

Item No. 10.1.2
Halifax Regional Council
December 6, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by

Mike Labrecque, Deputy Chief Administrative Officer

DATE: November 17, 2011

SUBJECT: Via Rail Sanitary Sewer Encroachment Agreement

ORIGIN

Application by Via Rail Canada Inc. to install a new pressurized sanitary sewer pipes under Hollis Street, Halifax.

RECOMMENDATION

It is recommended that Halifax Regional Council **approve** the attached encroachment agreement to allow the proposed sewer to be installed under Hollis Street from the Via Rail building to Barrington Street.

BACKGROUND

Prior to the Halifax Harbour Solutions project, it is well known that there were many sewer outfalls which discharged directly into Halifax Harbour. While the Halifax Harbour Solutions project addressed the re-routing of the public sewerage outfalls into various treatment facilities, there remain a small number of private outfalls which individual property owners must correct. As the outfalls are identified, Halifax Water notifies the owner and requests that the outfall be re-routed in such a way that the sewerage is treated according to today's standards. The Via Rail building is currently discharging sewerage into Halifax Harbour. They have presented a solution, however it does require an encroachment under the HRM lands on Hollis Street.

DISCUSSION

Connecting the Via Rail Station to a public sewer is not straight forward. There is no public sewer on Hollis Street immediately in front of the building. Complicating the situation further, the only sewer downhill from the station is not a public sewer; it is owned by the Halifax Port Authority. This leaves Via Rail with only one option: to pump their sewerage uphill to Barrington Street – where the closest public sewer to its building is located.

As the new sewer pipes will be pressurized (commonly referred to as a “forcemain”), and they will only serve one customer, Halifax Water will not own and maintain the pipes. They will be owned and maintained by Via Rail, therefore are considered encroachments under Hollis Street.

The proposal would see dual 75mm force mains installed from Via Rail to Barrington Street, one new manhole where the sewerage would be pumped to, and a short gravity sewer from the new manhole to the existing public system. The overall area of the encroachment is approximately 49.0m². In accordance with By-Law E-200, the encroaching pipes and manhole will be subject to an annual encroachment fee as prescribed by Administrative Order. The current fee is \$10.00 per square metre.

BUDGET IMPLICATIONS

The applicant is required to pay a one-time license fee of \$125.00 and the annual encroachment fee of \$490.00 (as prescribed by Administrative Order). This new annual revenue will be directed to Cost Centre R112 – 4912.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

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

ALTERNATIVES

Council could choose not to approve the proposed encroachment. This would mean Via Rail would continue to discharge raw sewerage into the harbour until another solution is presented. It is unlikely that any other solution would not involve an encroachment under HRM lands.

ATTACHMENTS

1. Encroachment Agreement
2. Plan showing the proposed encroachment

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: Christopher Davis, P.Eng., Right of Way Engineer, 490-7462

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

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

Financial Approval by: _____
James Cooke, EGA, Director of Finance/CFO, 490-6308

Report Approved by: _____
Ken Reashor, P.Eng., Director, Transportation and Public Works, 490-4855

This **Encroachment License Agreement** made this day of , 2011

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Of the One Part

and

VIA RAIL CANADA INC.

Of the Other Part

Recitals

1. (1) Whereas Via Rail Canada Inc. wishes to construct a pressurized sanitary sewer lateral on Hollis Street from civic # 1161 Hollis Street to Barrington Street;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2011, the Halifax Regional Municipality agreed to give Via Rail Canada Inc. 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

2. 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;

(c) "Via Rail" means Via Rail Canada Inc.

License

3. Subject to the terms of this encroachment license agreement, HRM hereby grants to Via Rail the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Hollis Street, Halifax identified on Schedule "A" to install and maintain a pressurized sanitary sewer lateral.

Relocation

4. If necessary for municipal purposes, the pressurized sanitary sewer lateral must be relocated within the street if requested by HRM, which relocation will be at the expense of Via Rail. Should Via Rail wish to relocate the pressurized sanitary sewer lateral, 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 Via Rail.

Permits

5. (1) Via Rail agrees to comply with all municipal bylaws including the Streets bylaw, 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 pressurized sanitary sewer lateral.

(3) The final location of the pressurized sanitary sewer lateral shall be subject to the approval of the Engineer.

(4) For the purposes of the construction of the original works, Via Rail 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 Via Rail 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, Via Rail agrees to arrange a preconstruction meeting with HRM staff.

(6) In addition to meeting the requirement of Streets Bylaw S-300, for the purposes of the construction of the original works, Via Rail 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 to deposit a maintenance security in the amount of 10% of said costs, or in the minimum amount of \$1000., 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, prior to release of said performance security, Via Rail 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, and standard drawings and approved changes.

Record Drawings

6. Via Rail 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 or in an electronic format approved by the GIS Manager.

Indemnity

7. Via Rail 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 pressurized sanitary sewer lateral however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

8. Via Rail 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 lines is 49.0 square metres.

Occupational Health & Safety Act

9. Via Rail agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically Via Rail 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

- 10. (1) Either party may terminate this license agreement at any time.
- (2) Upon termination of the license agreement, Via Rail shall remove the pressurized sanitary sewer lateral and reinstate the surface of Hollis Street.

Notices

11. 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
 P.O. Box 1749
 Halifax, N.S. B3J 3A5

and

Via Rail Canada Inc.
 3 Place Ville-Marie, Suite 500
 Montreal, QC H3B 2C9

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

12. This agreement shall ensure 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

VIA RAIL CANADA INC.

Schedule A – Plans showing the proposed Encroachment

