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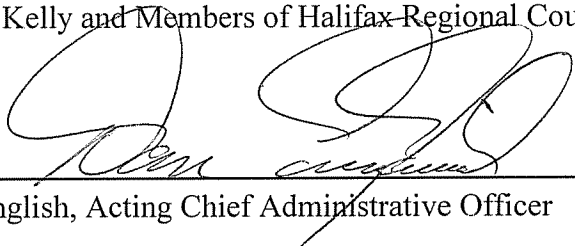


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Halifax Regional Council**  
**June 8, 2004**

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

**SUBMITTED BY:**

  
\_\_\_\_\_  
Dan English, Acting Chief Administrative Officer

**DATE:** May 27, 2004

**SUBJECT:** **One Government Place Heating/Telecommunications Tunnel  
Encroachment Agreement**

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**ORIGIN**

Staff

**RECOMMENDATION**

It is recommended that Halifax Regional Council approve the revised Encroachment Agreement with the Province of Nova Scotia, attached as Appendix A, for a heating/telecommunications tunnel under Prince Street between the Johnston Building (1672 Granville Street) and One Government Place (1700 Granville Street).

## **BACKGROUND**

At its meeting of November 18, 2003, Council approved the execution of an encroachment agreement between the Province and HRM in respect of a heating/telecommunications tunnel across Prince Street between Barrington and Granville Streets. The terms of this agreement are unsatisfactory to the Province's legal staff. Attached is a revised agreement, which is satisfactory to the Province, and which staff are recommending be approved by Council. The differences between the original agreement and the revised agreement are as follows:

- Rather than a commitment to abide by all municipal bylaws, to which the Province is not normally subject, the Province is prepared to agree to comply with all HRM bylaws applicable to the construction of the project and subsequent street excavation.
- Rather than the Province directly providing performance security for street restoration works, the Province is prepared to have its contractor provide such security.
- Most encroachment licenses, because they are licenses and not easements, can be terminated at any time by the municipality. The proposed investment in the heating tunnel is of some magnitude and therefore the Province is looking for some security to protect the investment. Staff are recommending in this instance an encroachment license with a 60 year term with a 20 year potential renewal subject to the proviso that if HRM requires the relocation of the tunnel, that the Province would do so at its cost. Termination within the term of the agreement would only be in the event of breach of the encroachment agreement.

## **DISCUSSION**

A key feature of the agreement is the Province's agreement to pay for any relocation costs. Under those circumstances, staff are recommending that Council depart from its usual practice of avoiding long-term commitments with respect to third party users of its streets.

## **BUDGET IMPLICATIONS**

The annual encroachment fee of \$496.00 will be a new revenue source.

## **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

**One Government Place Heating/Telecommunications  
Tunnel Encroachment Agreement  
Council Report**

- 3 -

**June 8, 2004**

**ALTERNATIVES**

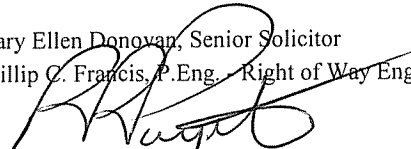
Council could refuse to approve the proposed revisions to the agreement as approved in November 2003.

**ATTACHMENT**

Appendix A - Encroachment Agreement

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Mary Ellen Donovan, Senior Solicitor  
Phillip C. Francis, P.Eng. - Right of Way Engineer

Report Approved by:   
Rick Paynter, P.Eng., Director, Public Works & Transportation at 490-4855

APPENDIX 'A'

THIS ENCROACHMENT LICENSE AGREEMENT made this        day of        , 2004.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Of the One Part ("HRM")

- and -

HER MAJESTY THE QUEEN in Right of the Province of Nova Scotia,  
as represented by the Minister of Transportation and Public Works  
("the Province")

Of the Other Part

**Recitals**

1. (1) **Whereas** the Province of Nova Scotia wishes to construct an underground utility tunnel across Prince Street between Barrington Street and Granville Street to provide a heating and communications link between the Johnston Building and One Government Place;
- (2) **And Whereas** by resolution of the Halifax Regional Municipal Council on \_\_\_\_\_, 2004, the Halifax Regional Municipality agreed to give the Province an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality Bylaw E-200, being the Encroachment Bylaw, and as contained in this Encroachment License Agreement.

**Definitions**

2. In this Encroachment License Agreement, unless the context otherwise requires:
  - (a) "HRM" means the Halifax Regional Municipality established pursuant to the *Municipal Government Act*;
  - (b) "Engineer" means the Engineer as defined by the *Municipal Government Act*;
  - (c) "Province" means Her Majesty the Queen, in Right of the Province of Nova Scotia.

