



**Town of Amherst
Regular Council Meeting
Agenda**

Date: **Monday, January 28, 2019**
Time: **7:00 pm**
Location: **Council Chambers, Town Hall**

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1. CALL TO ORDER	
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3. APPROVAL OF AGENDA/MINUTES	
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4. REQUESTS FOR DECISION	
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4.3 PAC Public Participation & Notification Policy - RHINDRESS	27 - 30
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5. INTERNAL COMMITTEE REPORTS

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6.4 Northern Region Solid Waste Committee - No Report

6.5 L. A. Animal Shelter - No Report

6.6 Senior Safety - No Report

6.7 Tourism - No Report

7. ADJOURNMENT

**TOWN OF AMHERST
Regular Council Meeting
Minutes**

Date: December 17, 2018
Time: 7:00 pm
Location: Council Chambers, Town Hall

Members Present Mayor David Kogon
Deputy Mayor Sheila Christie
Councillor Jason Blanch
Councillor Vince Byrne
Councillor Darrell Jones
Councillor Wayne MacKenzie
Councillor Terry Rhindress

Staff Present Greg Herrett, CAO
Jason MacDonald, Deputy CAO Operations
Bill Schurman, Director Recreation
Greg Jones, Fire Chief
Dwayne Pike, Acting Police Chief
Tom McCoag, Corporate Communications Officer
Andrew Fisher, Manager of Planning & Strategic Initiatives
Shelley Rector, Chief Financial Officer
Kim Jones, Municipal Clerk
Natalie LeBlanc, Deputy Clerk

1. PUBLIC HEARING - 6:30 P.M.

1.1 Land Use Bylaw Amendments - Cannabis Related Uses

Mayor Kogon opened the Public Hearing at 6:30 p.m. Mr. Fisher reviewed the proposed amendments, included as part of the agenda package.

Councillor Blanch asked that by restricting lounges to only those operated by the NSLC and not private entities; is the intention to allow the Town to revisit where lounges might be permitted should provincial legislation change? Mr. Fisher responded that yes that is the intention, and stated that it would be premature to decide where private lounges or retail sales could be located in Town because those uses are prohibited by Provincial legislation. If the legislation changes in the future the proposed amendments would give the Town the opportunity go through another amendment process to decide where these uses are appropriate.

Councillor Byrne asked if provincial legislation permits lounges to be operated by the NSLC. Mr. Fisher answered that lounges are currently prohibited outright. Councillor Byrne asked if this prohibition is specifically in provincial legislation, to which Mr. Fisher confirmed that it is.

There being nothing further from the Committee the Mayor opened the floor to the public. Three members of the public were in attendance.

Darren Akey spoke to the poor condition of soil in the Industrial Park, and wanted to advise that should it be permitted in the future plant should be planted along the marshland. He indicated he has just moved back to Amherst and has a license to grow medical marijuana, and is debating whether or not to rent a space to grow for others with a medical marijuana license that do not want to grow their own.

Wajdi Mohamad stated he is a licenced medical marijuana grower designated by the federal government. Now that the growing of four plants in a primary resident is legal; can a resident pass along their four plants to a designated grower? Mr. Fisher replied that his understanding is that under federal regulations that the 4-plant personal cultivation right cannot be designated or otherwise transferred.

2. **CALL TO ORDER**

Mayor Kogon called the meeting to order at 7:00 p.m.

3. **O'CANADA**

4. **APPROVAL OF AGENDA/MINUTES**

- 4.1 **Approval of the Agenda**
Moved By Councillor Rhindress
Seconded By Councillor Blanch
To approve the agenda as circulated.

Motion Carried

- 4.2 **Approval of Minutes**
Moved By Councillor Byrne
Seconded By Deputy Mayor Christie
To approve the minutes of the November 26, 2018 regular meeting of Council.

Motion Carried

5. **REQUESTS FOR DECISION**

- 5.1 **Capital Budget Amendment - Erncliff CNR Crossing**
Moved By Councillor MacKenzie
Seconded By Councillor Rhindress
That Council authorize approval of \$52,877 to be allocated in the current (2018/19) Capital Budget for the Town's contribution to the installation of new warning gates at the Erncliff Street railway crossing and that the Mayor and CAO be authorized to sign the attached Crossing Warning System Modification Agreement.

Motion Carried

- 5.2 **Fundy Winds Project**
Moved By Councillor Rhindress
Seconded By Councillor MacKenzie
That Council approve of the purchase of two park benches to be located in a rest area of Fundy Winds at a cost no greater than \$1200. The benches are to include a nameplate indicating the contribution is from the Town of Amherst. Further, that before any further funding is considered that staff attempts to, along with Mr. Barrow, arrange for a stakeholders meeting to discuss in more detail the project. Stakeholders to include the County of Cumberland and the Province of Nova Scotia (Communities Sport & Recreation).

Motion Carried

Moved By Councillor Blanch
That staff be directed to deliver one load of gravel to the Fundy Winds site.

There being no seconder for the motion the motion failed.

- 5.3 **Police Sustainability Report**
Moved By Councillor Byrne
Seconded By Councillor Jones
That Council accept the Amherst Police Sustainability Review report and the recommendation to move forward with option 2 which is to do an expanded internally focused review based on the revised terms of reference and not proceed with a proposal from the RCMP.

Motion Carried

6. **INFORMATION / DISCUSSION ITEMS**

6.1 Physician Recruitment Report

Mayor Kogon reviewed his report included as part of the agenda package. Information item; no direction given or action required.

7. INTERNAL COMMITTEE REPORTS

7.1 Planning Advisory Committee

Information item; no direction given or action required.

7.2 Amherst Board of Police Commissioners

Information item; no direction given or action required.

8. EXTERNAL COMMITTEE REPORTS

8.2 Cumberland YMCA

Information item; no direction given or action required.

8.4 Northern Region Solid Waste Committee

Information item; no direction given or action required.

8.6 Tourism Strategic Planning Committee

Information item; no direction given or action required.

9. ADJOURNMENT

Moved By Councillor MacKenzie

Seconded By Councillor Jones

To adjourn the meeting at 7:40 p.m.

Motion Carried

Kimberlee Jones
Municipal Clerk

David Kogon, MD
Mayor

SYNOPSIS

Land Use Bylaw Amendments - Cannabis

The purpose of these amendments to the Town's Land Use Bylaw will address the Federal Government's *Cannabis Act* that took effect October 17, 2018. The *Act* provides a legal framework for the production, distribution, sale, and possession of cannabis for medical and recreational purposes. At the same time, the Provincial Government's *Cannabis Control Act* regulates cannabis distribution and retail sales, and amends the *Smoke-Free Places Act* to control smoking cannabis in public places. Part of the role for Municipal Governments is to regulate where cannabis-related uses are appropriate.

The subject Land Use Bylaw amendment is intended to do the following:

- define licensed production facilities and allow them in industrial zones with minimum setback requirements from residential properties, parks, daycares, and religious institutions;
- Define cannabis retail sales and cannabis lounges so they are clearly prohibited uses in any zone.

The Planning Advisory Committee held an advertised public participation opportunity, and subsequently recommended that Council adopt the amendments as drafted. Council gave First Reading of the amendments at their regular meeting on November 26, 2018, and held an advertised Public Hearing at their regular meeting on December 17, 2018.

MOTION:

That Council give Second Reading to the Bylaw P-2-24 to amend the Land Use Bylaw to regulate cannabis-related uses as shown in the attachment.



AMHERST TOWN COUNCIL

RFD# 2019006

Date: January 28, 2019

TO: Mayor Kogon and Members of Amherst Town Council

SUBMITTED BY: Andrew Fisher, Manager of Planning & Strategic Initiatives

DATE: January 28, 2019

SUBJECT: **LUB amendments for cannabis-related uses**

ORIGIN: September 2018 Committee of the Whole referred this issue to the Planning Advisory Committee. The PAC recommended that Council adopt the amendments.

LEGISLATIVE AUTHORITY: Municipal Government Act, Part VIII Planning and Development.

RECOMMENDATION: That Council give Second Reading to the Bylaw P-2-24 to amend the Land Use Bylaw to regulate cannabis-related uses as shown in the attachment.

BACKGROUND: As a new land use, cannabis production facilities, retail sales and consumption venues are not addressed in the Town's planning documents. Licensed production facilities are strictly regulated by the Federal Government by requiring notice to local authorities, physical and personnel security, and good production practices. The Federal regulations do the following:

- prohibit any licensed activity in a dwelling;
- permit both indoor and outdoor cultivation, but permit only indoor storage and processing;
- require reasonable measures to prevent the escape of odours and pollen from indoor areas; and
- require physical and personnel security requirements, such as securing the perimeter to prevent unauthorized access with physical barriers and restricting who can access areas where cannabis is present.

Cannabis retail sales are only permitted through Nova Scotia Liquor Corporation outlets and online. Consumption venues and private retail sales are prohibited under the current provincial regulations. However, if provincial regulations were to change, under the current planning documents cannabis retail and consumption venues would be permitted in the Town's commercial zones. The attached amendment would do the following:

- define licensed production facilities and allow them in industrial zones with minimum setback requirements from residential properties, parks, daycares, and religious institutions;
- Define cannabis retail sales and cannabis lounges so they are clearly prohibited uses in any zone, except where operated by the NSLC.



FINANCIAL IMPLICATIONS: No direct financial implications have been identified.

COMMUNITY ENGAGEMENT: The PAC held a Public Participation Opportunity where no input from the public was received. A Public Hearing was held at the December 17, 2018 regular meeting of Council.

ENVIRONMENTAL IMPLICATIONS: The potential environmental impact relates to possible odours released from a licensed production facility. The minimum 70 metre setback to residential land and other sensitive uses is partly intended to mitigate this potential impact.

SOCIAL JUSTICE IMPLICATIONS: The proposed amendments are intended to mitigate the potential negative impacts of cannabis-related uses by establishing minimum separation distances, and limiting the risk of youth exposure. Conversely, the amendments will not place undue limitations on those wanting to consume or produce cannabis for a medical and/or recreation purpose.

ALTERNATIVES:

- 1) Do not adopt the amendment.
- 2) Adopt the amendment with changes.
- 3) Refer this matter back to the PAC for further review.

ATTACHMENTS: Proposed Land Use Bylaw Amendment.

Report prepared by Andrew Fisher
Report and Financial approved by:

Town of Amherst

By-Law P-2-24 to amend the Land Use By-Law, P-2

1. This is a by-law to amend the Land Use By-Law of the Town of Amherst with respect to the matter of regulating cannabis-related uses.
2. In the Land Use By-law *Section 1.0 Definitions*, add section 17a that provides a definition for *Cannabis Production Facility*, add section 17b that provides a definition for *Cannabis Lounge*, and add section 17c that provides a definition for *Cannabis Retail Sales*.

17(a) **Cannabis Lounge** means premises where the primary purpose of the facility is the consumption of cannabis, cannabis products or any of its derivatives such as oils or edible products. A cannabis lounge may or may not include cannabis retail sales.

17(b) **Cannabis Production Facility** means premises used or occupied by a person or organization licensed by the Government of Canada for the production of cannabis or cannabis products,

(a) including

(i) where cannabis or any of its derivatives, such as resin or oils, is grown, cultivated, harvested, manufactured, processed, packaged, or labelled, and

(ii) associated activities permitted by the federal license, such as research and development, storage, and destruction, and

(b) excluding

(i) industrial hemp, and

(ii) premises used for personal production permitted by federal legislation.

17(c) **Cannabis Retail Sales** means premises used for the retail sale of cannabis, cannabis products or any of its derivatives, such as oils or edible products, to the general public.

3. In the Land Use By-law, Section 8.0 General Provisions for Commercial Zones add section 8.1.4 as follows:

8.1.4 Cannabis-Related Uses

Notwithstanding any other provision in this Bylaw, cannabis retail sales and cannabis lounges are only permitted if such facilities are operated by the Nova Scotia Liquor Commission (NSLC).

4. In the Land Use By-law, Section 8.2.1 Highway Commercial Zone Uses Permitted, add *Cannabis Lounges and Cannabis Retail Sales subject to section 8.1.4* to the list of permitted uses after the words '*Business and Professional Offices*', and before the words '*Commercial Recreation Centres*'.
5. In the Land Use By-law, Section 8.3.1 Downtown Zone Uses Permitted, add *Cannabis Lounges and Cannabis Retail Sales subject to section 8.1.4* to the list of permitted uses after the words '*Business and Professional Offices*', and before the words '*Commercial Recreation Centres*'.

6. In the Land Use By-law, Section 9.1 *Industrial Zone Uses Permitted*, add Cannabis Production Facility to the list of permitted uses

9.1 Industrial Zone Uses Permitted

The following uses shall be permitted in the Industrial Zone:

- Any manufacturing, industrial, assembly or warehousing operation
- Any activity connected with the automotive trade, excluding salvage yards
- Boat and Marine Supplies and Sales
- Building supply and equipment depots including the bulk storage of sand or gravel
- Railway uses
- Recycling Collection and Storage Facilities, excluding salvage yards
- Retail and office uses incidental to the main industrial use

Cannabis Production Facility, subject to section 9.6

7. In the Land Use By-law, add section 9.6 regarding Cannabis Production Facilities:

9.6 Cannabis Production Facilities

Where a lot containing a cannabis production facility abuts a lot

- (i) zoned or used for residential purposes, or
- (ii) that is used for a daycare, community centre, school, religious institution, public park or playground,

such facility, including any building or outdoor area used as a cannabis production facility, shall be set back a minimum 230 feet (70 metres) from the abutting lot line.

Synopsis

150 East Victoria Street – Development Agreement Application

An application has been received by the property owner of 150 East Victoria Street for a development agreement to permit the conversion of an existing 15-unit motel with one apartment unit, to a 10-unit motel with six apartment units.

The subject property consists of two parcels, one contains a ten-unit motel, and the other contains five motel units that were converted from ten units. There is also an existing two-bedroom apartment unit on the second floor of the upper building. In total, the property is approximately 1664 m² in area, and is located in the Downtown Commercial Zone (outside the Core Area District). The property is at the edge of the downtown commercial core.

The proposal generally conforms to the relevant policies of the MPS and LUB. Staff do not anticipate significant negative impacts on the surrounding neighbourhood as result of this proposal.

The Planning Advisory Committee held an advertised Public Participation Opportunity on December 3, 2018. The Planning Advisory Committee met again on December 14, 2018 and passed a motion recommending Council enter into the Development Agreement with amendments.

Motion:

That Council approve first reading of a Development Agreement to convert the property located at 150 East Victoria Street from an existing motel to a 10-unit motel with six apartment units, and further schedule a Public Hearing in the near future.

REQUEST FOR PLANNING DECISION

RPD# 2019008

Date: January 28, 2019

SUBJECT: 150 East Victoria Development Agreement Application

RECOMMENDATION: That Council approve first reading of the development agreement regarding 150 East Victoria Street and schedule a Public Hearing in the near future.

RECOMMENDATION: Report/Document: Draft Agreement, Staff report to PAC

KEY ISSUE(S) CONCEPTS DEFINED: The property owner requests a development agreement to change the use of 5 motel units to 5 dwelling units. The remaining 10 motel units and 2-bdrm owner apartment would remain unchanged.

Within the Downtown Zone, MPS Policy CP-15 regulates the conversion of ground floor commercial space to residential uses. The proposal generally conforms to this policy and all other relevant policies of the MPS.

