


HALIFAX

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

Item No. 14.1.7
Halifax Regional Council
August 2, 2016

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

John Traves, Q.C., Acting Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: June 30, 2016

SUBJECT: Request for Permanent Encroachment – Barrington Street

ORIGIN

Application by Department of National Defence (DND) for an encroachment under Barrington Street

LEGISLATIVE AUTHORITY

Under Section 3 of HRM By-Law E-200, Respecting Encroachments Upon, Under or Over a Street, no person is to construct or maintain any structure on the street right of way without being issued an encroachment by license by Council.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached Encroachment Agreement, subject to non-substantive amendments, if any, allowing the installation of the rock bolts, footings of the permanent traffic barrier, and the temporary traffic barrier at the proposed location within the right of way.

BACKGROUND

A permanent traffic barrier currently installed along Barrington Street between Niobe Gate and North Street has reached the end of its service life and requires replacement. The barrier is situated on Department of National Defence (DND) property.

DND currently has a retaining wall located within their property along the east side of Barrington Street between Niobe Gate and North Street. The retaining wall supports the street; it is situated between an existing parking lot and Barrington Street. The lot is much lower than the elevation of Barrington Street.

DISCUSSION

DND plans to replace the permanent traffic barrier with a new concrete and chain link traffic barrier. The proposed barrier will still be located on DND property. The footings for the barrier wall will extend approximately one meter into the municipal right of way under the sidewalk, for a distance of approximately 440m. A temporary traffic barrier will be installed along Barrington Street to facilitate the construction of the new barrier.

DND has also requested permission to install approximately 100 rock bolts (25.2mm nominal diameter) to stabilize the rock behind the existing retaining wall. The rock bolts will extend into the right of way approximately 5 to 7m below the sidewalk on Barrington Street.

HRM staff has reviewed the encroachment and have concluded that the proposed permanent traffic barrier footings and rock bolts will not negatively impact HRM's operational requirements for this portion of the right of way, nor does it pose any hazards to road users.

The area of the encroachment is approximately 447 m². Typically for an encroachment of this size, the applicant would be required to pay a one-time license fee of \$125.00 and an annual encroachment fee of \$4,468.04 (as prescribed by HRM Administrative Order 15, the current fee is \$1 per 0.1 m²). These fees are not applicable here as the applicant is the Crown.

DND reviewed the Draft Encroachment Agreement. HRM staff believe the Draft Encroachment Agreement is settled but may be subject to non-substantive amendments.

FINANCIAL IMPLICATIONS

There are no financial implications.

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

Implications not identified.

ALTERNATIVES

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

ATTACHMENTS

Attachment A – Encroachment Agreement with plan showing proposed encroachment.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Jeff Nephew, P.Eng., Engineering Assistant, Right of Way, 902.490.6245
Megan Soroka, P.Eng., PMP, Right of Way Engineer, Right of Way, 902.490.6219

Report Approved by: _____
Roddy MacIntyre, P.Eng., Acting Manager, Traffic Management, 902.490.8425

Report Approved by: _____
Beverley Audey, A/Director, Transportation and Public Works, 902.579.2719

This Encroachment License Agreement made this _____ day of _____, 2016.

BETWEEN:

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

and

HER MAJESTY THE QUEEN as represented by the
MINISTER OF NATIONAL DEFENCE
(the “Licensee”)

Recitals

- A. **Whereas** the Licensee owns property along Barrington Street adjacent to the DND Dockyard lands and wishes to install rock bolts into rock located underneath Barrington Street, install a Permanent Traffic Barrier with footings extending underneath Barrington Street, and to construct a Temporary Traffic Barrier along Barrington Street to facilitate installation (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 _____, 2016, 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 Barrington Street, identified in Schedule “A” to install and maintain the Encroachment, including the temporary traffic barriers in connection therewith.

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, or prepared by a member of and on duty with any branch of Her Majesty's Armed Forces, as specified in section 10(a) of the *Engineering Profession Act*, RSNS 1989, c 148. 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.
- (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 with reasonable 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. For greater certainty the Licensee shall have no more than one year to rectify the unsafe condition.

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.

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 Halifax Regional Municipality, its Mayor, Council, Employees, Agents and Volunteers from and against all actions, claims, demands or costs- including solicitor fees, for any direct losses, costs, damages, or expenses suffered or incurred by Halifax Regional Municipality by reason of any damage of whatsoever nature, including damages to property or to any persons caused by, resulting from or attributable to any act or omission made in relation to the encroachment by Her Majesty the Queen as represented by the Minister of National Defence, It's Employees, Servants, Agents, Licensees, Invitees or generally by those for who it is by law responsible or to the existence, access to, construction, operation, maintenance, relocation, modification, or removal of the Encroachment or injury, including injury resulting in death, to the Employees, Servants, Agents, Licensees, Invitees while on Municipal property except to the extent that such liability, damage or injury arises out of the gross negligence of Halifax Regional Municipality. The terms of the Indemnity are modified by the Letter of Indemnity dated _____, 2016.

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

Insurance

13. As her Majesty the Queen in right of Canada does not carry insurance, Halifax Regional Municipality requires a Letter of Commitment at time of signing of this Agreement.

The Letter of Commitment will state that Her Majesty the Queen in right of Canada accepts all responsibilities for any event, incident, loss or costs which might lead to a claim to which an Insurer of such insurance which would be appropriate for this specific situation would have responded to in accordance with Clause 12.1.

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. (1) HRM may terminate this license agreement, in writing, upon providing the Licensee with one year's written notice. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9; and
- (b) with the exception of the Rock Bolts, 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) *Termination for Temporary Traffic Barrier*

The Licensee may terminate this license agreement with respect to the Temporary Traffic Barrier under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this aspect of the licence agreement;
- (b) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
- (c) at the Licensee's sole expense, removal of the Encroachment as it relates to the Temporary Traffic Barrier 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
- (d) 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) *Termination for Permanent Traffic Barrier Footings*

The Licensee may terminate this license agreement with respect to the Permanent Traffic Barrier Footings under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this aspect of the licence agreement;
- (b) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
- (c) at the Licensee's sole expense, removal of the Encroachment as it relates to the Permanent Traffic Barrier 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
- (d) 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.

(4) *Termination for Rock Bolts*

The Licensee may terminate this license agreement with respect to the Rock Bolts under the following conditions:

- (a) one year's written notification to HRM of its intention to terminate this aspect of the licence agreement;
- (b) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
- (c) the Licensee's shall be permitted to leave the Rock Bolts in place until such time as the parties may agree to remove same; and
- (d) 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.

(5) Subject to subsection 15(4), 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.

(6) The termination of this license agreement shall not be effective until the Licensee has paid all costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

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

Base Commander
CFB Halifax
PO Box 99000
Station Forces, Halifax, NS B3K 5X5

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, their heirs, executors, administrators, successors in title 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. 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:

**HER MAJESTY THE QUEEN AS
REPRESENTED BY THE MINISTER OF
NATIONAL DEFENCE**

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

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

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

