

HALIFAX

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

Item No 7.1.4
Halifax Regional Council
April 2, 2020

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: January 20, 2020

SUBJECT: Encroachment Agreement – Halifax Port Authority Traffic Monitoring Equipment

ORIGIN

Requested by Andrew Black at the Halifax Port Authority for an encroachment on Bedford Highway, Halifax.

LEGISLATIVE AUTHORITY

HRM By-Law E-200, Respecting Encroachments Upon, Under or Over a Street:

Section 3. no person is to construct or maintain any structure on the street right of way without being issued an encroachment license by Council.

Halifax Regional Municipality Charter

Section 61(3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached Encroachment Agreement, subject to non-substantive amendments, if any, allowing the installation of three transponder readers, traffic monitoring cabinet, and associated electrical conduit at the proposed location within the right of way.

BACKGROUND

Halifax Port Authority (HPA) desires to monitor truck traffic traveling on the Bedford Highway to and from the Ceres Fairview Cove Container Terminal. Trucks would be detected by an antenna just outside the terminal entrance and again when passing the installed transponder readers on the Bedford Highway. The data would be stored for future analysis by HPA staff to monitor efficiency and the data would be shared with HRM staff.

DISCUSSION

The Halifax Port Authority has requested permission to install three transponder readers, a traffic monitoring cabinet, and associated electrical conduit, on the overhead sign over the Bedford Highway near Kearney Lake Road. The transponder readers receive data from a passing truck and this information is stored for future analysis. The traffic monitoring cabinet will be powered by an underground electrical service, running approximately 15 meters from the closest utility pole.

The area of the encroachment is approximately 0.2 m². The applicant is required to pay a one-time license fee of \$60.00 and an annual encroachment fee of \$10.00 (as prescribed by HRM Administrative Order 15, the current fee is \$1 per 0.1 m², with a minimum fee of \$10.00).

Privacy Considerations

The system has an auto-generating whitelist of trucks that have passed through the container terminal gates, and only transponders that have passed through the gates are tracked. Transponders that do not match the whitelist are automatically discarded by the reader, and not transmitted or stored. Data collected by the transponders has an algorithm applied to the transponder number to generate an anonymous transponder number. The anonymous number is then transmitted through a secure encrypted protocol. The actual transponder number is not stored in the central system data storage; only anonymous transponder numbers are stored and matched to track locations.

FINANCIAL IMPLICATIONS

HRM would collect an annual encroachment fee of \$10.00 (as prescribed by HRM Administrative Order 15, the current fee is \$1 per 0.1 m², with a minimum fee of \$10.00).

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy, is not applicable to this process as only the applicant can appeal the decision of Regional Council to the Appeals Standing Committee.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

Council could choose not to approve the proposed Encroachment Agreement. This alternative is not recommended.

ATTACHMENTS

1. Attachment A – Encroachment Agreement with plan showing proposed encroachment

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Megan Soroka, P.Eng., PMP, Right of Way Engineer, 902.490.6219

Attachment A

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

BETWEEN:

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

and

HALIFAX PORT AUTHORITY
(the “Licensee”)

Recitals

- A. **Whereas** the Licensee wishes to construct three pole-mounted traffic monitoring antennae and an electrical service cabinet (the “**Encroachment**”) on an overhead sign structure owned by HRM (the “**Structure**”) located within the street right of way of Bedford Highway, near civic address 364 Bedford Highway, in Halifax, Nova Scotia where shown on Schedule “A” attached hereto, on lands owned by HRM identified as current PID 40920233 (the “Property”);
- B. **And Whereas** pursuant to the *Real Property Transaction Policy*, Administrative Order Number 2018-004-ADM HRM has agreed to give the Licensee an encroachment license in accordance with the terms and conditions set out in the Halifax Regional Municipality-Encroachment By-law E-200, and in accordance with this license agreement (“this License Agreement”).