Outdoor balconies are provided and high quality parks are nearby for the use of the residents. The buildings are obviously in existence in their current location, and due to the proximity to property lines landscaped buffers cannot be provided, nor are they required by the current policies of the MPS or regulations of the LUB.

The existing use of the building as a motel with both short and long term rentals can continue indefinitely without the benefit of a development agreement. It can be argued that reducing the number of units from 21 to 11 will reduce traffic on the property. Furthermore, the renovations, including doubling the size of the units and the addition of kitchens, may result in a safer situation than the potential alternative of people trying to cook with inadequate resources.

PUBLIC PARTICIPATION OPPORTUNITY SUMMARY: An advertised Public Participation Opportunity was held on December 3, 2018 and attended by two residents and the proponents. The major issues raised were related to the lack of landscaped open space, building code compliance and current esthetics of the property.

The Planning Advisory Committee met again on December 14 and passed a motion recommending that Council enter into the proposed Development Agreement for 150 East Victoria Street but amended to include maintenance to all cladding, create a green space between the lower building and Herbert Street where possible, create a minimum of 600 square feet of amenity space, that any vents on north side of the lower building meet the national building code, and that there is repair of pavement within 12 months of an occupancy permit. These amendments are incorporated into the attached development agreement and shown in red text.

RELEVANT MUNICIPAL PLANNING STRATEGY POLICY:

CP-15 – Ground Floor Residential Uses in the Downtown by DA (Summarized in the original PAC Report)

SP-1 It shall be the intention of Council to encourage high density residential development in the Downtown Zone

RP-11 It shall be the intention of Council to encourage and promote the provision of affordable housing units within all residential areas of the Town by:

(a) encouraging a mix of housing types and densities;

RP-8 It shall be the intention of Council to encourage a mix of housing densities in all residential areas of town to encourage a mix of housing types and income groups in all residential areas.

RESPONSE OPTIONS:

1. Approve First Reading of the Development Agreement;
2. Refer the issue back to Planning Advisory Committee for further consideration and options.
3. Refuse to enter into the agreement.

IMPLICATIONS OF PAC RECOMMENDATION:

GENERAL:

The proposed Development Agreement is in general conformance with the Town's policies and regulations.

COMMUNICATION:

Subject to Council passing First Reading of this agreement, an advertised public hearing will be held.

OTHER COMMENTS:

Submitted by: Andrew Fisher, Manager of Planning and Strategic Initiatives

Approved by: Gregory D. Herrett, CA, Chief Administrative Officer

Case No. DA-2018-01

This Agreement made this _____ Day of _____ 2019.

Between:

Jack Van Der Donk (Owner of property located at 150 East Victoria Street [PIDs 25343187 & 25005224], hereinafter called the "Owner")

of the one part

- and-

The Town of Amherst (a body corporate hereinafter called the "Town")_

of the other part.

WHEREAS the Owner wishes to obtain permission pursuant to Policy CP-15 of the Municipal Planning Strategy of the Town of Amherst, to convert a 15-unit motel into a 10-unit motel with 6 dwelling units on properties located at 150 East Victoria Street (PIDs 25343187 & 25005224.

AND WHEREAS a condition of the granting of approval of Council is that the Owner enter into an agreement with the Town;

AND WHEREAS the Council of the Town, at its meeting on the ____ Day of _____ 2019, approved the said development agreement subject to the registered owner of the land described herein entering into this agreement;

AND WHEREAS the following Schedules shall be attached to and form part of this Agreement:

- (a) Schedule 'A' - Terms and Conditions
- (b) Schudule 'B' – Site Map
- (c) Schedule 'C' - Building Floor Plans

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the Town of the development agreement requested by the Owner, the Owner agrees as follows:

- 1) That the Owner is the registered owner of the aforesaid lands in the Town of Amherst, hereinafter called the Lands. The aforesaid Lands are the only lands in the Town of Amherst to which this agreement applies, and the Lands are illustrated in the plan shown on Schedule B attached hereto and forming part of this agreement.
- 2) That the owner may convert the existing 15-unit motel to a 10-unit motel and a 6-unit apartment complex, subject to the following Schedules A and B, attached.

- 3) Nothing in this Agreement shall exempt or be taken to exempt the Owner or any other person from complying with the requirements of any Bylaw of the Town applicable to the Property (other than the Land Use Bylaw to the extent varied by this Agreement) or any Provincial or Federal statute, act, or regulation.
- 4) Any failure of the Town to insist upon strict enforcement of any requirements or conditions contained in this agreement shall not be deemed a waiver of any rights or remedies that the Town may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.
- 5) Should the Owner fail to act in accordance with any aspect of this agreement, the Town shall retain the right to discharge the agreement upon 30 days notification and / or enter the property and conduct the required work. The cost of the said work will become a lien on the property tax bill.
- 6) The Town shall issue the necessary Development Permit for the development upon expiration of the appeal period specified for Development Agreements under Section 249 of the Municipal Government Act, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken.
- 7) The Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Town in accordance with Section 229 of the Municipal Government Act.

SIGNED, SEALED AND DELIVERED

in the presence of

FOR THE TOWN OF AMHERST

David Kogon
Mayor

Gregory D. Herrett, CA
Chief Administrative Officer

FOR THE OWNER
Jack Van Der Donk

Schedule A

150 East Victoria Street - Development Agreement

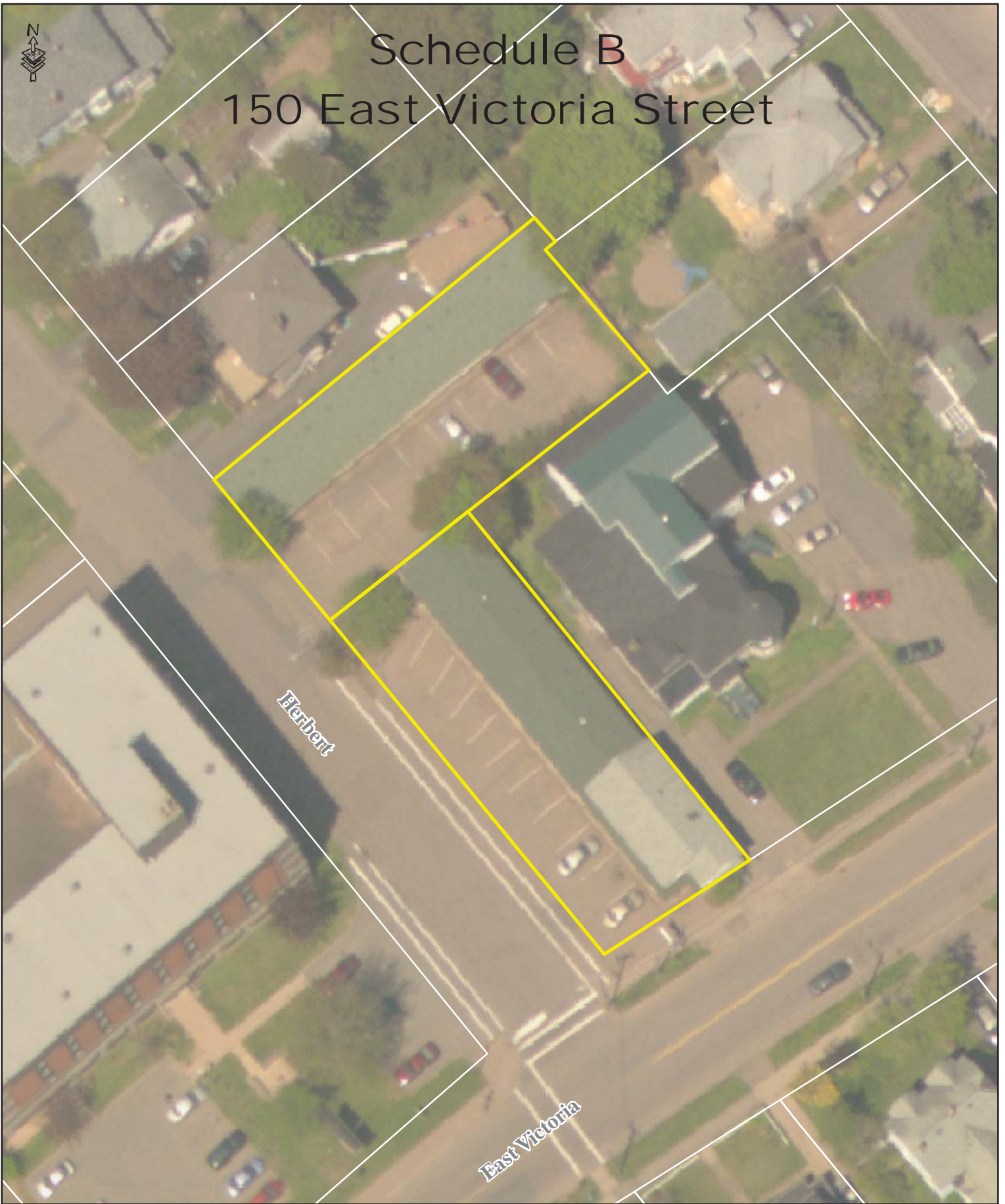
Terms and Conditions:

1. The use of the property shall be limited to a 10-unit motel and a 6-unit apartment dwelling in a 2-building complex.
2. The bulk and height of the buildings shall not be altered, and the character of the apartment buildings shall remain largely the same.
3. Solid waste management shall be in conformance with the Town of Amherst Solid Waste Bylaw.
4. A minimum of one (1) parking space per dwelling unit and motel unit shall be maintained on the site.
5. All driveway and parking areas shall be maintained with asphalt and kept clear of snow, and shall otherwise be unobstructed at all times so as to be passable by emergency vehicles.
6. All asphalt surfaces shall be repaired within twelve (12) months of issuance of an Occupancy Permit.
7. All areas not used for buildings, parking or driveways shall be landscaped with grass or other manicured vegetation. Existing overgrown vegetation on the property shall be removed to the satisfaction of the Development Officer.
8. The green space between the lower building and the asphalt shall contain maintained grass or other manicured vegetation, to the satisfaction of the Development Officer.
7. No outdoor storage shall be permitted on the property.
8. Exterior lighting shall be carefully designed to not shine directly onto adjacent properties.
9. The exterior rear wall of the lower building, including the foundation, shall be scraped and painted prior to August 1, 2018, and all other exterior cladding shall be maintained.
10. The subject properties, including buildings, shall be kept in good repair, and be continuously maintained to be aesthetically pleasing.
11. The existing office space at the front of the building may be used for the administrative purposes of the apartment complex as well as laundry facilities for residents of the complex.
12. A minimum of 2 benches and/or 2 patio and chair sets shall be provided out of doors for the residents of the property.

13. A minimum of 600 square feet of designated amenity space shall be created within the existing parking lot area that will be demarcated by fencing and / or vegetation, to the satisfaction of the Development Officer.
13. Upon entering into this agreement, the Owner shall submit an application for a Building Permit along with documentation that shows any necessary alterations to the building to meet current National Building Code requirements. In particular, any vents on the north side of the building shall also meet current National Building Code requirements.
14. Variations from the requirements of the development agreement in relation to the built structures are permitted in order to meet the Nation Building Code and nova Scotia Building Code requirements. Specifically, should non-combustible material be required along the outside walls this material will be permitted, with the design subject to the satisfaction of the Development Officer.



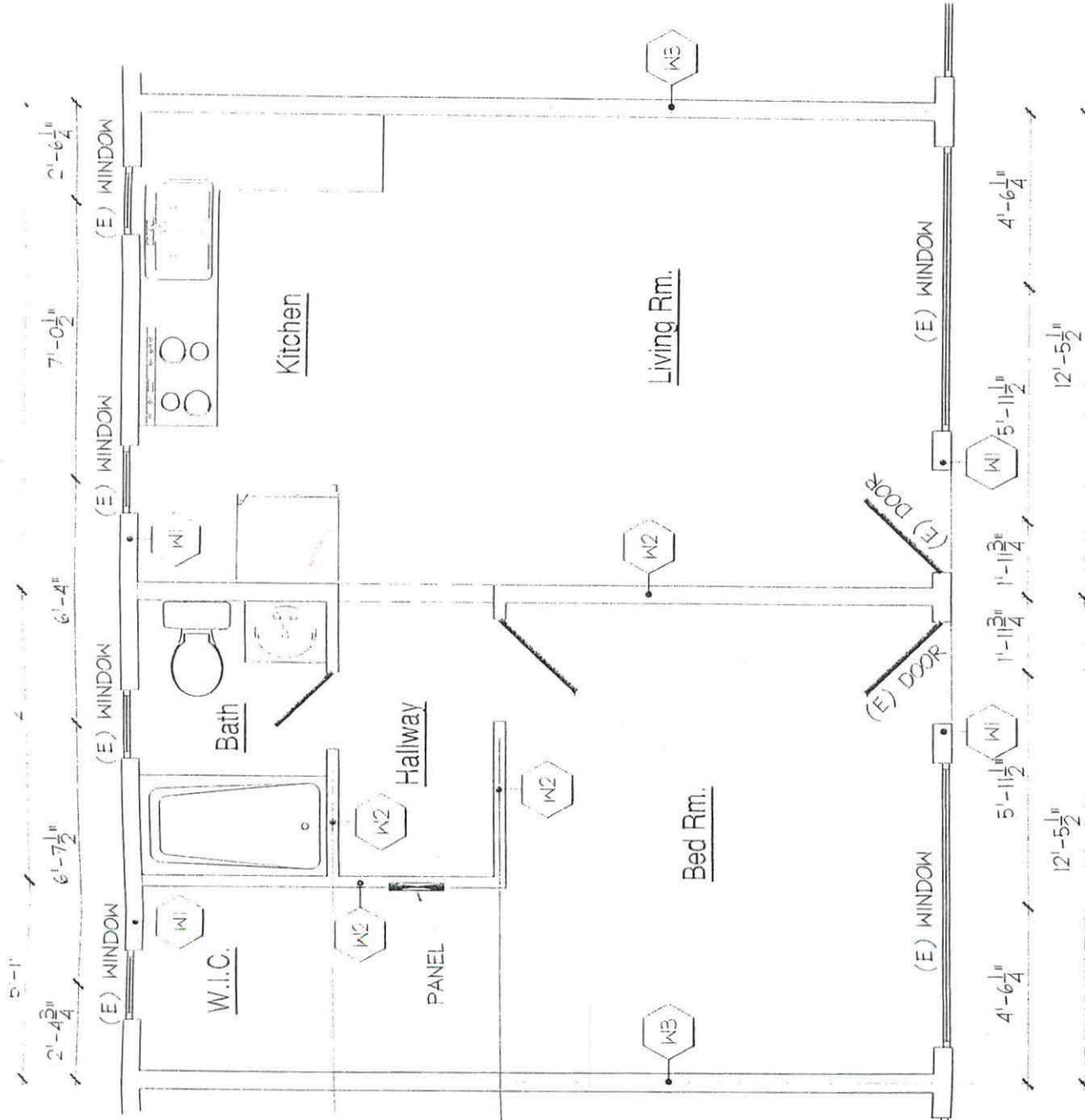
Schedule B 150 East Victoria Street



Schedule "C"

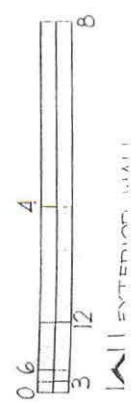
NOTE:

INSTALL 5/8" TYPE X DRYWALL ON CEILING, OR A FIRE RATED PARTITION IS TO BE CONSTRUCTED FROM TOP OF EXISTING WALL TO UNDERSIDE OF ROOF DECKING. OWNERS CHOICE.



