




P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 11.1.1
Halifax Regional Council
September 23, 2014

TO: Mayor Savage 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: August, 28, 2014

SUBJECT: **Encroachment Agreement – McAsphalt Industries Limited, Eastern Passage**

ORIGIN

Application by McAsphalt Industries Limited

LEGISLATIVE AUTHORITY

- *Encroachment By-Law* (By-law E-200)
- *Administrative Order 15*, Respecting License, Permit and Processing Fees

RECOMMENDATION

It is recommended that Halifax Regional Council approve the Encroachment Agreement, as provided in Attachment A to this report, to permit the installation of two sub-surface pipes within the Autoport Avenue and Main Road rights-of-way, Eastern Passage.

BACKGROUND

McAsphalt Industries Ltd. (the Applicant) is seeking approval to construct two new underground pipelines within the Autoport Avenue and Main Road rights-of-way in Eastern Passage (Map 1). Under the *Encroachment By-law*, Regional Council is required to approve an Encroachment Agreement for any encroachments located upon, under or over the HRM street right-of-way. If Regional Council approves the Encroachment Agreement, the applicant will be subject to an annual fee for the encroachment as outlined in Administrative Order 15.

Administrative Order 15 requires that all permanent encroachments within a HRM street right-of-way shall be subject to an annual rental fee of \$1.00 per 0.1 square metres (\$10 per square metres) of such encroachment, with a minimum fee of \$10.00.

Proposal

The Applicant is seeking a Development Permit to construct an above ground storage tank (AST) 60 feet in diameter and 48 feet in height within an existing containment system that they currently own, located at 90 Autoport Avenue, Eastern Passage (Maps 1 and 2). The AST meets the requirements of the I-2 zone of the Eastern Passage/Cow Bay Land Use By-law and is also subject to provincial approvals. In addition to the construction of the new AST, two new pipelines (8" and 10" diameter) will be part of the approval as the AST will be used to store an intermediate fuel oil (IFO) commonly used in the marine refueling industry. The pipelines are required to carry IFO from the AST to the destination. The pipelines will extend (underground) crossing Autoport Avenue and Main Road, ending at the Marine Dock currently operated by the Applicant (Map 2).

An 8-inch diameter pipeline currently exists and crosses under both street rights-of-way in the same proximity as the new proposed pipes. This existing pipeline, which is owned by the Applicant, was installed prior to By-law E-200 and, as such, is not subject to its requirements. The two new pipelines will run congruently with the existing pipeline, which will remain in service.

DISCUSSION

The Applicant has indicated that with the closure of the Imperial Oil Refinery, a need has emerged regarding ship-refueling capabilities and the Halifax Port Authority has indicated that the ability to continue to provide this service is critical to both the local and regional economy. The Applicant is able to provide this service.

Encroachment Agreement

Staff has prepared a proposed Encroachment Agreement, (Attachment A) as per the *Encroachment By-law*. The proposed Encroachment Agreement contains the following requirements:

- a) Construction and maintenance of the encroachments must comply with the Streets By-law, S-300;
- b) The pipelines are required to meet current HRM Municipal Design Specifications;
- c) The Applicant would be responsible for ownership and maintenance of the approved encroachments;
- d) If requested by HRM, the encroachments would be removed or relocated by the property owner(s) and the area within the rights-of-way reinstated at their expense; and
- e) Record information shall be provided to HRM.

The Encroachment Agreement would be effective concurrently with the approval of Streets and Services

permits. Design and Construction details are to be finalized prior to the issuance of the Streets and Services permits for these crossings; however, the Encroachment Agreement can be approved with the information included in this report.

Annual Fee

The encroachment area of the pipelines crossing under Autoport Avenue will be 20 square metres. The encroachment area of the pipelines crossing under Main Road will be 27 square metres. Combined, the total encroachment area within the right-of-way will be 47 square metres. In accordance with By-law E-200, the encroachments will be subject to an annual encroachment fee of \$470 (\$10.00 per square metre).

Conclusion

The Applicant's proposed improvements may assist with port operations and will not affect the ability of the Municipality to maintain and operate the street rights-of-way. Therefore, staff recommends that Regional Council approve the Encroachment Agreement for the two new pipelines crossing under Autoport Avenue and Main Road, Eastern Passage, as contained in Attachment A of this report.

FINANCIAL IMPLICATIONS

Should Regional Council choose to approve the encroachments, cost centre R112-4942, Right-of-Way Approval – Signs and Encroachments will be used to record this new annual revenue.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process.

ENVIRONMENTAL IMPLICATIONS

No implications identified.

ALTERNATIVES

1. Regional Council may choose to approve the encroachment agreement subject to modifications as per clause 10(a) of Encroachment By-law. Such modifications may require further discussion with the Applicant and the preparation of a supplementary staff report.
2. Regional Council may choose not to approve the Encroachment Agreement.

