


Item No. 10.1.1
Halifax Regional Council
April 24, 2012

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: April 2, 2012

SUBJECT: Via Rail Sanitary Sewer Encroachment Agreement (Revision)

ORIGIN

Application by Via Rail Canada Inc. to install a new pressurized sanitary sewer pipes under Hollis Street, Halifax; previously approved by Regional Council on December 6th, 2011.

RECOMMENDATION

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

BACKGROUND

Via Rail Canada Inc. made application to HRM for an encroachment agreement in 2011. This agreement was approved by Regional Council on December 6, 2011. The recommendation report included a copy of the proposed encroachment agreement. HRM Staff have been in discussions with Via Rail Canada Inc. since the standard encroachment agreement was approved. The discussion resulted in a change to the termination clause of the encroachment agreement. Recognizing that the proposed change is a substantive alternation to the document that Regional Council previously approved, the revised document is now being presented to Council for approval.

DISCUSSION

There are no changes to the proposed encroachment or fees; only to the encroachment agreement document. Whereas the previously approved agreement stated that “*Either party may terminate this license agreement, in writing, at any time*”, the proposed revision to the Termination clause of the agreement eliminates the ability to terminate the agreement at any time in favour of a 75 year fixed term.

Termination of the agreement would mean that HRM is cancelling the encroachment licence that allows Via Rail to connect to the public sewerage system on Barrington Street. The proposed revision provides Via Rail Canada Inc. with comfort that HRM cannot deny access to the public sewerage system by terminating the agreement at any time in the next 75 years.

The standard Relocation clause still protects HRM’s current and future use of the public right of way. Should the area encumbered by the encroachment be required for municipal purposes, the sewer lateral would be relocated at Via Rail Canada Inc.’s cost.

BUDGET IMPLICATIONS

The budget implications remain unchanged from the previously approved report:

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 as this is a recommendation to modify language in an agreement specific to HRM and Via Rail Canada Inc.

ALTERNATIVES

Council could choose not to approve the revised encroachment agreement. This would mean the construction of Via Rail Canada Inc.'s new sewer lateral would be delayed until another agreement can be reached. This is not recommended.

ATTACHMENTS

1. Encroachment Agreement (Revised April 2, 2012)

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., 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: _____
Greg Keefe, CMA, Acting 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 , 2012

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 December 6, 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 By-law E-200, being the Encroachment By-law, 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 and no other reasonable alternative is available, 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 by-laws applicable to Via Rail, as a federal undertaking, and related to this encroachment 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 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 requirements of the Streets By-law S-300, Via Rail agrees to deposit with HRM a security deposit in the amount equal to 10% of the estimated costs of restoring the municipal infrastructure affected by the project, which security shall be valid for a period of two years from the date of the acceptance of the works by the Engineer.

(7) For the purposes of the construction of the original works, prior to release of said security deposit, 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 By-law 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) This encroachment license agreement shall be for a term of 75 (seventy-five) years commencing on 12:01 am on May 1, 2012, and terminating at 11:59 pm on May 1, 2087.

(2) This encroachment license agreement may be terminated, at any time, with the written consent of both parties.

(3) 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 enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

13. The parties agree this is a public document within the meaning of Part XX of the Municipal Government Act.

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.

