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**NSCAD Encroachment agreement
Council Report**

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**Halifax Regional Council
September 23, 2003**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer

DATE: September 8, 2003

SUBJECT: Encroachment Agreement - NSCAD University

ORIGIN

Request by Nova Scotia College of Art and Design (NSCAD) University under HRM's Encroachment Bylaw to install two historic lion sculptures at the south end of Granville Mall.

RECOMMENDATION:

IT IS RECOMMENDED THAT Halifax Regional Council approve the attached Encroachment Agreement to allow NSCAD University to install two historic lion sculptures at the south end of Granville Mall at the intersection of Duke and Granville Streets.

BACKGROUND

NSCAD University is seeking permission from the Halifax Regional Municipality under its Encroachment Bylaw to install two historic lion statues in the circular planter located at the south end of Granville Mall adjacent to the Duke Street entrance. The statues were donated to NSCAD by Public Works Canada, and were originally located on top of the historic Customs and Excise building before the building's demolition. Details of the proposal are attached including an artist rendering of how the statues would appear once installed. Since Granville Mall is officially considered a "street", the location of such structures within HRM streets requires the approval of an Encroachment Agreement by Regional Council.

The project before Council is part of larger program being developed by Capital District in partnership with NSCAD to enhance the visibility of NSCAD and promote better design and public art within the Capital District. Future plans for NSCAD include the creation of a new "main entrance" which would eventually see its administrative offices relocated and housed at the centre block of Granville Mall. In advance of this move, NSCAD plans to install public art at key locations within Granville Mall to increase its presence in the area. The first phase of the project involves the installation of the lion statues to create a prominent gateway to Granville Mall. The second phase of the project to occur in Spring of 2004, would involve the installation of two permanent exhibition platforms in Granville Mall as part of the University's new outdoor Sculpture Exhibition Program. These platforms would showcase exhibits of sculpture by professional artists of national and international reputation.

DISCUSSION

The first phase of the NSCAD Granville Mall Project is addressed in the encroachment agreement in attachment two of this report. The agreement provides for NSCAD to install the two historic carved lion statues on pedestal bases at the centre of an existing planter near the Duke Street entrance to the mall. The statues will be prominently aligned to create a dramatic entrance and landmark for Granville Mall.

The project has been reviewed by staff from Capital District, Public Works, Halifax Regional Water Commission, Real Property and Asset Management, Recreation, Culture and Heritage, Planning & Development, and Legal Services. The agreement addresses primarily the responsibilities of NSCAD with respect to installation and maintenance of the statues. The agreement also includes the following:

- Construction and maintenance of the installation must comply with Streets Bylaw S-300. Detailed engineering plans are required as part of this review. The agreement provides for the lions to be sited to minimize any interference on underground services or emergency and service access to Granville Mall. The relocation of an existing water main around the local area may be required.

- The option for removal of the installation, if requested by HRM.
- Performance security and the on site supervision and certification of the works by a Professional Engineer will be required.
- NSCAD will assume responsibility for liability and maintenance of the statue installation. A protective coating will be applied to the statues to minimize any damage from vandalism or external elements.
- The agreement provides for amendments to enable future phases of the project.

If approved by Council, the first phase in the project would be installed in October.

The project has received support from several groups including, the HRM's Heritage Advisory Committee, the Downtown Halifax Business Commission, Granville Mall tenants, and the Capital District Task Force. Although the buildings surrounding the Granville Mall are municipally registered, the open space is not a registered heritage property. Given the proposal will affect the aesthetics of this historic area, the project was forwarded to the Heritage Advisory Committee as a courtesy to its August 27, 2003 meeting. A meeting of the Granville Mall tenants was also hosted by HRM Capital District and the Downtown Halifax Business Commission on September 3, 2003 to provide information on the project. The project was presented to the Capital District Task Force at its September 9 meeting. The project has been favourably received by all key interest groups.

BUDGET IMPLICATIONS

The project will be cost shared between HRM Capital District and NSCAD. HRM will contribute \$10,000 as part of a program to promote better urban design in the Capital District. The funds for this project will come from Capital District account #CDG00490 (urban design).

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.