ATTACHMENTS

Map 1	Location
Map 2	Encroachment
Attachment A:	Draft Encroachment Agreement
Attachment B:	McAsphalt Industries Ltd. Encroachment Request

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: Hugh Morrison, Development Engineer, 902-490-4907

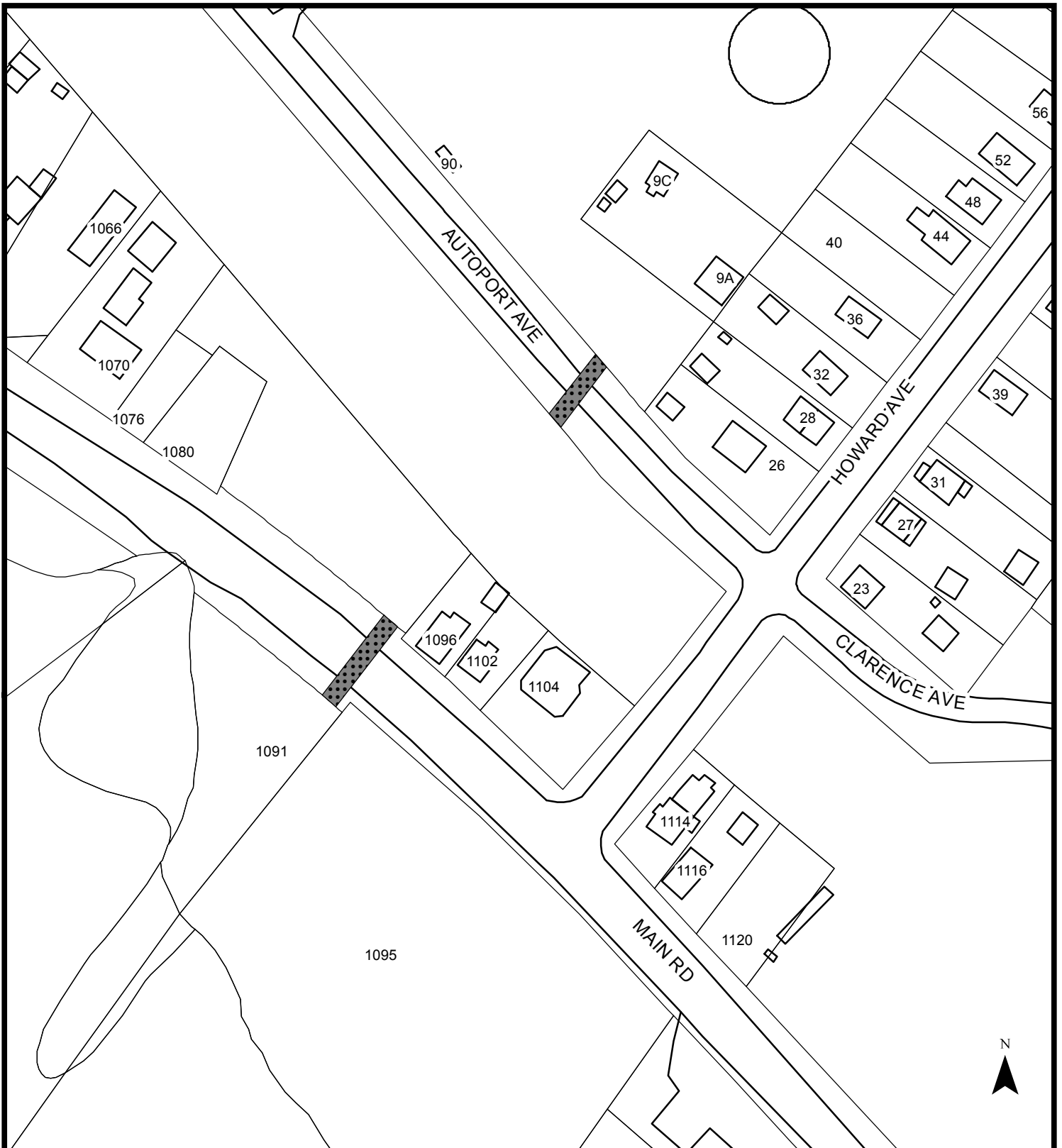
Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 902-490-4800

Financial Approval by: _____
Greg Keefe, Director of Finance & ICT/CEO, 902-490-6308

Report Approved by: _____
Brad Anguish, Director, Community & Recreation Services, 902-490-4933

Report Approved by: _____
Kathleen Llewellyn-Thomas, A/Director, Transportation & Public Works, 902-490-4855

Legal Review by: _____
John Traves, Director, Legal Services & Risk Management, 902-490-1036



