


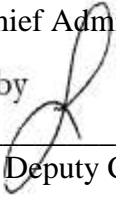
**Item No. 11.1.8**  
**Halifax Regional Council**  
**January 14, 2014**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original signed by 

**SUBMITTED BY:**

\_\_\_\_\_  
Richard Butts, Chief Administrative Officer

Original Signed by 

\_\_\_\_\_  
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** November 28, 2013

**SUBJECT:** Request for Permanent Encroachment – Ferguson’s Cove Road

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**ORIGIN**

Application by National Defence for an Encroachment under Ferguson’s Cove Road.

**LEGISLATIVE AUTHORITY**

Under Section 3 of HRM By-Law E-200, Respecting Encroachments Upon, Under or Over a Street, no person is to construct or maintain any structure on the street right of way without being issued an encroachment license by Council.

**RECOMMENDATION**

It is recommended that Halifax Regional Council **approve** the attached encroachment agreement allowing the construction of the duct bank at the proposed location within the right of way.

## **BACKGROUND**

National Defence currently has a duct bank and a splice pit located within the right of way on Ferguson’s Cove Road. The duct bank connects existing National Defence infrastructure in Halifax Harbour to a National Defence building across the road.

## **DISCUSSION**

National Defence has requested permission to install a new duct bank alongside the existing one to enhance the system reliability of the infrastructure. HRM staff has reviewed the encroachment and have concluded that the proposed duct bank will not negatively impact HRM’s operational requirements for this portion of the right of way, nor does it pose any hazards to road users.

The area of the proposed encroachment is approximately 20m<sup>2</sup>. Typically in this case, the applicant would be required to pay a one-time license fee of \$125.00 and an annual encroachment fee of \$200.00 (as prescribed by Administrative Order 15, the current fee is \$1.00 per 0.1 square meters). These fees are not applicable here as the applicant is The Crown.

## **FINANCIAL IMPLICATIONS**

There are no financial implications.

## **COMMUNITY ENGAGEMENT**

Community engagement was not deemed necessary in this process as there is no long-term impact to the community.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications associated with this report.

## **ALTERNATIVES**

Council could choose not to approve the proposed encroachment. This would prevent National Defence from upgrading their existing infrastructure. This alternative is not recommended.

## **ATTACHMENTS**

1. Encroachment Agreement with a plan showing the proposed encroachment

**Council Report**  
**Request for Permanent Encroachment**  
**– Ferguson’s Cove Road**

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**January 14, 2014**

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Christopher Davis, P.Eng., Supervisor, Right of Way Services, TPW, 490-7462

Report Approved by: \_\_\_\_\_  
Taso Koutroulakis, P.Eng., PTOE, Manager, Traffic & Right of Way Services, TPW, 490-4816

Report Approved by: \_\_\_\_\_  
David Hubley, P.Eng., A/Director, TPW, 490-4855

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This **Encroachment License Agreement** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BETWEEN:

**HALIFAX REGIONAL MUNICIPALITY**, a body corporate  
(“HRM”)

and

**HER MAJESTY THE QUEEN AS REPRESENTED BY THE  
MINISTER OF NATIONAL DEFENCE**  
(the “Licensee”)

### **Recitals**

- A. **Whereas** the Licensee owns property at 1 Ferguson’s Cove Road and wishes to construct a duct bank (the “Encroachment”) within the HRM street right of way as shown and described in Schedule “A”;
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on \_\_\_\_\_, 20\_\_\_\_, the HRM agreed to give the Licensee an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

**In consideration of the mutual promises contained in this agreement the parties agree as follows:**

### **License**

1. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of Ferguson’s Cove Road, identified in Schedule “A” to install and maintain the Encroachment.

### **Ownership**

2. The Licensee retains ownership of the Encroachment.

### **Relocation**

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and said relocation shall be at the sole expense of the Licensee.

### **Permits**

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the

Encroachment and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer, or prepared by a member of and on duty with any branch of Her Majesty's Armed Forces, as specified in section 10(a) of the Engineering Profession Act, RSNS 1989, c 148. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer").

(4) For the purposes of the construction of the Encroachment, the Licensee agrees:

(a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;

(c) that the Encroachment will be done in accordance with the approved plans; and

(d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.

(6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

### **Record Drawings**

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any temporary or minimal relocation.

### **Maintenance**

6. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

7. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon the Licensee's land.

8. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If the Licensee does not, within 15 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

9. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 within 15 business days of receiving notice of the costs of the work or expense incurred.

### **Street Maintenance**

11. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

### **Indemnity**

12. (1) The Licensee agrees to indemnify and save harmless Halifax Regional Municipality, its Mayor, Council, Employees, Agents and Volunteers from and against all actions, claims, demands or costs-including solicitor fees, for any direct losses, costs, damages, or expenses suffered or incurred by Halifax Regional Municipality by reason of any damage of whatsoever nature, including damages to property or to any persons caused by, resulting from or attributable to any act or omission made in relation to the Encroachment by Her Majesty the Queen as represented by the Minister of National Defence, its Employees, Servants, Agents, Licensees, Invitees or generally by those for who it is by law responsible or to the existence, access to, construction, operation, maintenance, relocation, modification, or removal of the Encroachment/Duct Bank or injury, including injury resulting in death, to the Employees, Servants, Agents, Licensees, Invitees while on Municipal property except to the extent that such liability, damage or injury arises out of the gross negligence of Halifax Regional Municipality.

(2) This section shall survive the termination of this license agreement.

### **Insurance**

13. As her Majesty the Queen in right of Canada does not carry insurance, Halifax Regional Municipality requires a Letter of Commitment at time of signing of this Agreement.

The Letter of Commitment will state that Her Majesty the Queen in right of Canada accepts all responsibilities for any event, incident, loss or costs which might lead to a claim to which an Insurer of such insurance which would be appropriate for this specific situation would have responded to in accordance with Clause 12.1

***Occupational Health and Safety Act, SNS 1996, c 7***

14. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

**Termination**

15. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:
- (a) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9; and
  - (b) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days, unless otherwise agreed to between the parties.
- (2) The Licensee may terminate this license agreement under the following conditions:
- (a) notification to HRM in writing of its intention to terminate this licence agreement;
  - (b) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
  - (c) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
  - (d) any other terms and conditions as may be necessary in the opinion of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer for the restoration of the street.
- (3) If the Licensee does not, within the sixty calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs and expenses of the work.
- (4) The termination of this license agreement shall not be effective until the Licensee has paid all costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

**Notices**

16. Any written notice or communication relating to the administration of this license agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality  
Director of Transportation & Public Works  
P.O. Box 1749  
Halifax, N.S. B3J 3A5

and

Base Commander,  
CFB Halifax,  
PO Box 99000, Station Forces,  
Halifax, Nova Scotia, B3K 5X5

17. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

18. This license agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

19. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

20. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

21. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

22. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

**IN WITNESS WHEREOF** the parties hereto have executed this license agreement as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED** in  
The presence of:

**HER MAJESTY THE QUEEN AS  
REPRESENTED BY THE MINISTER OF  
NATIONAL DEFENCE**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name: Angus Topshee Capt (N)  
Title: Base Commander for CFB Halifax

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:  
Title:

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk

Schedule "A" – Plans Showing and Describing the Proposed Encroachment, including the type of encroachment, the civic address where such encroachment is authorized, and any other terms and conditions as may be necessary in the opinion of Council, the Inspector or the Engineer.