MAIN FLOOR PLAN

477 SQ. FT.



- W2 INTERIOR WALL
- EXISTING DRYWALL
- EXISTING STUDS
- EXISTING DRYWALL

W3 RENOVATED DEMISING WALL
 ESTIMATED STC=51 F.R. = 1 HR.

To: Planning Advisory Committee
From: Andrew Fisher, Manager of Planning & Strategic Initiatives
Date: November 5, 2018
Subject: **150 East Victoria Street – Proposed Development Agreement to convert an existing motel into an apartment complex.**

PROPOSAL:

An application by the property owner of 150 East Victoria Street (PIDs# 25343187 & 25005224) for a development agreement to permit the conversion of an existing motel to a 10-unit motel with six apartment units.

BACKGROUND:

Site Details: The subjection property consists of two parcels, one contains a ten-unit motel, and the other contains five motel units that were converted from ten units. There is also an existing two-bedroom apartment unit on the second floor of the upper building. In total, the property is approximately 1664 m² in area, and is located in the Downtown Commercial Zone (outside the Core Area District). The property is at the edge of the downtown commercial core. To the west, across Herbert Street is a large senior's facility to the east, on East Victoria is a large converted apartment building, and to the north is a 2-unit detached dwelling. The remainder of Herbert Street consists of low density detached homes. The property is almost entirely covered by buildings with the remaining area covered in asphalt for 21 parking spaces.

Proposal Details: As previously mentioned, the lower building was converted from 10-unit motel rooms to five-units in 2017. While this conversion is permitted in the Land Use Bylaw (LUB), the creation of ground floor dwelling units is not permitted. Staff determined that the units change from a motel to a dwelling unit with the installation stoves. The installation of a stove in the five units is the essence of this development agreement application.

2017 Application: In January and February 2017 the PAC and Council considered an application for a development agreement to convert all existing 20 motel units into 10-dwelling units (plus the existing second floor dwelling unit). At that time, the PAC initially deferred a decision and asked staff to negotiate with the applicant to address the lack of greenspace and the concerns raised by an adjacent land owner. A motion to recommend that Council enter into the agreement was defeated. Subsequently, Council rejected the application on March 27, 2017.

The current application differs only in that the proposal involves conversion of five motel units to dwellings in the lower building, while leaving the upper building as-is. Otherwise, the circumstances of the application remain substantially unchanged. As such, please see the attached February 1, 2017 staff report that outlines the issues that were of concern in 2017. The discussion points and proposed solutions provided in the draft development agreement also remain the same.

RELEVANT POLICY AND DISCUSSION:

Municipal Planning Strategy policy CP-15 allows for the conversion of commercial uses to residential uses by development agreement:

CP-15 *It shall be the intention of Council to consider applications for ground floor residential uses in the Downtown Zone by Development Agreement excluding that portion of a building that abuts Church, Victoria and Havelock Streets. Outside said streets, applications for new*

residential buildings or ground floor conversion of existing commercial and institutional buildings will not be considered for residential uses unless it can be shown that such a conversion will not detract from the commercial character of the surrounding streetscape.

In negotiating such a development agreement, Council shall take into account:

- (a) the location, height, bulk of the building;*
- (b) the architecture of the building;*
- (c) signage;*
- (d) parking facilities;*
- (e) landscaping;*
- (f) pedestrian access;*
- (g) the unique characteristics of the property and its relationship to the surrounding streetscape;*
- (h) that the ground floor frontage of any building fronting on Church, Havelock or Victoria Streets shall be used for commercial purposes.*

(a) the location, height, bulk of the building;

As previously mentioned the exterior dimensions of the building are not being altered. That being said, the current structures on the lots satisfy all Land Use Bylaw requirements in regards to minimum standards for setbacks. The minimum front, side and rear yards in the Downtown Commercial zone is 0 meters.

(b) the architecture of the building;

Again, the exterior dimensions of the building are not being altered; therefore significant changes to the architecture of the buildings are not easily achieved. New windows and doors have been installed on all of the units. The majority of the building is one story and for the most part, the lower half is constructed of brick while the upper half is made up almost entirely of windows and doors.

(c) signage;

There is no proposed change to the existing signage.

(d) parking facilities;

Significant changes to the parking facilities on the property are not easily achieved. The property was designed as a drive up motel and parking is proposed to remain in front of each unit. The asphalt on the property is in fairly good condition.

(e) landscaping

The Development Agreement stipulates under Schedule 'A' that all areas not used for buildings and parking be landscaped. As well over grown vegetation will be required to be removed.

(f) pedestrian Access

Pedestrian access is achievable from Herbert Street as well as east Victoria Street.

(g) the unique characteristics of the property and its relationship to the surrounding streetscape;

The characteristics of the property and their relation to the surrounding streetscape will not be altered. The exterior of the building will remain largely the same as it is now.

(h) that the ground floor frontage of any building fronting on Church, Havelock or Victoria Streets shall be used for commercial purposes.

There is no direct access to the building off of Victoria Street. The current use of the Victoria Street end of the building is the motel office. The purpose of this clause is to require the continuation of an 'active storefront' along the main streets downtown. As this use never included an actual 'active storefront', is outside the Core Area District and is adjacent to the residential uses on Victoria Street, requiring this end of the building to be converted to a commercial operation is not the intent of the planning policy.

More generally, the proposal supports the following MPS Policies:

SP-1 It shall be the intention of Council to encourage high density residential development in the Downtown Zone

RP-11 It shall be the intention of Council to encourage and promote the provision of affordable housing units within all residential areas of the Town by:

- (a) encouraging a mix of housing types and densities;

RP-8 It shall be the intention of Council to encourage a mix of housing densities in all residential areas of town to encourage a mix of housing types and income groups in all residential areas.

Finally, the proposal satisfies all relevant aspects of MPS Policy A-5:

A-5 It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.
- (b) That the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Town to absorb any costs relating to the development;
 - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;
 - (iii) the adequacy of road networks, in, adjacent to, or leading to the development;
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) parking, traffic generation, access to and egress from the site;
 - (iv) any other matter of planning concern outlined in this strategy.

While not a matter to be considered in the land use planning process, the proposed renovations will have to satisfy all relevant provision of the National Building Code and Nova Scotia Building Code Regulations.

CONCLUSIONS:

The proposal generally conforms to the relevant policies of the MPS and LUB. Staff do not anticipate significant negative impacts on the surrounding neighbourhood.

OPTIONS:

Option One: Recommend that Council enter into the proposed Development Agreement for 150 East Victoria Street as drafted by Staff, subject to any revisions that may arise during the public participation process.

Option Two: Recommend to Council not to enter into the Development Agreement for 150 East Victoria Street, citing specific policies with which the proposal does not conform.

Option Three: Defer the application and instruct Staff to provide more information or negotiate changes to the agreement.

STAFF RECOMMENDATION: Option One.





SYNOPSIS

Public Participation and Notification Policy

We have been making some changes to our processes to improve our communications and transparency to citizens. To that end we have begun to “live stream” our Committee of the Whole, Council and Committee meetings on the internet. As well, the day following the meeting, the video is available to view in the archives.

So, further to improving transparency, we want to ensure that when public participation is a component of a planning decision, that decision makers have some time for consideration before voting on the matter.

The proposed amendment to this Policy will allow a Public Participation Opportunity (PPO) to be held in advance of the Planning Advisory Committee regular meeting. Staff would prepare a report on the PPO and distribute to members who were not in attendance. This will allow time between the public participation and voting on the matter for consideration. It will also will eliminate the need for multiple committee meetings each month that require quorum.

MOTION:

That Council approve the following amendments to the Public Participation and Notification Policy, namely to remove the requirement to conduct public participation sessions at a Planning Advisory Committee meeting, and permit them to be scheduled independently.

TO: Mayor Kogon and Members of Council

SUBMITTED BY: Kimberlee Jones, Municipal Clerk

DATE: January 28, 2019

SUBJECT: Amendment to the Public Participation and Notification Policy

ORIGIN: Staff initiated review of internal processes.

LEGISLATIVE AUTHORITY: MGA 204 (3) The content of a public participation program is at the discretion of the council, but it shall identify opportunities and establish ways and means of seeking the opinions of the public concerning the proposed planning documents.

RECOMMENDATION: That Council approve the following amendments to the Public Participation and Notification Policy, namely to remove the requirement to conduct public participation sessions at a Planning Advisory Committee meeting, and permit them to be scheduled independently.

BACKGROUND: We have been making some changes to our processes to improve our communications and transparency to citizens. To that end we have begun to “live stream” our Committee of the Whole, Council and Committee meetings on the internet. As well, the day following the meeting, the video is available to view in the archives.

So, further to the improved transparency issue – we want to ensure that when public participation is a component of a planning decision, that decision makers have some time for consideration before voting on the matter.

DISCUSSION: It is not a requirement in the Municipal Government Act to hold Public Participation Opportunities (PPO) at a formal meeting of the Planning Advisory Committee. The MGA 204(3) states “*The content of a public participation program is at the discretion of the council, but it shall identify opportunities and establish ways and means of seeking the opinions of the public concerning the proposed planning documents.*”

The proposed amendment to the policy will allow a PPO to be held in advance of the Planning Advisory Committee regular meeting. Staff would prepare a report on the PPO and distribute to members who were not in attendance. This will allow some time between the public participation and voting on the matter for consideration. And will eliminate the need for multiple committee meetings each month that require quorum.

A housekeeping change is also suggested by removing the words: “*The Deputy CAO, or designate is responsible for the administration of this policy*” from the policy”



FINANCIAL IMPLICATIONS: There are no financial implications.

COMMUNITY ENGAGEMENT: None anticipated

ENVIRONMENTAL IMPLICATIONS: None anticipated

SOCIAL JUSTICE IMPLICATIONS: Potentially allow more flexibility to conduct PPO's and have video available online.

ALTERNATIVES:

- 1) Do not amend the policy
- 2) Direct staff to provide additional information to Council

ATTACHMENTS: Public Participation and Notification Policy

Report prepared by: Kimberlee Jones, Municipal Clerk

Report and Financial approved by:

DEPARTMENT: PLANNING AND DEVELOPMENT

TITLE: **POLICY FOR PUBLIC PARTICIPATION and NOTIFICATION**

Minutes reference date: May 25, 2015

PURPOSE:

To establish a policy for public participation, and notification for the adoption of the Municipal Planning Strategy (MPS), Subdivision By-law, Land Use By-law (LUB), Development Agreements, Variances, Site Plans, and amendments thereto.

AUTHORITY:

This policy carries out MGA section 204 that requires Council to adopt a public participation policy concerning the preparation and administration of planning documents. This policy also provides for public notification where required under MGA sections: 205 (Requirements for adoption of planning documents), 206 (Public hearings), 210 (LUB amendments), 221 (Notifications and costs), 230 (Adoption or amendment of development agreement), 232 (Site-plan approval), 236 (Variance procedures), and 237 (Variance appeals and costs).

The Deputy CAO, or designate, is responsible for administration of this policy.

POLICY:

Public Participation Session

1. A public participation session will take place ~~at a meeting of the Planning Advisory Committee~~, prior to making a recommendation to Council. Notification of the session shall adhere to the Procedure for Public Participation and Notification.
3. A summary of the public participation session will be provided to **all members of the Planning Advisory Committee and** Council prior to First Reading.

Public Hearing

1. A public hearing will generally take place prior to a meeting of Council, and prior to giving second reading of the planning document, Development Agreement, or amendment thereto.
2. Advertisement and notification of the public hearing shall adhere to the Municipal Government Act, and the Procedure for Public Participation and Notification.

Documentation and Coordination

Documentation and coordination shall adhere to the Procedure for Public Participation and Notification.

SYNOPSIS

Territorial Acknowledgement

In acknowledging treaty and traditional territory, municipalities are responding to TRC recommendation ' 45iii: *Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect and shared responsibility for maintaining those relationships into the future*'. This is an important protocol that we see being adopted and practiced by many municipalities across the country.

It is therefore being proposed that we add the following statement to our Council meeting agenda, and it would be read aloud by the Chair immediately following the Call to Order:

The Statement will read:

"We [I] would like to begin by acknowledging that the land on which we gather is the traditional unceded territory of the Mi'kmaw Peoples.

MOTION:

That Council approve an amendment to the Proceedings of Council Policy to add the following statement to our Council meeting agenda, which would be read aloud by the Chair immediately following the Call to Order:

"We[I] would like to begin by acknowledging that the land on which we gather is the traditional unceded territory of the Mi'kmaw Peoples."

TO: Mayor Kogon and Members of Council

SUBMITTED BY: Kimberlee Jones, Municipal Clerk

DATE: January 28, 2019

SUBJECT: Territorial Acknowledgement / Amend Proceedings of Council Policy

ORIGIN: Staff direction from the April 2018 Council meeting.

LEGISLATIVE AUTHORITY: Policy #10350-24 Proceedings of Council.

RECOMMENDATION: That Council approve an amendment to the Proceedings of Council Policy to add the following statement to our Council meeting agenda, which would be read aloud by the Chair immediately following the Call to Order:

“We[I] would like to begin by acknowledging that the land on which we gather is the traditional unceded territory of the Mi’kmaw Peoples.”

BACKGROUND: This is an important protocol that we see being adopted and practiced by many municipalities across the country. In acknowledging treaty and traditional territory, municipalities are responding to TRC recommendation ‘ 45iii: *Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect and shared responsibility for maintaining those relationships into the future*’

DISCUSSION: I would propose that we add the following statement to our Council meeting agenda, and it would be read aloud by the Chair immediately following the Call to Order.

The Statement will read:

“We [I] would like to begin by acknowledging that the land on which we gather is the traditional unceded territory of the Mi’kmaw Peoples.

FINANCIAL IMPLICATIONS: There are no financial implications.

COMMUNITY ENGAGEMENT: There has been no community engagement.

ENVIRONMENTAL IMPLICATIONS: There are no environmental implications.



SOCIAL JUSTICE IMPLICATIONS: Supports inclusion and recognition of our history and heritage and the indigenous peoples from our area.

ALTERNATIVES:

- 1- Approve the policy with the territorial acknowledgement as presented
- 2- Approve the policy amendment with alternative language
- 3- Do not amend the policy

ATTACHMENTS: Proceedings of Council Policy

Report prepared by: Kimberlee Jones
Report and Financial approved by:

DEPARTMENT: Council

TITLE: Proceedings of Council

Minutes reference date: 23 February 2015 22 June 2015

General

1. The procedural requirements in this Policy are intended to complement and supplement, and not to replace, the requirements contained in applicable municipal legislation. Authority to enact this policy is under Section 23(1)(a) and (b) of the *Municipal Government Act*. The rules of order set out in this policy shall apply to all Town committees and commissions.

Definitions

2. In this Policy, unless the context otherwise requires,
 - (a) “business day(s)” means a day when the Town of Amherst office is open for business;
 - (b) “Chair” means the presiding officer;
 - (c) “committee” means any standing or adhoc committee or commission, the members of which are appointed by Council;
 - (c) “Council” means the Council of the Town of Amherst;
 - (d) “Council Member(s)” include(s) the Mayor unless the context indicates otherwise;
 - (e) “majority” means more than one half of those present, unless the context indicates otherwise.