**License**

3. Subject to the terms of this Encroachment License Agreement, HRM hereby grants to the Province the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Prince Street between Barrington Street and Granville Street, Halifax, identified on Schedule "A", to install and maintain a heating and telecommunications utility tunnel for a term of sixty (60) years, subject to termination as hereinafter provided. Provided however, that unless HRM notifies the Province of its intention not to renew this Grant on the expiration of the term, or unless the Grant is

terminated as hereinafter provided, then the grant of this license shall automatically be renewed for a further term of twenty (20) years upon the same terms and conditions as herein contained saving and excepting this provision providing for a renewal of the term of the Grant.

**Relocation**

4. The utility tunnel must be relocated within the street if required by HRM which relocation will be at the expense of the Province. Should the Province wish to relocate the utility tunnel, such shall be done only upon receipt of the written consent of HRM, which consent shall not be unreasonably withheld and said relocation shall be at the expense of the Province.

**Permits**

5. (1) The Province agrees to comply with all Municipal Bylaws respecting streets for the original construction of the works and all subsequent work which involves the excavation of the street.
- (2) The application for Streets & Services Permit shall include an engineering plan and profile stamped by a professional engineer of the proposed utility tunnel.
- (3) The final location of the utility tunnel shall be subject to the approval of the Engineer.
- (4) For the purposes of the construction of the original works, the Province agrees to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia, and to file with the Engineer a written undertaking stating that the professional engineer had been engaged by the Province to supervise and set out the work; that the work will be done in accordance with the approved plans; 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 original works, the Province agrees to arrange a preconstruction meeting with HRM staff and to provide a traffic control plan for review at this meeting.
- (6) In addition to meeting the requirement of Streets Bylaw S-300, for the purposes of the construction of the original works, the Province agrees to have its contractor deposit with HRM performance security, acceptable to the Engineer, in the estimated amount of the cost of restoring the municipal infrastructure affected by the project, which security shall be released upon acceptance of the works by the Engineer and deposit of a maintenance security in the amount of 10% of said costs, or in the minimum amount of \$1000.00, to be valid for a period of one year from the date of the acceptance of said works.
- (7) For the purposes of the construction of the original works, prior to release of said performance security, the Province shall provide HRM with a certificate from a

professional engineer certifying that all works are completed according to the approved drawings, any applicable municipal services specifications, standard drawings and approved changes.

### **Record Drawings**

6. The Province shall provide a copy of the record drawings immediately upon completion of said project and immediately upon completion of any relocation, both in hard copy and electronic format.

### **Indemnity**

7. The Province agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this Encroachment License Agreement or from the existence or operation of the utility tunnel however caused, except to the extent that the loss arises out of the gross negligence of HRM.

### **Fees**

8. (1) The Province shall pay the fees set out in Encroachment Bylaw E-200 for the space occupied by the utility tunnel. For the purpose of the calculation of said fees, it is agreed that the space occupied is 49.6 square metres.
- (2) The Province shall pay the fees set out in Encroachment Bylaw E-200 for the temporary working space occupied during construction of the tunnel. This will include the entire Barrington Street to Granville Street block during such time that Prince Street is under a full street closure.

### ***Occupational Health and Safety Act***

9. The Province agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Province 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 contractors or agents.

### **Termination**

10. If the Province breaches or is in default of any provision of this Encroachment License Agreement then, if the breach or default is not cured within fifteen (15) days from the date on which notice in writing of the breach or default is given to the Province or if the Province has failed to commence rectification of such breach or default in a reasonable and diligent manner, HRM may terminate this Encroachment License Agreement by giving notice of termination to the Province. The written notice of termination becomes effective immediately upon its delivery to the Province.

### **Notices**

11. Any written notice or communication relating to the administration of this Encroachment 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:

To: Halifax Regional Municipality  
Director of Public Works & Transportation  
P. O. Box 1749, 6<sup>th</sup> Floor Alderney Gate  
Halifax NS B3J 3A5 Tel: (902) 490-4855 Fax: (902) 490-6904

And to: Director, Real Property  
Department of Transportation and Public Works  
PO Box 186, 1672 Granville Street - 5<sup>th</sup> Floor  
Halifax NS B3J 2N2 Tel: (902) 424-6038 Fax:(902) 424-0583

Legal notices in respect of HRM must be given in compliance with the *Halifax Regional Municipality Act*.

- 12. This Encroachment License Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.
- 13. This Encroachment License Agreement may not be assigned by the Province.

**IN WITNESS WHEREOF** the parties hereto have executed this Encroachment License Agreement as of the day and year first above written.

<b>SIGNED SEALED AND DELIVERED</b>	)	
<b>in the presence of:</b>	)	<b>HALIFAX REGIONAL MUNICIPALITY</b>
	)	
_____	)	_____
<b>Witness</b>	)	<b>Mayor Peter Kelly</b>
	)	
_____	)	_____
<b>Witness</b>	)	<b>Acting Municipal Clerk, Jan Gibson</b>
	)	
	)	<b>PROVINCE OF NOVA SCOTIA</b>
	)	
_____	)	_____
<b>Witness</b>	)	<b>The Honourable Ronald S. Russell</b> <b>Minister of Transportation &amp; Public Works</b>