



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.1.3

Halifax Regional Council
March 31, 2009

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: March 11, 2009

SUBJECT: Encroachment Agreement - Dalhousie University, LeMarchant Street

ORIGIN

Application by Dalhousie University (Dalhousie).

RECOMMENDATION

It is recommended that Halifax Regional Council **approve** the attached Encroachment Agreement to allow Dalhousie to install an underground electrical conduit structure on LeMarchant Street to service the Killam Library.

BACKGROUND

Dalhousie is proposing to install an underground electrical ductbank that will run under the sidewalk from a pole on the west side of LeMarchant Street, just north of University Avenue, to a padmount transformer located on Dalhousie property at the northeast corner of the Killam Library. This will be a new 23,000 volt electrical service to the existing Computer Data Centre. The location of the ductbank under an HRM sidewalk requires the prior approval of an Encroachment Agreement by Regional Council

DISCUSSION

The proposed underground ductbank will run under approximately 14 metres of sidewalk and will occupy approximately 14 square metres. In accordance with Bylaw E-200, the pipe crossing would be subject to an annual encroachment fee of \$140.00 (\$10. per square metre).

The attached draft encroachment agreement also includes the following:

- Construction and maintenance of the ductbank must comply with Streets Bylaw S-300.
- If requested by HRM, the ductbank would be relocated by Dalhousie 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

The annual fee of \$140.00 will be a new revenue source for HRM and will be deposited to Operating Cost Centre R112 - Right of Way Approval.

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/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

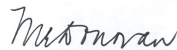
Report Prepared by: Phillip C. Francis, P.Eng., Manager, Right of Way Services, 490-6219

Report Approved by:



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

Report Approved by:



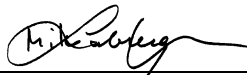
Mary Ellen Donovan, Director, Legal Services, 490-4226

Financial Approval by:



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

Report Approved by:



Mike Labrecque, Director, Transportation and Public Works, 490-4855

This **Encroachment License Agreement** made this day of , 2009

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Of the One Part

and

DALHOUSIE UNIVERSITY

Of the Other Part

Recitals

- (1) Whereas the Dalhousie University wishes to install an underground electrical ductbank under the sidewalk on the west side of LeMarchant St. to a transformer located on Dalhousie property;
- (2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2009, the Halifax Regional Municipality agreed to give Dalhousie University 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 established by S.N.S., 1995, c.3 succeeding and incorporating the former municipal units of the Town of Bedford, the City of Dartmouth, the City of Halifax and the Halifax County Municipality;
 - (b) “Engineer” means the Engineer as defined by the Halifax Regional Municipality Charter; and
 - (c) “Dalhousie” means Dalhousie University.

License

- 2 Subject to the terms of this encroachment license agreement, HRM hereby grants to Dalhousie the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion LeMarchant St., Halifax identified on Schedule “A” to install and maintain an underground electrical ductbank shown on drawing number _____.

Relocation

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

Permits

4 (1) Dalhousie agrees to comply with all municipal bylaws including the Streets bylaw, S-300, as amended from time to time, 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 underground electrical ductbank.

(3) The final location of the underground electrical ductbank shall be subject to the approval of the Engineer.

(4) For the purposes of the construction of the original works, Dalhousie 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 Dalhousie to supervise and set out the work, that the work will be done in accordance with the approved plans, and 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, Dalhousie agrees to arrange a preconstruction meeting with HRM staff.

(6) In addition to meeting the requirements of Streets Bylaw S-300, for the purposes of the construction of the original works, Dalhousie 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, or in the minimum amount of \$1000.00, to be valid for a period of two years from the date of the acceptance of said works.

(7) For the purposes of the construction of the original works Dalhousie 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

5 Dalhousie 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 Dalhousie 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 license agreement or from the existence or operation of the underground electrical ductbank however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

7 Dalhousie shall pay the fees set out in Encroachment Bylaw E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the ductbank is 14 square metres.

Occupational Health & Safety Act

8 Dalhousie agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically Dalhousie 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, Dalhousie shall at HRM's option either:
- (a) remove the underground electrical ductbank and restore the surface of LeMarchant St.
 - (b) abandon all claim to title in the underground electrical ductbank 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 Transportation & Public Works
 21 Mount Hope Avenue
 Halifax, N.S. B3J 3A5

and

Dalhousie University
 Director, Facilities Management
 1236 Henry Street
 Halifax, NS, B3H 3J5

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

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

Municipal Clerk

DALHOUSIE UNIVERSITY