Time, Place, Date and Notice of Meetings of Council and Committee of the Whole

3. Unless otherwise specified pursuant to section 5, regular meetings of Council shall be held:
 - (a) In Council Chambers, Dominion Public Building, 98 Victoria Street, Amherst;
 - (b) On the fourth Monday of every month except that there shall be no regular meeting during the months of July and August;
 - (c) Commencing at 7:00 PM and concluding not later than 9:00 PM; when public hearings are scheduled, the hearing will commence at 6:30 PM and the Council meeting will commence at 7:00 PM.
4. Unless otherwise specified to section 5, regular meetings of Committee of the Whole shall be held:
 - (a) In Council Chambers, Dominion Public Building, 98 Victoria Street, Amherst;

- (b) On the third Monday of every month except that there shall be no regular meeting during the months of July and August;
 - (c) Commencing at 4:00 PM and concluding not later than 6:00 PM.
 - i. Should there remain unfinished business on the agenda at 6:00 PM, the meeting shall be adjourned until 4:00 PM on the fourth Monday when the balance of the business on the agenda shall be addressed.
5. Regular meetings of Council or Committee of the Whole may be rescheduled, relocated or cancelled:
- (a) By resolution of Council at a previous meeting three or more days in advance of the additional or special meeting;
 - (b) By resolution of Committee of the Whole at a meeting three or more days in advance of the additional or special meeting; or
 - (c) By the Chief Administrative Officer on behalf of the Mayor, owing to unforeseen circumstances, provided the Mayor believes that the majority of Council Members would support such a step.
6. Additional or special meetings of Council or Committee of the Whole may be convened
- (a) By resolution of Council at a previous meeting three or more days in advance of the additional meeting;
 - (b) By resolution of Committee of the Whole at a meeting three or more days in advance of the additional or special meeting; or
 - (c) By the Chief Administrative Officer on behalf of the Mayor, owing to unforeseen circumstances provided the Mayor believes that the majority of Council Members would support such a step.
 - (d) Business conducted at a special meeting must conform to what is specified in the call of the meeting.
7. Specific notice to Council Members and to the public need not be provided of
- (a) Meetings held pursuant to section 3 or 4; or
 - (b) Meetings held pursuant to subsection (a) and (b) of section 5 or 6;

but, subject to any statutory relaxation of notice requirements, three days' notice shall be specifically provided for other meetings to Council Members in the manner described in section 9 and to the public in the manner described in section 10.

8. Within 30 days following the first meeting of Council after a municipal election or by-election:
 - (a) The CAO shall provide a cellular phone to each Council Member which the Council Member will check at least once per day; and
 - (b) The CAO shall provide an electronic email address to each Council Member, and the Council Member will check at least once per day;
9. Subject to section 7, notice of meetings shall be provided by electronic mail to each Council member through the Town electronic mail address as provided in section 8.
10. Subject to section 7, notice of meetings shall be provided to the public by posting in the lobby of the Dominion Public Building and in a prominent place on the Town's website, a "Notice of Council Meeting" containing the time, date and place of the meeting.

Conduct of Meetings

11. It shall be the duty of the Chair to:
 - (a) Open the meeting of Council by taking the chair and calling the Council Members to order;
 - (b) Receive and submit to Council motions properly presented by a Council Member;
 - (c) Put to a vote a question which is regularly moved and seconded or necessarily arising in the course of the proceedings and to announce the result of the vote.
 - (d) Decline to put to a vote, a motion which infringes upon the rules of procedure;
 - (e) Restrain the Council Members, when engaged in debate, within the rules of conduct of debate;
 - (f) Enforce on all occasions, the observance of order and decorum;
 - (g) Call by name any Council Member persisting in a breach of the rules of order of Council thereby ordering him or her to vacate the Council Chambers;
 - (h) Inform the Council when necessary, or when referred to, on a point of order;
 - (i) Permit the Chief Administrative Officer to speak on any point upon request;
 - (j) Permit proper questions to be asked through the Chair or any official or employee of the Town of Amherst, to provide information to assist any debate;
 - (k) Declare a meeting dissolved if no quorum has been achieved within 15 minutes of the scheduled meeting time. And
 - (l) Adjourn the meeting when the business is concluded or, when an adjournment time has been set and approved by majority vote or when the adjournment time has been reached, except when it is extended by unanimous consent.

Council Agenda

12. All items appearing on the Council agenda will only consist of items that have been:
 - (a) Recommended or referred to Council by motion through either Committee of the Whole or a committee of Council;
 - (b) Placed on the agenda by Council through a motion or notice of motion at a previous meeting;
 - (c) Submitted by a member of Council prior to the issuing of the final agenda;
 - (d) Approved as an addition to the agenda of a regular meeting at the time the agenda is approved at the meeting.
13. Except for matters arising from correspondence, committee or other reports, agenda items, or notices of motion or other material circulated to Council Members on or before the business day before the meeting, and except for matters arising from an *in camera* meeting, no motion committing the Town of Amherst to the expenditure of funds shall be accepted by the Chair for the consideration of Council except with the unanimous consent of Council Members present.
14. Preliminary Council agendas will be issued by 4:30 PM on the Friday preceding the regularly scheduled meeting.
15. Final Council agendas will be issued by noon on the day of the meeting.
16. Items included on the Council agenda will include a copy of the motion to be made when the item arises on the agenda.
17. Copies of the agenda and supporting documentation will be made available to the public in electronic format by 9:00 AM the day of the meeting except for the supporting documents related to matters to be dealt with *in camera*.
18. At Council meetings, unless a majority consents to a different order for the meeting, Council shall conduct business in the following order:
 - (a) Call to Order
 - (b) Territorial Acknowledgement
 - (c) National anthem
 - (d) Presentations
 - (e) Approval of agenda, including additions or deletions
 - (f) Approval of minutes from the previous meeting
 - (g) Follow up action list
 - (h) Requests for Decision

- (i) Information / Discussion Items
 - (j) Additions
 - (k) Internal Committee Reports
 - (l) External Committee Reports
 - (m) Adjournment
19. Councillors who have been appointed to outside Boards and Agencies shall provide a written report to the Council to be included in the agenda package. Recognizing that such reports provide Council with the ability to make informed decisions, reports may contain such elements as:
- (a) The date the meeting was held;
 - (b) A review of the key issues or discussion points covered that have an impact on the Town;
 - (c) Information and decisions that may impact a current Council position, or future Council course of action;
 - (d) A summary of the organization's key operations and events.

Committee of the Whole Agenda

20. The Committee of the Whole will meet for the purpose of discussion and possible referral to Council and no formal decisions will be made by Committee of the Whole, except to the extent that Committee of the Whole is specifically designated bylaw, policy or delegated by a resolution of Council as having the authority to make a decision.
21. Items appearing on the Committee of the Whole agenda will only consist of items as follows:
- (a) Placed on the agenda by Council or Committee of the Whole through a motion or notice of motion from a previous meeting;
 - (b) Submitted by a member of Council prior to the issuing of the final agenda;
 - (c) Staff reports;
 - (d) Items from the administration requiring a decision or direction;
 - (e) Items approved as an addition to the agenda at the time the agenda is approved at the meeting.
22. Preliminary Committee of the Whole agendas will be issued by 4:30 pm on the Friday preceding the regularly scheduled meeting.
23. Final Committee of the Whole agendas will be issued by noon on the day of the meeting.

24. Items included on the Committee of the Whole agenda will include a copy of the motion to be made when the item arises on the agenda.
25. Copies of the Committee of the Whole agenda and supporting documentation will be made available to the public in electronic format by 9:00 AM the day of the meeting, except for the supporting documents related to matters to be dealt with in camera.
26. At Committee of the Whole meetings, unless a majority consents to a different order for the meeting, Council shall conduct business in the following order:
 - (a) Call to Order
 - (b) Approval of Agenda
 - (c) Approval of Minutes
 - (d) Presentations
 - (e) Council Direction Requests
 - (f) Information / Discussion Items
 - (g) Monthly Departmental Reports
 - (h) Adjournment

Minutes

27. At regular meetings of Council, except when Council resolves to defer approval of minutes for a maximum of one additional meeting, the minutes of the last preceding regular meeting and subsequent special meetings shall be reviewed and after all necessary corrections and amendments have been made and the minutes approved, the approved minutes shall be entered in the minute book of the proceedings of Council and such entry shall conclusively constitute the minutes of Council.
28. The minutes shall be kept by the Clerk who may, in his or her discretion, appoint recording secretaries as appropriate
29. The Minutes shall:
 - (a) Record the time when any Council Member joins or leaves a meeting which is in progress;
 - (b) Contain all resolutions, decisions by consensus and motions, with the name of the movers and seconders, and shall record the outcome of each vote;
 - (c) Mention reports, petitions and other papers submitted to Council only by their respective titles, or a brief description of their contents.

Motions, Voting and Speaking

30. The Chair shall start every question properly presented to Council and before putting it to a vote, shall ask, "Is Council ready for the question" and if no Council Member offers to speak, the Chair shall put the question, after which no Council Member shall be permitted to speak upon it.
31. The usual form of voting shall be by the Chair calling for "yeas" and "nays", but any Council Member, before or after a voice vote can call for, and obtain through the Chair, a show of hands and any two Council Members can call for, and obtain through the Chair, a recorded vote with each Council Member's vote entered into the minutes.
32. A motion must be seconded and then repeated by the Chair or read aloud by the Chief Administrative Officer before it is debated. The Chair may direct that the motion be put in writing.
33. After reading of a motion by the Chair or Chief Administrative Officer, it shall be open for discussion.
34. A motion may at any time before the Council has voted on it be withdrawn by the mover with the consent of the seconder.
35. The Chair must vote and shall be deemed to have voted in the affirmative on any resolution unless the Chair indicates clearly it is voting in the negative.
36. When any question is before the Council, the only motions in order shall be:
 - (a) A motion in amendment of the original motion;
 - (b) A motion to refer the question, including the motion and amendment if one is moved, to any committee;
 - (c) A motion to defer the consideration of the question either indefinitely or to a specified time;
 - (d) A motion to close the debate at a specified time;
 - (e) A motion that the question be put to a vote;
 - (f) A motion to adjourn.
37. When any one of the motions mentioned in the next preceding section has been made as an amendment to the original motion, no other motion may be made as an amendment except to the original motion or to the amendment, except the following:
 - (a) To refer to a committee;
 - (b) To defer the consideration of the question;
 - (c) To close the debate at a specified time;
 - (d) That the question be put to a vote;
 - (e) To adjourn

Any of which may be moved either to the original motion or to the amendment of the original motion.

38. A motion:

- (a) That the debate be closed at a specified time; or
- (b) That the question be put to a vote,

Shall be put to a vote without further amendment or debate, but a motion that the question be put to a vote shall not itself be put to a vote until every Council Member who has not spoken on the question and claims a right to speak has been heard.

39. A motion that the question be put to a vote shall preclude all amendments to the main question until the motion is decided, and shall be put to a vote, without debate, in the following words: "That this question be put to a vote". If this motion is resolved in the affirmative, the original question shall be put to a vote immediately, without any amendment or debate, but if such motion is resolved in the negative, then the Council shall proceed to other business.

40. A motion to adjourn shall always be in order except in the following cases:

- (a) When a Council Member is in possession of the floor;
- (b) When the "yeas" and "nays" are being called;
- (c) While the Council Members are voting; or
- (d) When the adjournment was the last preceding motion.

41. The following questions shall be decided without debate:

- (a) A motion to reconsider;
- (b) All motions as to priority of business or as to the suspension of the order of the day;
- (c) Applications to speak more than the prescribed number of times;
- (d) A motion to allow any person other than the Council Members or CAO to address the Council;
- (e) A motion to postpone to a specified time or day;
- (f) A motion to lay on the table when claiming a privilege over another person; and
- (g) A motion to adjourn.

42. Amendments shall be put in the reverse order to that in which they are moved. Every amendment submitted shall be decided or withdrawn before the main question is put to a vote. Only one amendment shall be allowed to an amendment and any further amendment must be to the main question.

43. Any notice of motion given by a Council Member for a subsequent meeting may, in the absence of the Council Member giving such notice, be taken up by any other Council Member.
44. Every Council Member, prior to speaking on any question or motion, shall raise a hand and wait to be recognized by the Chair. When two or more Council Members raise their hands to speak, the Chair shall designate as the Council Member who has the floor the Council Member who, in the opinion of the Chair, first raised a hand.
45. No Council Member may speak more than twice, without the leave of Council, on any motion except to explain a misconception of his remarks, but the mover of a motion shall have the right to reply and sum up in closing the debate.
46. When a Council Member wishes to explain, the Council Member shall raise a hand and ask leave of the Chair, without further comment, and if permitted by the Chair, shall explain only an actual misunderstanding of language.
47. No Council Member shall speak more than two minutes upon any matter at one time, without the leave of Council.
48. During a meeting Council may adjourn for short periods or move to another place, without ending the meeting.

Reconsideration

49. After any question has been decided in the affirmative, any Council Member who has voted in the affirmative, may, after the decision has been announced from the chair but before adjournment of the meeting, give notice of an intention to move a reconsideration at the next meeting of the Council. The giving of such a notice operates as a stay or suspension of Council's decision.
50. Unless reconsideration is moved at the next meeting, the right of reconsideration shall be lost.
51. No discussion of the main question shall be allowed on the motion for reconsideration.
52. The following matters are not eligible for reconsideration:
 - (a) A motion approving the first or second reading of a bylaw enactment, amendment or repeal;
 - (b) A motion to decide upon a matter which was the subject of a statutory hearing by Council;
 - (c) A matter which has been reconsidered once; and
 - (d) A vote to reconsider.

Rescission

53. No motion to rescind any resolution of Council shall be made unless Notice of intention to move the same has been given at the regular meeting of Council just previous to that at which the

same is moved.

54. A Notice of motion to rescind any previous resolution of the Council may be given by any member at any regular meeting of Council.
55. When giving Notice of motion to rescind, the member shall provide a brief explanation of the reason for the Notice.
56. A Notice of motion to rescind shall be dealt with at the next meeting of the Council.
57. At such meeting, the giver of such Notice, or in the absence of the giver, any other member on the giver's behalf shall move the motion to rescind and shall briefly state the reasons therefor.
58. If the motion to rescinded is seconded the same becomes subject to debate according to the normal rules except that it may not be amended.
59. A motion to rescind requires the same vote as was required for the resolution which is subject to rescission. That is, if the resolution subject to rescission required a majority vote of Council the motion to rescind such resolution shall require a majority vote of Council.