REGIONAL PLANNING IMPLICATIONS

This report complies with the Regional Planning principles endorsed by Council.

ALTERNATIVES

Council could refuse to enter into the attached encroachment agreement. Staff does not recommend this alternative.

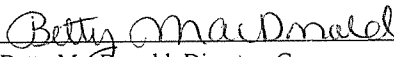
ATTACHMENTS

1. NSCAD Proposal Overview
2. Draft Encroachment Agreement

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Jacqueline Hamilton Project Manager, Capital District, Phone: 490-5685

Report Approved by:



Betty MacDonald, Director, Governance and Strategic Initiatives Phone: 490-4769

Report Reviewed by: Phillip Francis, P.Eng, Right of Way Engineer, Phone: 490-6219

This License Agreement made this day of , 2003

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY
Of the One Part

and

NOVA SCOTIA COLLEGE OF ART AND DESIGN
Of the Other Part

RECITALS

1.

- (1) Whereas The Nova Scotia College of Art and Design wishes to install two historic lion sculptures at the south end of Granville Mall at the intersection Duke and Granville Street;
- (2) And Whereas by resolution of the Halifax Regional Municipal Council on Sept 16th, 2003, the Halifax Regional Municipality agreed to give Nova Scotia College of Art and Design 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:

- (1) "HRM" means the Halifax Regional Municipality
- (2) "Engineer" means the Engineer appointed by Halifax Regional Council pursuant to the Municipal Government Act.
- (3) "Installation" means the stone lion sculptures and pedestals and lighting supporting the sculptures as outlined in the proposal attached as schedule B.
- (4) "NSCAD" means the Nova Scotia College of Art And Design
- (5) "Premises" means the planter at the corner of Granville and Duke Streets where the Installation is to be placed and as outlined in red and marked Parcel A, on the attached Schedule A, Granville Mall.

LICENSE

3. Subject to the terms of this agreement, HRM hereby grants to NSCAD the non-exclusive license by its officers, servants, agents and contractors at all times to enter on, over and under the Premises to install and maintain an Installation comprising of two pedestals and two historic sandstone carved lions as outlined in the attached proposal.

PERMITS

4.

- (1) NSCAD agrees to comply with all municipal bylaws including the Streets By-Law, S-300 for the original construction of the works and all subsequent work involving the Installation.
- (2) The application for Streets & Services permit shall include an engineering plan and details stamped by a professional engineer of the proposed Installation.
- (3) The final location of the Installation shall be subject to the approval of the Engineer.
- (4) For the purposes of the construction of the original works, NSCAD 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 NSCAD 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, NSCAD agrees to arrange a preconstruction meeting with HRM staff and to provide a traffic and pedestrian control plan for review and approval at this meeting.
- (6) In addition to meeting the requirement of Streets By- Law S-300, for the purposes of the construction of the original works, NSCAD 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 deposit of a maintenance security in the amount of \$1000.00, to be 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, NSCAD 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.
- (8) NSCAD acknowledges the presence of an existing water main below the proposed site for the Installation. Both parties recognize the relocation of the existing water main around the local area may be required. NSCAD agrees to co-ordinate the Installation

with any modifications required to the underground water main.

RECORD DRAWINGS

5. NSCAD shall provide to the Engineer a copy of the record drawings immediately upon completion of said project, and immediately upon completion of any relocation or changes to the Installation.

INDEMNITY

6. NSCAD 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 sculpture Installation however caused.

FEES

7. Fees shall be as set out in HRM's Encroachment Bylaw E-200.

OCCUPATIONAL HEALTH & SAFETY ACT

8. NSCAD agrees to comply with the requirements of the *Occupational Health & Safety Act* and all regulations enacted pursuant thereto. Specifically NSCAD 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.

TERM

9.