In consideration of the mutual promises contained in this License Agreement and other good and valuable consideration, the parties agree as follows:

License

1. Subject to the terms set out herein, and subject to the terms of the said Encroachment By-law, 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 the Property required to enable the Licensee to install and maintain the Encroachment on the Structure.

Ownership

2. The Licensee shall retain ownership of the Encroachment subject to this License Agreement.

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, installation, and maintenance of the Encroachment and all subsequent work with respect to it, including any work which involves the excavation of the street.
- (2) The Licensee shall apply for a permit under the Streets By-law S-300. The application shall include an engineering plan and profile of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate the area (in square metres) of the Encroachment proposed to be installed 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.
- (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 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.
8. If HRM determines in its sole discretion that the Encroachment is unsightly, unsafe, or impedes traffic and pedestrians, HRM may:
 - (a) notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM in its sole discretion directs; and
 - (b) if the Licensee does not begin the repair or alteration of the Encroachment within five (5) business days of HRM giving the Licensee notice to do so, and complete such repairs and alterations to the satisfaction of HRM within fifteen (15) business days of the notice, or within such other time as the HRM directs, HRM may, in its sole discretion cause the remedial work to be done, the costs of which shall be paid for by the Licensee forthwith upon demand.
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 remedy the safety issue or remove the Encroachment and restore the street right-of-way ("the Work") in any manner HRM, in its sole discretion, determines and the Licensee shall:
 - (a) reimburse HRM for the cost and expenses of the Work forthwith upon issuance of the invoice for the Work from the HRM; and,
 - (b) the Licensee shall pay HRM's legal fees and disbursements on a solicitor/client basis.

Street Maintenance

9. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, including any losses or damages occurring because of street maintenance, snow and ice removal, and street cleaning.

Indemnity

10. (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.
- (2) The Licensee's indemnity set out in section 10(1) shall survive the termination of this License Agreement.

Insurance

11. The Licensee shall purchase and maintain, during the term of this License Agreement, Commercial General Liability Insurance in the amount of not less than Three Million Dollars (\$3,000,000.00) 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 the Encroachment License and at any renewal of the insurance required under this section.

Fees

12. The Licensee shall be invoiced for, and shall pay, HRM for all fees levied pursuant to the Encroachment By-law E-200 and Administrative Order 15, as amended.

13. 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. The Licensee acknowledges and agrees that the fees for the Encroachment License contemplated by this License Agreement may increase accordingly, from time to time.

Occupational Health and Safety Act, SNS 1996, c 7

14. 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

15. Either party may terminate this License Agreement, by notice in writing to the other party, at any time upon the following conditions:

The Licensee shall:

- (i) pay to HRM all encroachment fees due;
- (ii) pay to HRM the cost of any Work done and expenses paid by HRM under clauses 3, 8, and 9 and 15 (b) of this License Agreement;
- (iii) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within thirty (30) calendar days, or within such lesser or other time-period as the HRM may, in its sole discretion, direct; and
- (iv) comply with any other directives that may be given by the Building Inspector for the Municipality or the Engineer.

(b) The termination of this Licensee's obligations under this License Agreement shall not be effective until the Licensee has satisfied the foregoing conditions. If the Licensee does not comply with its obligations set out in this License Agreement, the HRM shall have the absolute discretion to remove the Encroachment and restore the street right-of-way, and the Licensee shall fully reimburse HRM for all costs and expenses it incurs.

Notices

16. 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

Halifax Port Authority
P.O. Box 336
Halifax, N.S. B3J 2P6

17. 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.

18. This License Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

19. 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.

20. This License Agreement shall be construed according to the laws of the Province of Nova Scotia.

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

22. The Licensee and the signatory(ies) of the Licensee declares that he or she has the full corporate authority to bind the Licensee.

IN WITNESS WHEREOF the parties hereto have duly executed this License Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

HALIFAX PORT AUTHORITY

Witness

Name:
Title:

Witness

Name:
Title:

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that _____, one of the parties thereto, signed, sealed and delivered the same in his presence.

A Commissioner of the Supreme Court of Nova Scotia