Points of Order

60. It shall be the duty of the Chair, and the privilege of any Council Member, to call any Council Member to order, who violates any established rule or order. A point of order must be decided before the subject under consideration is proceeded with.
61. When a Council Member is called to order, the Council Member shall remain seated and silent until the point is determined, until called upon by the Chair to be heard on the point of order.
62. A point of order is not debatable amongst other Council Members, unless the Chair invites discussion in an effort to assist in making a ruling. Where the Chair permits discussion of a point of order, no Council Member shall speak more than once.
63. Decisions of the Chair on points of order or procedure, including an order expelling and excluding a person from the Council Chambers pursuant to sections 65 and 66, are not debatable but are appealable to Council by any Council Member. When an appeal is made from the decision of the Chair, the Chair shall simply put the question, "Shall the decision of the Chair be sustained?"
64. No Council Member shall use offensive or unparliamentary language or speak disrespectfully to or about anyone while in Council, or speak outside the parameters of the question in debate.
65. If a Council Member resists the rules of Council, willfully obstructs the business of Council or disobeys the decision of the Chair, or of Council on appeal, on any question of order or practice or upon the interpretation of the rules of Council after being called to order by the Chair or otherwise disrupts the proceedings of council, the Council Member may be ordered by the Chair to leave the Council Member's seat provided that a majority vote of Council shall be required to sustain the expulsion.
66. If the Council Member refuses to leave the Council Member's seat, the Chair may order the Council Member to be expelled and excluded from the Council Chambers.

- 67. Such Council Member may, by vote of Council, later in the meeting or at a subsequent meeting be permitted to re-enter Council Chambers and to resume participation in Council's business with or without conditions.
- 68. Persons who are not Council Members or officers or employees of the Town of Amherst shall observe silence and order in the Council Chambers, unless given permission to speak. Any such persons disturbing the proceedings of Council shall be called to order by the Chair, and, if they fail to comply, shall be ordered by the Chair to be expelled and excluded from the Council Chambers, provided that a majority vote of Council shall be required to sustain the expulsion.
- 69. Such member of the public may, by vote of Council, later in the meeting or at a subsequent meeting, be permitted to re-enter Council Chambers with or without conditions.
- 70. An order of the Chair to expel a person from the Council Chambers pursuant to section 68 of this Policy constitutes a direction from the Town of Amherst to leave the premises for purposes of the *Protection of Property Act* and other applicable laws.
- 71. If any question arises that is not provided for by applicable legislation or the foregoing rules, it shall be decided according to the ruling of the Chair, having regard to general principles of parliamentary procedure to the best of the Chair's ability but the Chair shall not be expected to conform its decisions with parliamentary procedure texts or precedents.
- 72. Any of the rules of order may be suspended in its operation by the unanimous consent of the Council Members present.

Presentations to Council

- 73. Persons wishing to make a presentation to Council shall write one week in advance of the next Committee of the Whole meeting to the CAO outlining their issue and the decision they wish Council to consider, and request to make a presentation.
- 74. The request will be added to the next Committee of the Whole agenda to be issued.
- 75. Committee of the Whole will discuss the matter when it appears on the agenda, and will determine if they wish to have the presentation at a future meeting.
- 76. The CAO shall advise the person or group requesting to make a presentation of the decision of Committee of the Whole including, if approved, the date and time of the presentation.
- 77. Presentations shall be limited to 15 minutes, unless Committee of the Whole determines a longer period of time is needed.
- 78. When a delegation is recognized and offered an opportunity to speak, the Mayor or Chairperson of the meeting will request the spokesperson to come forward from the gallery to present. Only one person shall be permitted to speak.
- 79. No debate or decision on the presentation will occur during the meeting in which the presentation is made, unless the item was previously an agenda item for that meeting.

Petitions

80. Persons wishing to present a petition to Council shall file a copy of the petition with the CAO before 12:00 noon on the Wednesday prior to the meeting of Council at which it is proposed to be presented.
81. The CAO shall circulate a copy of any such petition to each member of Council before the meeting at which it is proposed to be presented.
82. The body of the petition itself, excluding the list of names, shall, if determined by the Chairperson to be practical, be read by the CAO on behalf of the group supporting the petition.
83. No petition shall be presented which Council determines to contain impertinent or improper matter.
84. No persons shall be permitted to speak, whether supporting or opposing the petition, unless the petition comes up for discussion which shall be at the next regular meeting of Council unless Council decides according to the rules to hold a special meeting of Council for that purpose.

SYNOPSIS

Council Remuneration

Historically, the compensation for elected officials had a portion (one third) that was exempt from income taxes. Some rationale provided for the tax-free exemption was to recognize elected officials were contributing to their communities, attending events at their costs and travelling within their communities without reimbursement. The Federal Government announced in last year's budget that the exemption would be removed effective for the 2019 tax year.

Without a change in the remuneration, Council will take home less pay than they received in 2018, making it potentially unaffordable for some to continue to serve in a public capacity and impacting the pay for future Councils.

The majority of Municipalities in Nova Scotia are increasing the compensation effective January 1, 2019 (16) with some not increasing it at all (3), and some deferring until budget discussions (7).

MOTION:

That Council approve the amendment to the Salary Administration Policy, Policy number 04530-01, to reflect an increase in Council Remuneration with salaries reflecting the increases outlined below.

Salary Increase	Current	Future
Councillor	\$ 21,542	\$ 25,050
Deputy Mayor	\$ 24,375	\$ 27,723
Mayor	\$ 36,447	\$ 41,178

TO: Mayor Kogon and Members of Council

SUBMITTED BY: Greg Herrett, CPA, CA – CAO

DATE: January 28, 2019

SUBJECT: CRA Council Remuneration Adjustment

ORIGIN: Federal Government

LEGISLATIVE AUTHORITY: Income Tax Act; MGA Section 23

RECOMMENDATION: That Council approve the request to have staff adjust the Salary Administration Policy, Policy number 04530-01, to reflect an increase in Council Remuneration with salaries reflecting the increases outlined below.

Salary Increase	Current	Future
Councillor	\$ 21,542	\$ 25,050
Deputy Mayor	\$ 24,375	\$ 27,723
Mayor	\$ 36,447	\$ 41,178

BACKGROUND:

Historically, the compensation for elected officials was not considered a salary and a portion (one third) has been exempt from income taxes. Some rationale provided for the tax-free exemption was to recognize elected officials were contributing to their communities, attending events at their costs, travelling within their communities without reimbursement. The Federal Government announced in their budget the exemption would be removed effective for the 2019 tax year. Information was provided to council in June and October and staff were directed to provide information on what is being done in other municipalities.

DISCUSSION:

The NSFM has indicated its support for changes to the remuneration of elected officials:

“The NSFM Board passed a motion at its meeting in June 2018 recognizing the need to support elected officials in avoiding abrupt changes to remuneration. The NSFM is recommending that pre-tax compensation for elected officials be adjusted to allow them to maintain the same levels of post-tax compensation after the 2019 laws take effect. For further information visit www.nsfm.ca.”



Without a change in the remuneration, Council will take home less pay than they received in 2018, making it potentially unaffordable for some to continue to serve in a public capacity.

The majority of Municipalities in Nova Scotia are increasing the compensation effective January 1, 2019 (16) with some not increasing it at all (3), some deferring until budget discussions (7) and one (in addition to Amherst) expected to decide in January 2019.

Some of the jurisdictions deferring until budget deliberations are also requesting the ability to make the raises retroactive if the decision is to increase the compensation.

FINANCIAL IMPLICATIONS:

There will be an impact to the budget of \$25,619 annually. For the 2018-19 budget it would require Council to approve an additional \$6,317.01 for Council salaries. It is expected this will be funded from any surplus this fiscal. If no surplus exists at year end, it is expected that the funds will be taken out of the Operating Fund.

COMMUNITY ENGAGEMENT:

No community engagement is anticipated at this stage.

ENVIRONMENTAL IMPLICATIONS:

None

SOCIAL JUSTICE IMPLICATIONS:

None

ALTERNATIVES:

1. Make no change to council compensation – take home dollars will decrease;
2. Defer the decision until budget 2019/2020 deliberations;
3. Increase council compensation for a lesser amount.

ATTACHMENTS:

Presentation

Report prepared by: Shelley Rector
Report and Financial approved by: Shelley Rector

CRA Council Remuneration Adjustment

Town of Amherst

January 2019



BACKGROUND

- Compensation for elected officials is not considered salary
- Traditionally a portion of the compensation has been exempt from income taxes (one third currently)
- Some rationale provided for the tax-free exemption was to recognize elected officials were contributing to their communities, attending events at their costs, travelling within their communities without reimbursement
- The increase in taxation means increased revenue for the province and federal which is being paid for by the municipality



DISCUSSION/DISCLAIMER

- The Federal Government announced in their budget the exemption would be removed effective for the 2019 tax year – January 1, 2019
- The next few slides are for demonstration purposes only
- Council should inquire about the actual impacts of the change in taxation based on their own personal situation
- The tax amounts are based on 2017 tax rates (this is the only on-line calculator available)
- This analysis shows the increase in compensation required for Council to take home the same pay as they received prior to the tax change



IMPACTS – TOWN COUNCILLOR

Town Councillor	
Current Taxable Amount	14,361
Tax (Due) Rebate	216
Tax Exempt Amount	7,181
Total Take Home Pay	\$ 21,758
Future Taxable Amount	21,542
Tax (Due) Rebate	- 2,457
Total Take Home Pay	\$ 19,085
Difference	\$ 2,673
Amount of Income required	25,050
Tax Payable	3,292
Total Take Home Pay	\$ 21,758
Net Increase to Councillor's Pay	
To Have the Same Take Home Pay	\$ 3,508

* Note the tax rates are estimates (NS provincial rates and federal rates do not have the same threshold. 2019 uses 2018 thresholds and tax rates)



IMPACTS – DEPUTY MAYOR

Deputy Mayor	
Current Taxable Amount	16,250
Tax (Due) Rebate	- 580
Tax Exempt Amount	8,125
Total Take Home Pay	\$ 23,795
Future Taxable Amount	24,375
Tax (Due) Rebate	- 3,131
Total Take Home Pay	\$ 21,244
Difference	\$ 2,551
Amount of Income required	27,723
Tax Payable	3,928
Total Take Home Pay	\$ 23,795
Net Increase to Deputy Mayor's Pay	
To Have the Same Take Home Pay	\$ 3,348

* Note the tax rates are estimates (NS provincial rates and federal rates do not have the same threshold. 2019 uses 2018 thresholds and tax rates)



IMPACTS – MAYOR

Mayor	
Current Taxable Amount	24,298
Tax (Due) Rebate	- 3,113
Tax Exempt Amount	12,150
Total Take Home Pay	\$ 33,335
Future Taxable Amount	36,447
Tax (Due) Rebate	- 6,426
Total Take Home Pay	\$ 30,021
Difference	\$ 3,314
Amount of Income required	41,178
Tax Payable	7,843
Total Take Home Pay	\$ 33,335
Net Increase to Mayor's Pay	
To Have the Same Take Home Pay	\$ 4,731

* Note the tax rates are estimates (NS provincial rates and federal rates do not have the same threshold. 2019 uses 2018 thresholds and tax rates)



OVERALL BUDGET IMPACT

- If approved the total impact to budget would be:

Budget Increase	
5 Councillors	\$ 17,540
Deputy Mayor	\$ 3,348
Mayor	\$ 4,731
Total	\$ 25,619

OTHER ITEMS FOR CONSIDERATION

- The NSFM is recommending that pre-tax compensation for elected officials be adjusted to allow them to maintain the same levels of post-tax compensation after the 2019 laws are enacted.
- A scan of the other jurisdictions shows that most fall into one of these three options:
 - 1) Defer the increase until 2019/2020 budget discussions
 - 2) Implement an increase effective Jan 1, 2019
 - 3) No increase at all
- Of the municipalities that responded to the request for information, there are four that have not yet made a decision.



ENVIRONMENTAL SCAN

COUNCIL HONORARIUM REPLIES TO LIST SERVE QUESTION

NO CHANGES	INCREASE TO MAINTAIN NET INCOME AS OF JANUARY 1, 2019	POSTPONED TO BUDGET 2019-2020	WILL BE DISCUSSED AT COUNCIL JANUARY (UNDECIDED)
Annapolis Royal	Bible Hill	Town of Pictou	Annapolis County
Guysborough	Mun. East Hants	Town of New Glasgow	Town of Amherst
Middleton	CBRM	Municipality Yarmouth - 11.1%	
	Town of Berwick	Municipality Saint Mary's	
	Wolfville - 12%	Town of Shelburne	
	Halifax - 1.1%	Municipality of Shelburne	
	Queens	Town of Port Hawkesbury	
	County of Kings		
	Municipality of Digby		
	Town of Antigonish		
	Town of Digby (pending approval)		
	Town of Windsor		
	Town of Mulgrave		
	Town of Truro		
	Municipality Clare		
	County of Richmond (passed at COW Dec - expect approval at Council Jan)		



CHOICES

- 1) Make no change to council compensation – take home dollars will decrease
- 2) Increase council compensation to keep net pay the same effective January 1, 2019
- 3) Increase council compensation to keep net pay the same effective April 1, 2019 (means three months less pay in 2019: Jan-Mar)
- 4) Increase council compensation a lesser amount



RECOMMENDATION

- In keeping with what the majority of municipalities in the Province have done and the recommendation of the NSFM, it is recommended that Council increase Council compensation to keep net pay the same effective January 1, 2019.
- It is recommended that salaries for Council be adjusted as follows and the Salary Administration Policy be updated to reflect the changes in salaries:

Salary Increase	Current	Future
Councillor	\$ 21,542	\$ 25,050
Deputy Mayor	\$ 24,375	\$ 27,723
Mayor	\$ 36,447	\$ 41,178



QUESTIONS AND DISCUSSION



SYNOPSIS

Snow and Ice Management Policy

This is essentially a housekeeping adjustment to the Policy which was initiated because the Town is now providing a direct financial contribution to the YMCA rather than providing in-kind services of an equal amount. When reviewing the Policy to remove the YMCA, it was noted that some of the parking lots referenced in the Policy are incorrect. As the private parking lots are leased, it was determined it would be best to reference the leased lots rather than specific parking lots in the policy. In addition, the Community Credit Union Business Innovation Center was added to the list of Public Buildings.

MOTION:

That Council approve amendments to the Snow and Ice Management Policy, which would revise the list of town owned and leased parking lots and include the Community Credit Union Business Innovation Centre to the list of public buildings.

TO: Mayor Kogon and Members of Council

SUBMITTED BY: Shelley Rector, Chief Financial Officer

DATE: January 28, 2018

SUBJECT: Snow and Ice Management Policy

ORIGIN: Adjustments due to changes to services to YMCA.

LEGISLATIVE AUTHORITY: MGA sections 47(1) states “The council shall make decisions in the exercise of its powers and duties by resolution, by policy or by by-law”.

RECOMMENDATION: That Council approve amendments to the Snow and Ice Management Policy, which would revise the list of town owned and leased parking lots and include the Community Credit Union Business Innovation Centre to the list of public buildings.

BACKGROUND: A review of the policy was initiated due to the changes made to how the Town contributes to the YMCA as this Policy referenced the YMCA parking lot. In addition, the Policy referenced the names of various parking lots that were leased by the Town. During the review there were a few other items that needed adjustment for clarity purposes which are highlighted in the attached documents.

DISCUSSION: This is essentially a housekeeping adjustment to the Policy which was initiated because the Town is now providing a direct financial contribution to the YMCA rather than providing in-kind services of an equal amount. When reviewing the Policy to remove the YMCA, it was noted that some of the parking lots referenced in the Policy are incorrect. As the private parking lots are leased, it was determined it would be best to reference the leased lots rather than specific parking lots in the policy. In addition, the Community Credit Union Business Innovation Center was added to the list of Public Buildings.

FINANCIAL IMPLICATIONS: There are no financial implications

COMMUNITY ENGAGEMENT: None at this time.