- (1) The term of this license shall be for a period of **Fifteen Years**. The license may be renewed for an additional term as mutually agreed to by the Licensor and the Licensee.
- (2) This licence may be terminated at any time. Should either HRM or NSCAD wish to terminate the license, three months notice in writing must be given by the either party.
- (3) Upon termination of the license agreement, NSCAD shall with the mutual agreement of HRM either:
 - a) remove the Installation and restore the planter at the corner of Granville and Duke Streets to its original condition; or
 - b) abandon all claim to title of the Installation and hand the Installation over to HRM in a condition acceptable to HRM
- (4) Anything in the nature of license hold improvements, which term shall include, but without limiting the generality of the foregoing, all fixtures (including electrical light fixtures, mechanical fixtures and the like), improvements, fittings, sculptures, (other than NSCAD's trade fixtures, furniture or trade equipment) made, erected or installed on or under the Premises, shall remain the property of the NSCAD unless officially

ceded to and accepted by HRM .

SERVICES AND FACILITIES TO BE SUPPLIED BY NSCAD

10.

- (1) NSCAD shall provide all services, materials, equipment and personnel required for the administration, operation and maintenance of the Installation.
- (2) NSCAD shall pay for all repairs and maintenance associated with the Installation.

RESPONSIBILITIES FOR ALTERATIONS, REPAIRS AND MAINTENANCE

11.

- (1) NSCAD shall keep and maintain the Premises and Installation clean, tidy and in good repair.
- (2) NSCAD shall carry out regular inspections through out the licencing period to ensure that the installment remains in good and safe condition. Inspections shall be carried out by a professional engineer, license to practice in the Province of Nova Scotia.
- (3) NSCAD shall repair or replace at its own cost any portion of the Premises damaged through any willful or negligent act or omission of the NSCAD, its Servants, Agents or Guests.
- (4) HRM shall be responsible for general maintenance of the existing planter due to normal wear and tear.
- (5) HRM shall be responsible for horticultural display and maintenance of the planter
- (6) NSCAD shall repair or replace at its own cost any portion of the Premises damaged through the routine wear and tear caused by the NSCAD activities.
- (7) NSCAD shall not make any alterations to the Premises and Installation without first obtaining the written consent of HRM, which consent will not be unreasonably withheld.
- (8) NSCAD covenants that it will leave the Premises in good repair, reasonable wear and tear accepted.
- (9) NSCAD agrees to the relocation of the Installation if required for the purposes of maintenance or repairs to underground services. NSCAD shall be responsible for all costs related to removal and restoration of said Installation.

HRM MAY PERFORM NSCAD COVENANTS

12. If NSCAD shall fail to perform any of the covenants or obligations of NSCAD under or in

respect of this license, HRM may from time to time, in its discretion, perform or cause to be performed any such covenants or obligations or any part thereof and for such purpose may do such things as may be requisite, including without limiting the foregoing, entering upon the Premises and doing such things, upon or in respect of the Premises of any part hereof as may be necessary to fulfill the NSCAD's covenants. All reasonable expenditures made by HRM to fulfill the obligations of NSCAD's covenants or any other remedy will be reimbursed to HRM by NSCAD.

DAMAGE OR DESTRUCTION OF THE PREMISES

13. If during the term of this license, the Premises are damaged or destroyed by fire, explosion, earthquake, accident, riot or the elements of some similar cause or peril, NSCAD, within thirty (30) days of the damage or destruction shall notify HRM either that it estimates that repairs to Premises can be effected within (60) days of the date of such notice, or that it estimates that a period longer than sixty (60) days will be required to effect such repairs, and in the latter case either party shall be at liberty to terminate this license without further liability thereunder giving the other party written notice of termination at least sixty (60) days in advance of the termination date.

MODIFICATIONS OF LICENSE

14. Failure of either party to insist upon strict performance of any covenant or condition of this license or to exercise any right or option hereunder shall not be construed as a waiver or relinquishment for the future of any such covenant right or option. No assent or consent to any variation of any covenant on condition of the license shall be valid unless done in writing and identified with this license. The acceptance of any rent or the performance of any obligation hereunder by a person other than NSCAD shall not be construed as an admission by the HRM of any right, title or interest of such person or sub-lessee, assignee, transferee or otherwise in the place and stead of NSCAD.

NOTICES

15. 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

Nova Scotia College of Art and Design

Legal notices in respect of HRM must be given in compliance with the *Municipal Government Act*.

ASSIGNMENT

16.. 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

Regional Clerk, Vi Carmichael

Nova Scotia College of Art and Design

