meunier
Chief Administrative Officer
TO: Bert Meunier, Chief Administrative Officer

FROM: Mark Segsworth, Commissioner of Operations

PREPARED BY: Lorraine Thibadeau, Properties Division

DATE OF MEETING: May 18, 2004

SUBJECT: Sharon Shibley – Request for Stop Up, Closure and Conveyance of Unopened Road Allowance between Lots 17 and 18, Concession 5, City of Kingston, Geographic Township of Kingston, Designated as Part 2 on Reference Plan 13R-5754

RECOMMENDATION TO COUNCIL:

WHEREAS in accordance with the Municipal Act 2001, c. 25, s.34(1) and By-Law No. 2003-15 "A By-Law to Provide for Notice Provisions as Required Under The Municipal Act, 2001", notice has been given of Council's intention to stop up and close the above-noted unopened road allowance.

AND WHEREAS as of May 14, 2004 no requests to be heard have been received by the City as provided for in the notice.

It is recommended that:

1. City Council pass a by-law to declare surplus to municipal need the unopened road allowance between Lots 17 and 18, Concession 5, City of Kingston, Geographic Township of Kingston, designated as Part 2 on Reference Plan 13R-5754.

2. City Council pass a by-law to authorize the stop up and closure of the said unopened road allowance and to transfer the title therein to Sharon Mae Shibley.

3. The Mayor and Clerk be authorized and directed to sign the necessary agreements to give effect thereto.

4. And further, that the rules of By-Law 98-1 be waived and that the By-law receive three readings this evening.

ORIGIN/PURPOSE:
This report originates from an application by Sharon Shibley, the owner of Lots 17 and 18, Concession 5, City of Kingston, Geographic Township of Kingston, Designated as Part 2 on Reference Plan 13R-5754, to stop and up and close the unopened road allowance which runs between the two lots.

OPTIONS/DISCUSSION:

A resolution approved by City Council on April 21, 2004, being Clause (d) of Report 40, authorized the City Clerk to give notice of Council’s intention to stop up and close the unopened road allowance in accordance with the Municipal Act 2001, c. 25, s. 34(1) and By-law No. 2003-15.

EXISTING POLICY/BY-LAW:

A by-law must be passed declaring the land surplus to municipal need.

A by-law must be passed to stop up, close and authorize the transfer of ownership of the unopened road allowance after the notice requirements prescribed by the Municipal Act have been met.

LINK TO STRATEGIC PLAN: N/A

FINANCIAL CONSIDERATIONS:

No financial implications are to be considered with this report. The applicant is responsible for assuming all costs incurred by the City.

CONTACTS: Lorraine Thibadeau, Ext. 1602
DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:

Kim Brown, Engineering Services, 384-1770, Ext. 3132
Hal Linscott, Director, Legal Services, Ext. 1296
Kristine Hebert, Planning Co-ordinator, Cultural Services, Ext. 1256
George Wallace, Planning Division, 384-1770 Ext. 3219
Paul MacLatchy, Environmental Services, 384-1770, Ext. 3134

NOTICE PROVISIONS: N/A

APPENDICES: N/A

Mark Segsworth
Commissioner of Operations

Bert Meunier
Chief Administrative Officer