ENVIRONMENTAL IMPLICATIONS: There are no environmental implications

SOCIAL JUSTICE IMPLICATIONS: N/A

ALTERNATIVES: 1. Do not accept the policy revisions. 2. Direct staff to adjust the revisions.



ATTACHMENTS: A tracked changes version of the Policy and the final revised version of the Snow and Ice Management Policy

Report prepared by: Shelley Rector, Chief Financial Officer

Report and Financial approved by: Shelley Rector, Chief Financial Officer

DEPARTMENT: OPERATIONS

TITLE: SNOW AND ICE MANAGEMENT POLICY

Date: 24 November 2014 23 November 2015

PURPOSE:

The purpose of this policy is to provide direction to staff involved in snow and ice management operations to ensure streets, sidewalks, fire hydrants and parking lots are cleared in a safe and timely manner.

POLICY STATEMENT:

1. Snow and ice management operations will commence after 5 – 10 cm of snow has fallen and snowfall is continuing.
2. Salting of streets on the 'salt route' will commence when conditions warrant and salting of remaining streets not on the salt route will occur as needed.
3. Upon completion of the public streets, sidewalk operations will commence.
4. Priority will be given to heavily travelled streets and sidewalks, as defined in this policy.
5. Safety of the public and our operators is paramount in all aspects of our work.
6. Additional street widening and intersection clearing will occur upon the completion of the priority operations and as time and budget allow.

SERVICE LEVEL EXPECTATIONS

Level of Service for Roadway Types

The objective is that all streets will be cleaned of snow within 6 hours from the end of a snow storm of up to 30 centimetres.

Street Priority 1

- Plow continuously during storm, visibility permitting
- Plow to bare pavement, whenever possible
- Normally plow curb to curb within 4 hours after storm ends

Street Priority 2

- Plow continuously during storm, visibility permitting
- Salting of hills, intersections, as needed
- Normally plow curb to curb within 6 hours after storm ends

Level of Service for Sidewalk Types

The objective is that all sidewalks will be cleaned of snow within 24 hours from the end of snow plowing operations, for snow storms up to 30 centimetres.

Sidewalk Priority 1 (Cleared within 12 hours)

- Sidewalks in school zones
- Sidewalks in the Core Area District (Downtown)
- Arterial streets

Sidewalk Priority 2 (Cleared within 24 hours)

- Collector streets
- Local streets

The sidewalks in the Downtown will be maintained with salt. Other sidewalks will receive sand to improve traction, as needed.

Level of Service for Fire Hydrants

The objective is that all fire hydrants will be accessible by emergency personnel 96 hours from the end of snow plowing operations, for snow storms up to 30 centimetres.

The Streets Foreman will decide if the accumulation of snow around the fire hydrants, and/or the snow bank along the street in front of the fire hydrant, warrants the clearing operation to be activated.

Town crews are available to clear hydrants in an emergency, whenever required.

MAJOR STORMS

A major storm will be declared by the Transportation Foreman, or on-call supervisor, when snow clearing crews are no longer able to keep all Town streets cleared of snow and the storm continues.

During a major snowstorm, crews will attempt to keep at least one lane of the following streets open:

- Abbey Road
- Albion & South Albion Street
- Anson Avenue
- Chamberlain Street
- Chandler Road
- Church Street
- Havelock Street
- Hickman Street
- Industrial Park Drive
- LaPlanche Street
- King Street
- Electric Street
- Lawrence Street
- McCully Street
- Pleasant (East & West)
- Spring Street
- Robert Angus Drive
- Rupert Street
- Townshend Avenue
- Tupper Blvd
- Victoria Street
- Willow Street
- Prince Arthur (Church to Havelock)

During a major snowstorm, the Town Hall Parking Lot, Fire Station and Stadium parking lots will be kept open to allow emergency off-street parking.

To provide quick response in an emergency, a "storm line" will be activated during major storms (664-6000). This line will be monitored 24 hours a day until all of the streets have been opened.

As snowfall intensity decreases, Town equipment will commence snow plowing operations on other streets.

PRIORITY STREETS – BARE PAVEMENT

Town snow clearing crews will attempt to create a “bare pavement” condition within 12 hours following a snowfall event of up to 30 cm on the following streets:

- Victoria Street
- Church Street
- Willow Street
- Albion / West Pleasant intersection
- Albion Street
- South Albion Street
- Lawrence Street
- LaPlanche Street
- Robert Angus Drive
- East Pleasant
- West Pleasant
- Hickman Street

SNOW HAULING

Within 48 hours of the accumulation of 10 or more centimeters of snow, the snow will be hauled away from the boulevards of the Town streets listed below:

- Victoria Street from Herbert Street to C.N.R. Tracks
- Church Street from Victoria Street to YMCA Driveway
- Havelock Street from Victoria Street to Prince Arthur Street
- Ratchford Street
- King Street
- Princess Street
- Electric Street
- Prince Arthur Street from Acadia to Station Street
- Acadia Street from Victoria Street to Prince Arthur Street
- Albion Street from Church Street to the Lord Amherst Drive
- LaPlanche Street from Victoria Street to Civic # 12
- Lawrence Street from Victoria Street to Civic # 17
- Academy Street from Spring Street to Queen Street on (West side only)
- Charles Street from Spring to Dunlap (West side only)
- Spring (Albion to Church)
- Maltby Court
- Cornwall Avenue (West Side)
- Hickman Street (Mission to Park)
- Mission Street (Hickman to Cornwall)

TOWN OWNED PROPERTY

Town staff will take necessary steps to minimize public hazards due to snow/ice conditions on Town-owned/leased property.

Public Parking Lots

~~When a snow event of 5cm or more has occurred over night, snow will be removed by private contractors before 8:00 a.m. each day for the following Town owned parking lots:~~

- ~~Town Hall~~
- ~~Police Station~~
- ~~Fire Station~~
- ~~Library~~
- ~~Works Garage~~
- ~~Stadium~~
- ~~Ratchford Street~~
- ~~Corner of Maple and Electric~~

AND

~~For private parking lots that are leased by the Town of Amherst.~~

~~The lots will then be checked for slippery conditions by Town staff and appropriate measures taken, using salt and sand as required to alleviate any hazard to the public. Further periodic checks are to be made as conditions warrant throughout the day.~~

- ~~Town Hall~~
- ~~Library~~
- ~~Ratchford Street~~
- ~~George Blanche~~
- ~~Corner of Maple and Electric~~
- ~~Corner of Church and Electric~~
- ~~Bounded by Church, Prince Arthur, Maple and Electric~~
- ~~Trinity~~
- ~~Baptist Church and Church of England~~
- ~~YMCA~~
- ~~Stadium~~
- ~~Fire Station~~

Public Buildings

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The public entrances and adjacent sidewalks to Town operated facilities will be checked by Town staff for hazardous snow and ice conditions each day, before the building is open to the public. Excess snow will be removed and slippery conditions will be addressed using salt, sand and other suitable ice control material. Further periodic checks are to be made as conditions warrant throughout the day.

- Town Hall
- Police Station
- Fire Station
- Library
- Works Garage
- Stadium
- [Community Credit Union Business Innovation Center](#)

SALT MANAGEMENT

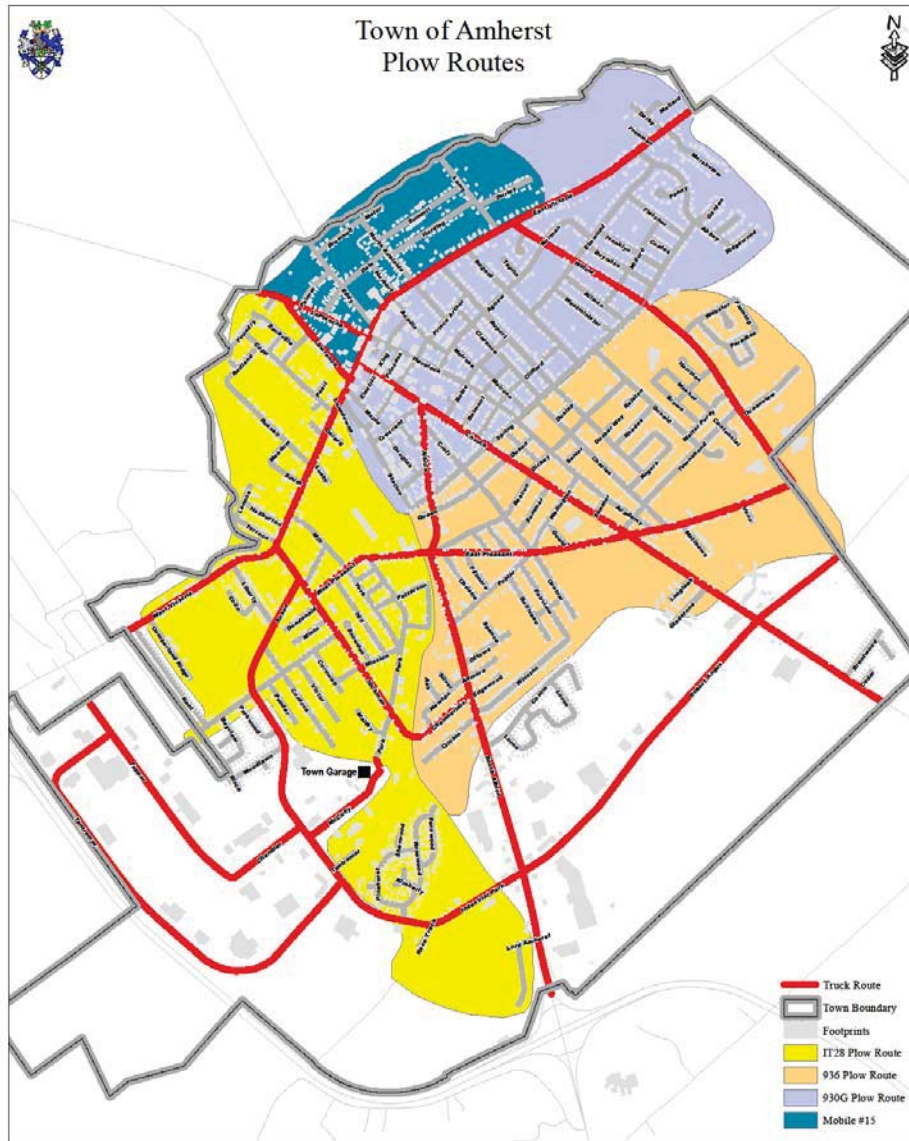
The Town of Amherst is committed to the efficient management of its road salt, while continuing to provide effective winter maintenance for the safety of motorists and winter maintenance workers.

The Town will demonstrate environmental responsibility by implementing and maintaining a Salt Management Plan (SMP) and associated best management practices.

To ensure the Town successfully meets its commitment, it will:

- Conduct operational activities in a manner that protects the environment and prevents or minimizes pollution;
- Continue to provide snow and ice control on Town streets so that service level standards are achieved;
- Address concerns raised by the federal government's review of road salts and their effect on the environment;
- Comply with environmental legislation, relevant standards, and industry codes of practice that apply to the Town's facilities and operations;
- Provide all winter maintenance personnel with appropriate training and resources so they are able to complete their assigned tasks in a manner that is consistent with the requirements of this Policy;
- Establish and track objectives and targets to verify effectiveness and identify opportunities for continual improvement of processes and operations;
- Monitor operations and implement appropriate corrective and/or preventive actions to improve performance;
- Communicate the requirement of this Policy and the Salt Management Plan to all employees







SYNOPSIS

Poverty Reduction Circle

Amherst Town Council identified Poverty Reduction as a Strategic Priority in 2018. One of the first steps in the process was staging its first municipal forum on poverty which was held in March of 2018. The goal of the forum was to provide greater awareness of the significant level of poverty in our community.

The recommended next step to Council in the process to reduce poverty is the creation of a Poverty Reduction Advisory Circle.

The Town of Amherst Poverty Reduction Advisory Circle will provide advice and assistance to Mayor and Council towards the development of a collaborative poverty reduction strategy for Amherst.

MOTION:

That Council endorse and support the creation of a ad hoc Poverty Reduction Advisory Circle to:

- Provide advice and assistance to council in understanding and addressing poverty in Amherst
- Engage a broad range of stakeholders and government departments at all levels on the issues related to poverty in Amherst.
- Through engagement, develop a better understanding of the capacity and roles of stakeholders to address poverty in the community.
- Identify opportunities for short term actions
- Development of a poverty reduction action plan.

And further that the ad hoc Advisory Circle consist of:

Deputy Mayor Sheila Christie	Town of Amherst
Bill Schurman	Town of Amherst
Sarah MacMaster	Executive Director Maggie's Place
HeeYeon Son	Volunteer, Newcomer
Colleen Dowe	Community Health Board Coordinator, NSHA
Veronica Richards	Volunteer, St. Vincent de Paul, Empowering Beyond Barriers
Connie Fisher	Academic Chair, Health & Human Services, NSCC
Dawn Ripley,	Health Equity Consultant, NSHA
Allison Lair	Community Support Coordinator, YMCA
Janine DeWitt	Health Promoter, Public Health, NSHA

And further that the Poverty Reduction Circle present to Council a detailed terms of reference with timelines by March 31, 2019 for consideration and approval. .

TO: Mayor Kogon and Members of Council

SUBMITTED BY: Bill Schurman, Director of Recreation

DATE: January 28, 2019

SUBJECT: **Poverty Reduction Circle**

ORIGIN: Council Strategic Priority

LEGISLATIVE AUTHORITY: Council Strategic Priority

RECOMMENDATION: That Council endorse and support the creation of a Poverty Reduction Advisory Circle consisting of:

Deputy Mayor Sheila Christie	Town of Amherst
Bill Schurman	Town of Amherst
Sarah MacMaster	Executive Director Maggie's Place
HeeYeon Son	Volunteer, Newcomer
Colleen Dowe	Community Health Board Coordinator, NSHA
Veronica Richards	Volunteer, St. Vincent de Paul, Empowering Beyond Barriers
Connie Fisher	Academic Chair, Health & Human Services, NSCC
Dawn Ripley,	Health Equity Consultant, NSHA
Allison Lair	Community Support Coordinator, YMCA
Janine DeWitt	Health Promoter, Public Health, NSHA

And further that the Poverty Reduction Circle set a target date of March 31, 2019 to present to Council a detailed terms of reference with timelines.

BACKGROUND: Council has identified poverty reduction as a strategic priority. In 2018 the Town hosted a municipal poverty forum, which included diverse stakeholders. The poverty reduction circle will allow Council to obtain advice and recommendations regarding the next steps in the priority to reduce poverty.

DISCUSSION: See attached memo.

FINANCIAL IMPLICATIONS: Financial implications will be dependent upon the recommendations from the poverty reduction circle recommendations.



SOCIAL JUSTICE IMPLICATIONS: Vulnerable populations should be positively affected by any effort to reduce poverty in our community

ENVIRONMENTAL IMPLICATIONS: N/A

COMMUNITY ENGAGEMENT: The municipal poverty forum was held, and it is anticipated that the poverty reduction circle will offer the opportunity for a number of community engagement initiatives. There will be ample opportunity for citizens to have a voice on this topic. In addition, there are ongoing, multiple conversations in the community regarding poverty reduction, including a pilot project on Community Innovation Lab—Food Insecurity project (Overview attached)

ALTERNATIVES:

1. Council does not accept the recommendation;
2. Council decides its own plan for poverty reduction;
3. Council determines that poverty reduction is no longer a priority.

