

Date: August 24, 2021

To: Chair and Members of General Committee

From: Shari Lichterman, CPA, CMA, Commissioner of
Corporate Services and Chief Financial Officer

Originator's files:
CA-ADM

Meeting date:
October 6, 2021

Subject

Delegation of Authority to issue Letter Agreements in Connection with the Repair, Replacement and Reconstruction of Noise Attenuation Barriers

Recommendation

1. That the Manager of Realty Services or any person he or she designates, be authorized to issue and receive Letter Agreements from private property owners, at nominal consideration, in connection with the repair, replacement and reconstruction of noise attenuation barriers to be carried out by the City, where such Letter Agreements have been approved by the City Solicitor, in form and content.
2. That all By-Laws be enacted.

Executive Summary

- By-Law 0148-2018 delegates authority to the Manager of Realty, the Director of Facilities and Property Management, the Commissioner of Corporate Services and the City Manager to approve and execute certain formal documents in order to effectively conduct City business, however, it does not cover situations that don't require formal agreements. Over the next few years, it is anticipated that a large number of private properties across the City will need to be accessed to carry out repair, replacement and relocation of noise attenuation barriers. In order to streamline the process to gain access onto privately-owned lands for the purposes of repair, replacement and reconstruction of noise attenuation barriers, staff with Legal Services, Realty Services and Transportation and Works have developed a Letter Agreement to invite or authorize access. This report seeks authority to enact a bylaw to delegate Council's authority to enter into Letter Agreements.

Background

Staff have been actively pursuing a cost effective, efficient, method to gain access to multiple private properties, for the purposes of undertaking repairs, replacement, and reconstruction of

noise attenuation barriers throughout the City and staff of Transportation and Works propose to undertake such activity this year, for an estimated fifty-seven (57) residences. Additional noise barrier projects are planned over the next few years, many of which will require access to residential properties and which staff are proposing to utilize the Letter Agreement.

It is further anticipated that from time to time, unexpected requirements for repairs to noise attenuation barriers will arise.

Comments

Under the existing practice, Realty Services staff create individual Consent to Enter Agreements, have them executed by the property owner, and thereafter draft a Delegated Authority report for approval of the agreement and authorization to execute via By Law 0148-2018. Given the large number of properties involved and the minor nature of the entry requirements, this current practice is considered unduly cumbersome and will likely cause unnecessary delays in undertaking these important noise attenuation barrier projects. There are no existing legal documents allowing for quick access and use of private property involving multiple properties to make repairs or construct noise attenuation barriers. The proposed solution is to delegate authority to Staff to issue and act on Letter Agreements.

The City's Legal Services Division, working with Transportation and Works Department and Realty Services has created a Letter Agreement (the "Letter Agreement") attached hereto as Appendix 1, for use only for noise attenuation barrier projects and for no other purposes. This proposal represents the most efficient, responsible and cost effective means of managing these types of approved budget projects.

Allowing the use of Letter Agreements will result in the City accepting pre-prescribed levels of obligations and responsibilities as set out in the terms and conditions listed below, as approved by the City Solicitor:

- The noise attenuation barrier project will be undertaken at the sole cost of the City
- Access granted under the Letter Agreement is at nominal consideration
- The City is the owner of the adjacent property to be occupied (typically road allowance)
- There are to be no substantive alterations to the Letter Agreement by the property owner, failing which this delegated authority shall not apply
- The agreement is for a specified temporary term
- Following construction the City is to be the owner, or accepts the obligation and responsibility for replacing/repairing and/or installing of the noise attenuation barrier
- The City needs to enter on the owner's property to effect the repair, replacement or reconstruction
- Where permission is granted by Letter Agreement the City will be responsible for:
 1. pruning/removal of trees obstructing repair or construction
 2. removal of existing fences, gates, or other improvements
 3. tying in existing lateral fences to the noise barrier

4. restoration of the land to a condition reasonably similar to what it was prior to the City entry
- The City agrees to indemnify the Owner for using the Owner's lands
 - The City will carry Commercial General Liability Insurance in an amount of not less than Five Million Dollars (\$5,000,000)
 - That it be understood that there is no additional execution on behalf of the City. On execution and return of the executed letter by the Owner, the City will be authorized to enter and will accept all obligations and liabilities associated with any works undertaken.

In order to carry out noise attenuation barrier projects involving multiple property owners in an efficient, cost effective and responsible manner, staff is recommending approval and use of a Letter Agreement. Under this proposal, the Manager of Realty Services or any person he or she designates, will be authorized to issue and receive Letter Agreements from private property owners, at nominal consideration, in connection with the repair, replacement and reconstruction of noise attenuation barriers to be carried out by the City, where such Letter Agreements have been approved by the City Solicitor, in form and content.

Financial Impact

There is no financial impact to the City associated with these recommendations.

Conclusion

Use of the Letter Agreement will avoid considerable costs in terms of money, staff time to prepare agreements, capital project delays, associated with creating individual Consent to Enter Agreements, potentially requiring multiple delegated authority reports, and other potential costs associated with additional negotiations and third party legal expenses.

Attachments

Appendix 1: Sample – Letter Agreement



Shari Lichterman, CPA, CMA, Commissioner of Corporate Services and Chief Financial Officer
Prepared by: William Moffatt, Supervisor Acquisitions, Realty Services, Facilities & Property Management