Map 1 Location

Autoport Ave and Main Rd,
Eastern Passage

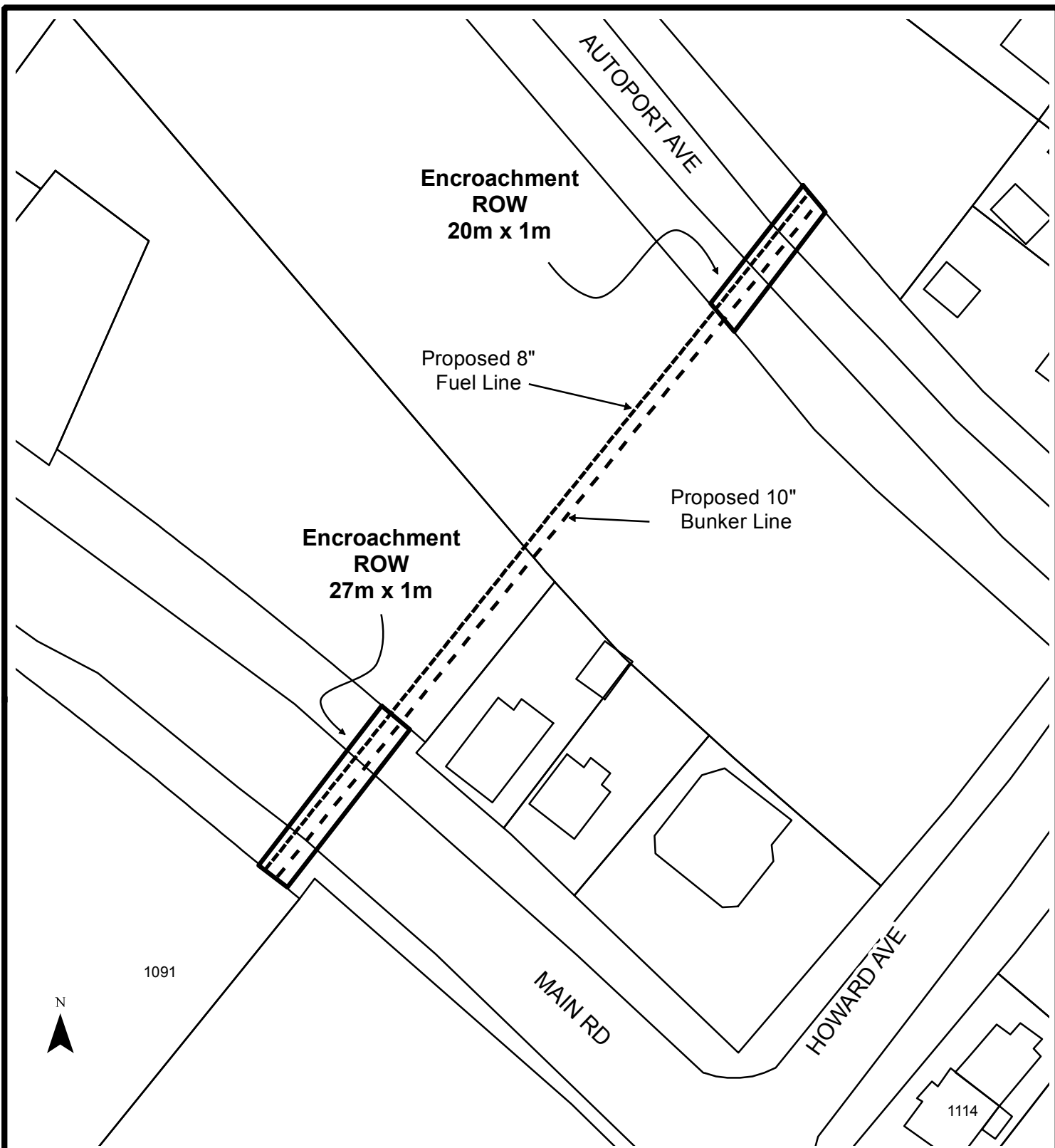
HALIFAX



Encroachment Areas

0 5 10 20 30
Meters

The accuracy of any representation on this plan is not guaranteed.



Map 2 Encroachment

Autoport Ave & Main Rd,
Eastern Passage

HALIFAX

0 3 6 12 18 Meters

The accuracy of any representation on this plan is not guaranteed.

Attachment A Draft Encroachment Agreement

This **Encroachment License Agreement** made this ____ day of _____, 20____.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
(“HRM”)

and

McASPHALT INDUSTRIES LIMITED, a body corporate
(the “Licensee”)

Recitals

- A. **Whereas** the Licensee owns property at 90 Autoport Avenue, Eastern Passage and wishes to install two underground pipes (the “Encroachment”) within the HRM street right of way as shown and described in Schedule “A”;
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 20____, the HRM agreed to give the Licensee 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.