ATTACHMENTS: Memo on poverty reduction and the report on the poverty forum
Community Innovation Lab Food Insecurity project update

Report prepared by: Bill Schurman, Director of Recreation

Report and Financial approved by:

MEMORANDUM

To: Mayor Kogon and Amherst Town Council
From: Bill Schurman, Director of Recreation
Date: January 21, 2019
Subject: **Poverty Reduction**

Amherst Town Council identified Poverty Reduction as a Strategic Priority. One of the first steps in the process was staging its first municipal forum on poverty which was held in March of 2018. The goal of the forum was to provide greater awareness of the significant level of poverty in our community. Post survey results following the forum indicated increased awareness of the existence of poverty in Amherst, a greater understanding about the effect of poverty on the entire community and the responsibility for the reduction of poverty lies with many.

Municipal responses to poverty reduction involve a combined effort of municipal driven programs and initiatives and a collaboration of efforts with community stakeholders. Municipal poverty reduction strategies in particular those within communities with populations comparable to Amherst are just emerging. A number of roundtables have been established however not a great deal of evaluation has been done. These initiatives bring together municipal representatives with local stakeholders to develop responses to reducing poverty.

The recommended next step to Council in the process to reduce poverty is the creation of a Poverty Reduction Advisory Circle.

The Town of Amherst Poverty Reduction Advisory Circle will provide advice and assistance to Mayor & Council towards the development of a collaborative poverty reduction strategy for Amherst.

Development of the strategy will be led by the Department of Recreation but will include active participation from all town departments, all levels of governments, community and service organizations, non-government organizations, the business community and interested Amherst citizens.

The Poverty Reduction Advisory Circle will advise and assist Town Council through the development of a poverty reduction strategy. Poverty Reduction Advisory Circle members, many of whom assisted with organizing the first municipal form on poverty in 2018 will bring diverse views and experiences for consideration of the multiple factors that contribute to poverty in Amherst.

In addition the Circle will focus on and identify opportunities for short term action. The development of the strategy will recognize and build on the considerable knowledge, capacity and compassion of the Amherst community and the many not-for-profit, non-governmental and service organizations that play a considerable role in supporting individuals and families on a regular basis. Through an engagement process, the strategy will be developed collaboratively with these groups and individuals.

The Poverty Reduction Advisory Circle will have a minimum of eight members who bring a broad range of perspectives and experiences related to poverty, representing one or more of the following diverse perspectives:

Lived experience of low income/social exclusion
Disability
Business / employer
Service provider to persons experiencing low income/social isolation
Academic
Newcomer

Definitions

Poverty Reduction Circle Members see poverty as more than having a lack of income; they see reducing poverty as building people and community up so that they can live in a healthy, considerate, and growing environment.

Prosperity

Emphasis is on quality of life for all
It's not monetary; it is more about respect and dignity
It is about enhancing people's lives to lift them up
Prosperity the ultimate goal

Poverty

Lack of fundamental resources which includes lack of self-esteem and self-confidence
Lack of capability however it does not mean that people who live in poverty are not capable
It is about barriers and not about people; barriers to developing strengths and assets
Poverty is systemic

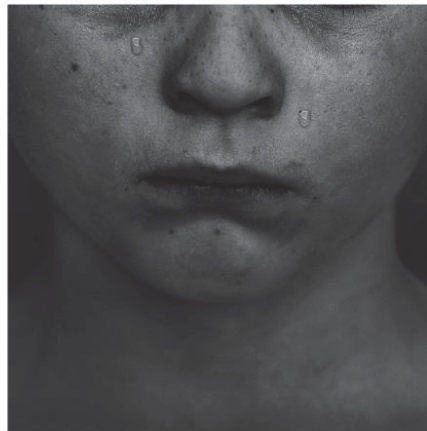
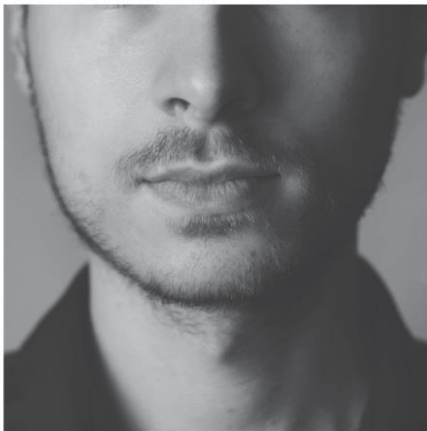
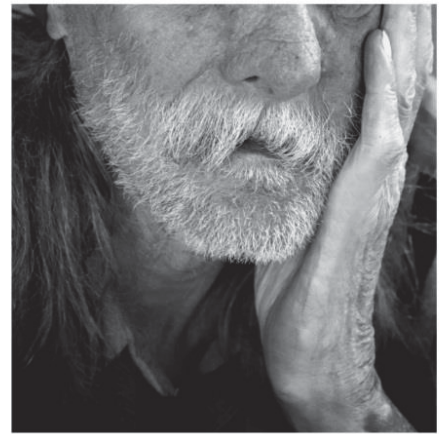
Goals – Identify long lasting solutions to reducing poverty; Tell the truth about poverty using real facts; Help others understand how important it is to reduce poverty; Shift the general public's perception of people living in poverty; Engage people from multiple sectors to address poverty; Improve collaboration and actions in poverty reduction efforts by all stakeholders

The following have agreed to participate on the poverty reduction circle.

Deputy Mayor Sheila Christie	Town of Amherst
Bill Schurman	Town of Amherst
Sarah MacMaster	Executive Director Maggie's Place
HeeYeon Son	Volunteer, Newcomer
Colleen Dowe b	Community Health Board Coordinator, NSHA
Veronica Richards	Volunteer, St. Vincent de Paul, Empowering Beyond Barriers
Connie Fisher	Academic Chair, Health & Human Services, NSCC
Dawn Ripley	Health Equity Consultant, NSHA
Allison Lair	Community Support Coordinator, YMCA
Janine DeWitt	Health Promoter, Public Health, NSHA

Given the complexity of the challenge of the issue of reducing poverty and out of respect for those who have agreed to volunteer to participate the Poverty Reduction Circle will need to confirm their terms of reference. As a starting point the following provided general terms of reference for the circle to consider. It is anticipated that the circle will come back to council by March 31, 2019.

- Provide advice and assistance to council in understanding and addressing poverty in Amherst
- Engage a broad range of stakeholders and government departments at all levels on the issues related to poverty in Amherst.
- Through engagement, develop a better understanding of the capacity and roles of stakeholders to address poverty in the community.
- Identify opportunities for short term actions
- Development of a poverty reduction action plan.



POVERTY LIVES HERE

A MUNICIPAL FORUM ON POVERTY

Presented by the Town of Amherst, NS on March 22, 2018

SUMMARY REPORT

Presented by:



Purpose and Goal for the Day

Amherst Town Council identified Poverty Reduction as a strategic priority. Organizing the first municipally-led forum on poverty is a first step in the process. The forum theme “Poverty Lives Here” was created to provide participants with a greater awareness of the significant level of poverty in our community. Invitations targeted those with influence on policy, including elected municipal representatives, town senior management, stakeholders and community champions.



We engaged a facilitator to lead participants through a process designed to help raise awareness of poverty. Speakers included Robert S. Wright MSW RSW and Dr. Christine Saulnier, The Nova Scotia Director for the Canadian Centre for Policy Alternatives. Four participants agreed to share their firsthand accounts of the challenges of living in poverty.

50 participants registered which was robust considering we were hit with the biggest snowstorm of the season.

Participants were asked to complete a pre and post forum survey with identical questions about opinion and several additional questions pertaining to the forum to determine if awareness of the issue had changed.

The Survey: What We Learned

There was an 80% response rate to the survey and the comparison between the pre- and post-survey results clearly show there was an increased awareness about the existence of poverty in Amherst, a greater understanding about the effect of poverty on the entire community and the responsibility lies with many.

SURVEY RESULTS		
QUESTIONS	PRE-SURVEY	POST-SURVEY
Strongly agree that poverty exists in Amherst	65%	88%
Strongly agree that poverty affects the health of the community	78%	88%
Poverty is the responsibility of the individual	41%	31%
Poverty is the responsibility of charitable organizations	20%	14%
The goal of the day was to raise awareness about poverty and it's affects in our community. The Goal of the day was met.	-	91%
The Conversation should continue at the municipal level	-	100%

When asked if the municipality was to consider the development of future policy to reduce the effect of poverty, the top four suggested priorities included:

- Housing
- Food security
- Public transportation
- No charge inclusive recreation



Table Conversations

Throughout the afternoon participants were separated into five small table conversations around some difficult first voice scenarios.

The groups were asked to read their scenario and consider a day in the life of the person in the story. Following very rich discussions each group was tasked with considering;

If the municipality was going to look at the development of future policy to reduce the effects of poverty on the community, rank your top three priorities.

The themes that emerged were:

- Housing
- Food Security
- Transportation
- Inclusive recreation programming particularly for youth
- Employment
- Communication
- Advocacy



Housing

“43% of renters spend more than 30% of their income on shelter costs.”

Statistics Canada 2016

Housing was a priority in every conversation identifying the need for several types of supports including transitional, emergency, safe and affordable housing. The need for a homeless shelter that could accommodate people regardless of age or gender was a priority

There is so much stigma and far too many barriers attached to being homeless or being on the verge of homelessness. These are a few examples shared during the forum: not knowing where to go, no phone, no constant address, no IDs, no money, no food, no shelters available, no transportation to even look for a home, lack of family support or social isolation and lack of communication, lack of credibility/reputation, addiction, mental health and suicide risk, anxiety because of no income, fear of physical safety, embarrassment, having only short term, one off options, constantly worrying and wondering who can I stay with.

Housing can be particularly difficult for teens as many landlords aren't prepared to rent to them and they aren't able to find accommodations within their budget as it is often difficult for them to access income assistance. Some rent supplements should be earmarked specifically for young families through Cobequid Housing and individuals in crisis should be pushed up to the front of the housing waitlist.

Food Security

“72% of female lone parent families with children 0 to 5 years live in poverty.”

Statistics Canada 2016

Food insecurity is a reality for many in our community. People face extremely difficult decisions daily around buying food or paying for utilities like heat and lights. That stress alone leads to a cycle of poor health, potential for more illness, and lost time from work.

Lack of access to food was a concern because there is no longer a downtown grocery store. It was also noted that our food bank has limited hours that may not be practical for many and the pantry may not be accessible to all because of the location.



There is a need more barrier-free services so we can eliminate the requirement for youth and families living in poverty having to complete several forms before accessing benefits.

There needs to be a place for youth to go to be out of the cold where they can eat and share their stories without fear of judgement.

A universal school food program makes sense. According to some of the data up to 47% of school kids are hungry and although most, if not all, schools in Cumberland County have some sort of breakfast and or lunch program they are not all equal.

More money needs to be earmarked into programs and services that increase community supports such as Maggie’s Place and the YMCA.

Transportation

“I don’t own a car so my children and I walk everywhere – this is extremely difficult and dangerous for my family when the sidewalks are snow-covered and icy and I have to walk on the road pushing a stroller.”

First Voice Story

Transportation came up as a concern in every table conversation. Lack of affordable transportation impacts the ability to access food, health services, employment, education and social opportunities.

A bus route that operates on a regular basis through town and out to the hospital should be a priority. Taxis are expensive and Cumberland County Transit Society (CCTS) can be inconvenient and/or impractical as you have to call at least one day in advance to book transportation.

Groups suggested an active transportation policy that includes a walkability plan, bike routes and a bike share program. We heard stories about people having to walk on the road because sidewalks were not cleared. Making sidewalks and walkways a priority for snow clearing and repair would allow much safer access to resources.



Inclusive Youth Programming Recreation

“34.7% of all Amherst youth 17 and under live in poverty.”

Statistics Canada 2016

Fear, shame and stigma were a big part of every table conversation. When discussing youth, isolation and not knowing where to turn were added to the list.

It is important to improve supports for youth so they can stay in school. Free childcare programs, fair access to youth income assistance and more resources for the SchoolsPlus program would all go a long way to help.

Lack of community supports and networks for people without family or friends within the area only increases the sense of isolation and loneliness. Funding should be increased for programming that provides individuals and families with barrier free activities allowing them to be more connected to their community. Build a greater sense of belonging.

Employment

*“A job is not an automatic ticket out of poverty.
86% of those making minimum wage are 20 or older.”*

Christine Saulnier



The first voice stories we heard and the broader perspective shared by Christine Saulnier all highlighted the inequity of poverty. There are higher rates of poverty among women, visible minorities and people with disabilities. Many are unemployed or under-employed.

In order to have an impact, it is important that employers consider our hiring policies. There is a need for a process that will help those most impacted acquire jobs.

Employers should prioritize hiring employees within the community not just for a single position but also for contract work such as building contracts, consultants etc.

There should be supports in place and enable individuals to complete their education in order to increase the likelihood of obtaining employment. Encourage employers and community groups to offer inclusive volunteer opportunities that can help individuals gain experience and enhance social skills to improve their employability.

BEHIND THE NUMBERS - WE DID THE MATH:

<http://behindthenumbers.ca/2017/10/04/15-minimum-wage-in-nova-scotia/>

Communication

“If you do not have internet or phone, you cannot access 211, or contact a support service without finding a way to get there and without money...”

Forum Participant

All five groups cited communication as a concern. When living in poverty there was often no access to phones or internet to reach out for services or help. Without these services that many take for granted, people cannot access 911, 811 or 211 let alone contact family doctors or other professionals. It was suggested that more payphones be available and more access to free internet.



Along with lack of access to phone and internet, there is also a need for a better way to share knowledge. Many are not aware of services that are available to them or who to call when they need help. Several groups suggested a navigator for the county to help link services. The library may be a great place to maintain lists of available services. The town could consider taking a leadership role in pulling partners together.

There should be a place a person can go when they find themselves in a crisis to obtain access to phone and internet.

Advocacy and Awareness

“There is a lack of community supports and networks for people without families/friends within the area makes.”

Forum Participant

Throughout the afternoon conversations sparked lots of idea around the need for advocacy at different levels of government. Participants noted they would like to see the municipality advocate for:

- Increased SchoolsPlus programming.
- Addiction services for youth particularly around smoking.
- Fair processing of youth applications for DCS.
- Increase CPP, guaranteed living wage.
- Uniform school food programs.
- Fluoride in water.
- Access to health care including prenatal services, mental health and addictions.
- Sensitivity training for first responders to help reduce personal bias and judgement.
- Education system that can prepare individuals for a career change help people earn a living wage.
- A DCS navigator that would enable people to get the benefits they are entitled to and feel they have someone advocating for them. This navigator could also point them toward other programs that could be useful in their particular circumstance.
- Shift the culture of poverty; suspend judgement.



Community Innovation Lab – Food Insecurity

Project Update

We are excited to notify you that the next phase of the Nova Scotia Government funded project to find lasting ways for individuals, families, and communities to access food they like and enjoy on a regular basis is underway.

Last summer, a number of people from Amherst and surrounding area helped co-create and test a food inclusive housing concept. Responses were positive, and residents expressed interest in participating in a trial where food is purchased at a discounted rate in the same way residents pay rent. The food service will deliver pre-purchased food choices ranging from raw ingredients to prepared meals.

Last fall we shared the results of the food security innovation lab with senior officials in government. The recommendation to conduct an in-depth prototype was accepted by government.

