



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 11.1.13

**Halifax Regional Council
May 13, 2008**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

A handwritten signature in cursive script, appearing to read "Dan English".

Dan English, Chief Administrative Officer

A handwritten signature in cursive script, appearing to read "Wayne Anstey".

Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: April 14, 2008

SUBJECT: Encroachment Agreement - DND Pleasant Street Storm Sewer

ORIGIN

Application by Department of National Defence (DND).

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached Encroachment Agreement to allow DND to install a storm sewer with manhole across Pleasant Street as part of infrastructure upgrades at 12 Wing Shearwater.

BACKGROUND

DND is undertaking a major upgrading of water service and sanitary and storm sewer systems at 12 Wing Shearwater. This work forms part of required support facilities for Cyclone helicopter operations.

The storm sewer aspect involves consolidation of drainage into one major storm sewer at Bonaventure Street which then crosses Pleasant Street to the lower base and onto an outfall on Halifax Harbour. The location of the storm sewer and manhole structure within an HRM street requires the prior approval of an Encroachment Agreement by Regional Council.

DISCUSSION

The proposed 1800 and 2100 storm sewer and 3600 x 3600 manhole will cross the approximately 28 m wide Pleasant Street and will occupy approximately 80 square metres. In accordance with Bylaw E-200, the pipe crossing would normally be subject to an annual encroachment fee of \$800.00 (\$10.00 per square metre).

However, based on another consideration, staff is recommending that Council grant the storm sewer encroachment for nominal consideration of \$1.00. This would be in exchange for formalizing a license for a park area (Crathorne Park) on DND lands at the foot of Jamieson Street in Dartmouth, again for nominal consideration of \$1.00. The park license would have a 10-year term with automatic renewal.

Staff is confident that the proposed waiving of this \$800.00 approximate annual encroachment fee represents a loss of revenue considerably less than what it would cost the HRM to license Crathorne Park at market value (estimated at \$7,500. per annum). This is based on an appraisal of the park lands done by Turner Drake for DND in 2005.

The attached draft encroachment agreement also includes the following:

- Construction and maintenance of the storm sewer and manhole must comply with Streets Bylaw S-300.
- If requested by HRM, the storm sewer and manhole would be relocated by DND at their expense.
- Performance security and the on site supervision and certification of the works by a Professional Engineer will be required.
- Record information will be provided in paper and electronic format.

BUDGET IMPLICATIONS

There is no new revenue from this encroachment agreement but there are annual savings from payments which otherwise would be required from HRM for the Crathorne Park license. The savings net of waiving the encroachment fee is estimated to be \$6,700 annually.

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.

ALTERNATIVES

Council could choose not to approve the encroachment agreement. Staff does not recommend this alternative


ATTACHMENTS

Draft Encroachment Agreement

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: Phillip C. Francis, P.Eng. Manager, Right of Way Services, 490-6219

Report Approved by:



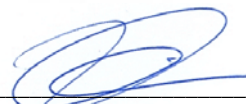
Ken Reashor, P.Eng., Manager, Traffic & Right of Way , 490-6637

Report Approved by:



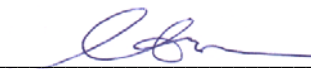
Mary Ellen Donovan, Director, Legal Services, 490-4226

Report Approved by:




Peter Stickings, Manager, Real Property , 490-7129

Financial Approval by:



Catherine Sanderson, Senior Manager, Financial Services, 490-1562

Report Approved by:



Mike Labrecque, P.Eng., Director, Transportation and Public Works, 490-4851

This **Encroachment License Agreement** made this day of , 2008

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY
Of the One Part

and

DEPARTMENT OF NATIONAL DEFENCE
Of the Other Part

Recitals

Whereas the Department of National Defence wishes to construct a storm sewer across Pleasant Street at Shearwater;

And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2008, the Halifax Regional Municipality agreed to give the Department of National Defence 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 license agreement.

Definitions

1. In this agreement, unless the context otherwise requires,
 - (a) “HRM” means the Halifax Regional Municipality;
 - (b) “Engineer” means the Engineer as defined by the Halifax Regional Municipality Act;
 - (c) “DND” means Department of National Defence.

License

2 Subject to the terms of this encroachment license agreement, HRM hereby grants to DND the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion Pleasant St., Dartmouth identified on Schedule “A” to install and maintain a storm sewer as shown on drawing number _____.

Relocation

3 If necessary for municipal purposes, the storm sewer must be relocated within the street if requested by HRM, which relocation will be at the expense of DND. Should DND wish to relocate the storm sewer, 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 DND.

Permits

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- (1) DND agrees to comply with all municipal by-laws including the Streets By-law, S-300 for the original construction of the works 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 stamped by a professional engineer of the proposed storm sewer.
 - (3) The final location of the storm sewer shall be subject to the approval of the Engineer.
 - (4) For the purposes of the construction of the original works, DND 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 that the professional engineer had been engaged by DND 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, DND agrees to arrange a preconstruction meeting with HRM staff.
 - (6) In addition to meeting the requirement of Streets By-law S-300, for the purposes of the construction of the original works, DND agrees to 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 maintenance security in the amount of 10% of said costs, or in the minimum amount of \$1000.00, 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, DND shall provide HRM with a certificate from a professional engineer certifying that all works have been completed according to the approved drawings, any applicable municipal services specifications, standard drawings and approved changes.

Record Drawings

5. DND 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 compatible with the HRM Geographic Information System(GIS).

Indemnity

6. DND 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 grant of the rights set forth in this license agreement or from the existence or operation of the storm sewer however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

7. This storm sewer encroachment is granted for the nominal \$1.00 per year.

Occupational Health & Safety Act

8. DND agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically DND agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

Termination

- 9. (1) Either party may terminate this license agreement at any time.
- (2) Upon termination of the license agreement, DND shall at HRM's option either:
 - (a) remove the storm sewer and restore the surface of Pleasant St; or
 - (b) abandon all claim to title in the storm sewer to HRM.

Notices

10. Any written notice or communication relating to the administration of this 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 Engineering & Transportation
21 Mount Hope Avenue
Halifax, N.S. B3J 3A5

and

Department of National Defence

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

11. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

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

HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

Regional Clerk

DEPARTMENT OF NATIONAL DEFENCE