In consideration of the mutual promises contained in this agreement the parties agree as follows:

License

1. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of Autoport Avenue and Main Road (Eastern Passage Highway), identified in Schedule “A” to install and maintain the Encroachment.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and said relocation shall be at the sole expense of the Licensee.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the Encroachment 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 of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.
- (3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer").
- (4) For the purposes of the construction of the Encroachment, the Licensee agrees:
 - (a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;
 - (b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;
 - (c) that the Encroachment will be done in accordance with the approved plans; and
 - (d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.
 - (e) that as much information regarding location, depth, and condition of existing pipe infrastructure be gathered and conveyed to the Municipality upon the completion of the work related to this agreement.
- (5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.
- (6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any temporary or minimal relocation.

Maintenance

6. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

7. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon the Licensee's land.

8. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If the Licensee does not, within 15 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

9. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 within 15 business days of receiving notice of the costs of the work or expense incurred.

(2) HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM for the work.

Street Maintenance

11. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

Indemnity

12. (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages 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 Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.

(2) This section shall survive the termination of this license agreement.

Insurance

13. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any renewal of the insurance.

Fees

14. The Licensee shall be invoiced for, and shall pay, the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is 47 square metres.

15. The Licensee acknowledges that the fee prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council.

Occupational Health and Safety Act, SNS 1996, c 7

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

Termination

17. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM all encroachment fees owing;
- (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days, unless otherwise agreed to between the parties.

(2) The Licensee may terminate this license agreement under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this licence agreement;
- (b) payment to HRM of all encroachment fees owed ;
- (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
- (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
- (e) any other terms and conditions as may be necessary in the opinion

of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer for the restoration of the street.

(3) If the Licensee does not, within the sixty calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.

(4) The termination of this Encroachment License Agreement shall not relieve the Licensee from any obligations under this Agreement including:

(a) paying all fees, costs and expenses owed to HRM under this Encroachment License Agreement; and

(b) restoring the street right of way to the satisfaction of HRM.

Notices

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

Halifax Regional Municipality
Director of Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

McAsphalt Industries Limited
8800 Sheppard Avenue East
Toronto, ON M1B 5R4

19. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

20. This license agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

21. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

22. This license agreement shall be construed according to the laws of the Province

of Nova Scotia.

23. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

24. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

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

SIGNED, SEALED AND DELIVERED in
The presence of:

MCASPHALT INDUSTRIES LIMITED

Witness

Name:
Title:

Witness

Name:
Title:

I/We have authority to bind the Licensee

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

[illegible]



Attachment B Encroachment Request

Port of Halifax - Marine Refueling Project

REQUEST FOR ENCROACHMENT AGREEMENT

APRIL 15 2014

Sterling Fuels in conjunction with the Port of Halifax and McAsphalt Industries Ltd., is seeking approval to construct an aboveground storage tank (AST) 60 feet in diameter and 48' in height within an existing secondary containment system currently owned and operated by McAsphalt Industries Ltd., located at 90 Autoport, Eastern Passage Nova Scotia. In addition to the construction of the new AST, two new pipelines (8" and 10 " in diameter) will be part of the approval as the AST will be used to store an intermediate fuel oil (IFO) commonly used in the marine refueling industry. The two pipelines will extend (underground) crossing Autoport Rd as well as Eastern Passage or Main Ave, ending at the Marine Dock currently operated by McAsphalt Industries Ltd. In addition to an Industrial Approval from Nova Scotia Environment, we respectfully requests to enter into an encroachment agreement as per HRM Bylaw E-200; to allow the pipelines to cross both municipal roads listed above. Also, as an existing 8" pipeline currently crosses both roads, we view this as an opportunity update the current operation as per the new by-law.

With the closure of the Imperial Oil Refinery located several miles away a significant need has emerged regarding the refueling of the many ships which regularly enter and exit the Port of Halifax. The ability to continue to provide this service was identified as critical to both the local and regional economy. Both the Port of Halifax and Sterling Fuels realized that McAsphalt Industries Ltd., possessed the comprehensive knowledge, experience, resources and geographical requirements; all of which are supported by the many years the terminal has operated within safe and sustainable industry guidelines and regulatory requirements. As further evidence of McAsphalt's commitment towards safe and sustainable business practices; in 2011 we achieved the Green Marine certification for terminals and in 2012 implemented an environmental management system conforming to ISO 14001: 2004, both of which are internationally recognized and regularly audited by third party registrars.

We look forward to our continued relationship with Port of Halifax and will ensure that the construction and eventual operation of the marine refueling business exceeds all local, provincial and Federal regulations while providing a critical service to the shipping industry through the continual improvement of our processes.

Sincerely,

ORIGINAL SIGNED

Joel Gardner

Corporate Health, Safety and Environment Manager

McAsphalt Industries Ltd.