During this next important phase of work, we continue to take a community-driven approach. We are working with individuals, families, community and system leaders to design, test, and determine the viability of the concept in Amherst and potentially other communities.

In order to meet these objectives, the prototype will need to:

- improve the **quality and affordability** of food for residents;
- be optimized in a way that is **desirable and meets the needs** of residents;
- increase **community connectedness** between residents and the community at large;
- **build enduring partnerships** with residents, community, and system leaders; and,
- identify **opportunities to expand and scale** the solution beyond the prototype testing phase.

The results of phase 2 will inform our recommendations to government in Summer 2019. We sincerely thank you for your continued interest in this project. As always should you have any comments or questions, please reach out to:

- Mike Davis – Mike.Davis@davispier.ca
- Jennifer McGill – Jennifer.McGill@davispier.ca
- Bryan Daniels – Bryan.Daniels@davispier.ca

Sincerely,
The Davis Pier Team

SYNOPSIS

February Committee of the Whole Meeting Date

The Town's Proceedings of Council Policy sets the third and fourth Mondays of the month for the Committee of the Whole and Council meetings, respectively. The Policy also permits the rescheduling of such meetings by resolution of Council.

This year, Heritage Day falls on Monday, February 18, 2019, our regular Committee of the Whole meeting date.

MOTION:

That Council change the regular Committee of the Whole meeting date from Monday, February 18, 2019 to Tuesday, February 19, 2019 due to the Heritage Day holiday.



REQUEST FOR DECISION

RFD# 2019007

Date: January 28, 2019

TO: Mayor Kogon and Members of Amherst Town Council

SUBMITTED BY: Kimberlee Jones, Municipal Clerk

DATE: January 28, 2019

SUBJECT: February Committee of the Whole Meeting Date

ORIGIN: 2019 Calendar – Heritage Day

LEGISLATIVE AUTHORITY:

Proceedings of Council Policy 10350-24 Section 5 states “Regular meetings of Council or Committee of the Whole may be rescheduled, relocated or cancelled: (b) by Resolution of Committee of the Whole at a meeting three or more days in advance of the additional or special meeting”

RECOMMENDATION:

That Council change the regular Committee of the Whole meeting date from Monday, February 18, 2019 to Tuesday, February 19, 2019 due to the Heritage Day holiday.

BACKGROUND:

The Town’s Proceedings of Council Policy sets the third and fourth Mondays of the month for the Committee of the Whole and Council meetings, respectively. The Policy also permits the rescheduling of such meetings by resolution of Council.

DISCUSSION: This year, Heritage Day fall on Monday, February 18, 2019, our regular Committee of the Whole meeting date. The options available to Council appear to be:

1. Reschedule the regular Committee of the Whole meeting to Tuesday, February 19;
2. Hold both COW and Council on February 25;
3. Schedule an alternate date for regular Committee of the Whole.

FINANCIAL IMPLICATIONS: There are no financial implications to changing the meeting dates.

COMMUNITY ENGAGEMENT: The public and media will be notified of any changes by media release.

ENVIRONMENTAL IMPLICATIONS: No environmental implications.

SOCIAL JUSTICE IMPLICATIONS: No social justice implications.



ALTERNATIVES:

1. Reschedule the regular Committee of the Whole meeting to Tuesday, February 19, 2019. This is being recommended.
2. Reschedule Committee of the Whole to Monday, February 25, 2019. This is not the recommended alternative, as it doesn't leave sufficient time to develop the agenda between the Committee of the Whole and Regular Council meetings.
3. Schedule an alternate date for Committee of the Whole.

ATTACHMENTS: N/A

Report prepared by: Kimberlee Jones, Municipal Clerk
Report and Financial approved by:

SYNOPSIS

Transfer of VIA Rail/Canadian National Railways Station, and Station Street

The Town of Amherst has agreed to purchase that portion of Station Street owned by VIA Rail, the VIA Rail Station building, and connected parking areas. The station building will be leased to J.E. Bembridge Enterprises Ltd., and sold to same after five years. A portion of the station building will be leased to VIA Rail for a designated passenger waiting area. J.E. Bembridge will assume the lease with VIA Rail upon taking ownership of the station.

MOTION:

That Council authorize the Mayor and CAO to execute the following agreements:

- 1. Agreement of Purchase & Sale between the Town & VIA Rail Canada INC.**
- 2. Lease Agreement between the Town & VIA Rail Canada INC.**
- 3. Agreement of Purchase & Sale between the Town & J.E. Bembridge Enterprises Limited.**
- 4. Access and Use Agreement between the Town & VIA Rail Canada INC.**
- 5. Contribution Agreement between the Town, VIA Rail Canada INC., & J.E. Bembridge Enterprises Limited.**

that provide for the transfer of Station Street, adjacent parking areas, and the Train Station to the Town, with eventual transfer of the Train Station to J.E. Bembridge Enterprises Limited, with a closing date of March 1, 2019.



AMHERST TOWN COUNCIL

RFD# 2019009

Date: January 28, 2019

TO: Mayor Kogon and Members of Amherst Town Council

SUBMITTED BY: Andrew Fisher, Manager of Planning & Strategic Initiatives

DATE: January 28, 2019

SUBJECT: **VIA Station / Station Street: closing documents**

ORIGIN: Transfer of the Train station and a portion of Station Street owned by VIA to the Town, and eventual transfer of the Station Building to J.E. Bembridge.

LEGISLATIVE AUTHORITY: Municipal Government Act (MGA), section 50 concerning the powers of a municipality regarding property, and section 51 concerning the sale or lease of municipal property.

RECOMMENDATION: That Council authorize the Mayor and CAO to execute five agreements that provide for the transfer of Station Street, adjacent parking areas, and the Train Station to the Town, with eventual transfer of the Train Station to J.E. Bembridge Ent., with a closing date of March 1, 2019.

BACKGROUND: In September 2016, Council approved Agreements of Purchase & Sale (APS), and leases that would result in the VIA Station, and a portion of Station Street owned by VIA transferred to the Town. The station building would be transferred to the Town and leased to J.E. Bembridge Enterprises for five years, with ownership transferring to Bembridge at year five. A portion of the Station Building would also be leased to VIA for a waiting area, the terms and conditions of which Bembridge would assume when ownership transfers at year five.

While the 2016 agreements were executed at that time, they were subject to approval by Parks Canada and the Privy Council. The delay in getting approval at the federal level rendered the agreements void as the closing date lapsed. In February 2018 Council approved amending agreements that updated the 2016 agreements with new closing dates, and provisions to address the conditions stipulated under the Order in Council. However, upon further review of the agreements, Bembridge could no longer accept some of the original terms and conditions.

At present, there are now five new documents described below. VIA and Bembridge have confirmed that the agreements are acceptable and are ready to sign immediately. Please see the attached Site Plan showing the newly created lots and respective ownership. Also attached is floor plan of the station building that shows the VIA designated waiting area and technology space.

The five attached agreements are as follows:



1. **Agreement of Purchase & Sale between the Town and VIA** provides for transfer of Station Street (Lot 18-5), Parking Lots (18-1 & 18-3), and the Station building (Lot 18-2). The Platform (Lot 18-4) remains under VIA ownership. The agreement allows the transfer of the Station Building to Bembridge after 5 years. In addition to the Municipal Heritage designation already completed, the Town will submit an application for Provincial Heritage Designation as required by the Order in Council. These designations protect the exterior character of the station, but do not impact the building interior.
2. **Station Building Lease between the Town and VIA** provides VIA a designated waiting area for their customers and space within the building to house VIA's technology, as shown on the attached floor plan. This lease will be assumed by Bembridge after 5 years. The lease term is 20 years, with the option to renew for another 20 years. The Town is responsible for operation and maintenance of the building (immediately assumed by Bembridge), and snow clearing of the platform. Flagging for snow clearing is paid by VIA.
3. **Agreement of Purchase & Sale between the Town and Bembridge** provides that Bembridge will lease-to-own the station, taking ownership after 5 years. Except for snow clearing of the platform, Bembridge assumes operational responsibility for the station building, and VIA's requirements.
4. **Parking Lot Agreement** provides that the Town will own and maintain the lands surrounding the Station Building, and will provide VIA access over said lands to the Station Building and platform. Accessible parking and loading spaces as required by Bembridge will be permitted within the parking areas.
5. **Renovation Contribution Agreement** provides for the cost sharing of the Station Building as it relates to the VIA designated waiting area. VIA have agreed to pay at least \$5,000 of the cost, or more if they determine additional costs are required to meet their standards. The Town will contribute up to \$7,000 to replace the furnace; otherwise, Bembridge is responsible for renovation and ongoing maintenance of the Station.

For the most part, the above noted agreements reflect what the Town agreed to in 2016, and the Town's liability has not changed substantially. The following outlines the significant changes and implications of the current agreements:

- Land Ownership – In 2016 the Town was to take ownership of the entire area (street, station, platform). After year five, Bembridge would assume ownership of everything but Station Street. The difference now is that Bembridge takes only the station building and the Town keeps the parking area around it. VIA retains ownership of the platform. This change increases the Town's liability with respect to the parking areas, but decreases liability with respect to owning and maintaining a train platform.
- Snow Clearing – Bembridge is responsible for snow on the Station Building property (everything under the roof). The Town is responsible for snow within the parking areas in perpetuity, and on the platform for the term of the lease (20 years).

- **Right to Repossess** – While of no consequence to the Town, VIA’s right to repossess the station was not acceptable to Bembridge for legitimate reasons. This clause has been replaced by a remedy clause that provides VIA recourse to correct safety or operational deficiencies if required.
- **VIA Designated Areas** – As shown on the attached floor plan, VIA has a designated customer waiting area, to which VIA can remotely control access. There is also a space designated for VIA’s technology. The Contribution Agreement ensures that the designated space meets VIA standards without causing Bembridge undue costs. Bembridge has until December 31, 2019 to complete the renovations.

Overall the Town’s most substantial risk the same as it was in 2016. That is, if Bembridge breaches the agreement and does not take ownership of the station after year five. In this case the town will own the station and be obligated to VIA’s waiting area requirements for the 20-year renewable lease. The other risk is owning the parking areas in addition to Station Street. This represents additional snow clearing and maintenance obligations, as well as, potential environmental liability. However, Staff do not feel this is a significant risk increase, especially when weighed against the reduced risk of owning the train platform.

FINANCIAL IMPLICATIONS: At close, the town will receive a one-time payment of \$90,000 from VIA, and Bembridge will pay the Town a total of \$64,980 + HST in monthly installments over five years. The town will be responsible for survey and closing costs, and will contribute up to \$7,000 towards a new furnace. Upon the sale of station to Bembridge at year five, the town will receive tax revenue.

COMMUNITY ENGAGEMENT: In 2015 VIA indicated their desire to divest the Train Station. The Town underwent a public RFP process and received one response from J.E. Bembridge Enterprises. Since then, the public has been kept up to date on this issue with ongoing media releases.

ENVIRONMENTAL IMPLICATIONS: The town takes official ownership of Station Street and the parking areas, which are adjacent to a railway, and other industrial uses.

SOCIAL JUSTICE IMPLICATIONS: There are no social justice implications related to this decision.

ALTERNATIVES: Refuse to enter into the above agreements, or direct staff to negotiate different terms.






ATTACHMENTS:

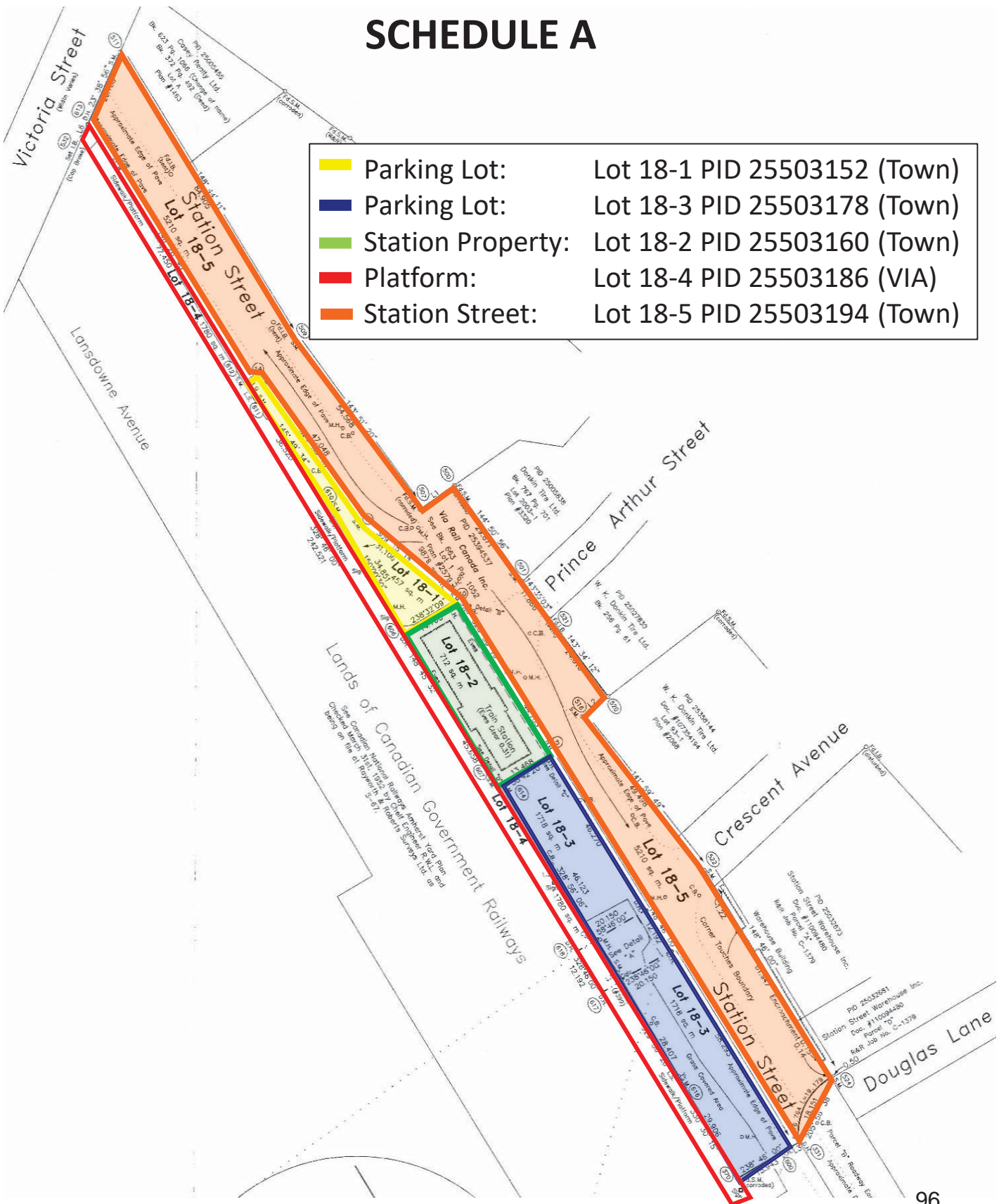
1. Site Plan and Station Floor Plan
2. Agreement of Purchase & Sale between the Town and VIA
3. Station Building Lease between the Town and VIA
4. Agreement of Purchase & Sale between the Town and Bembridge

5. Parking Lot Agreement
6. Renovation Contribution Agreement

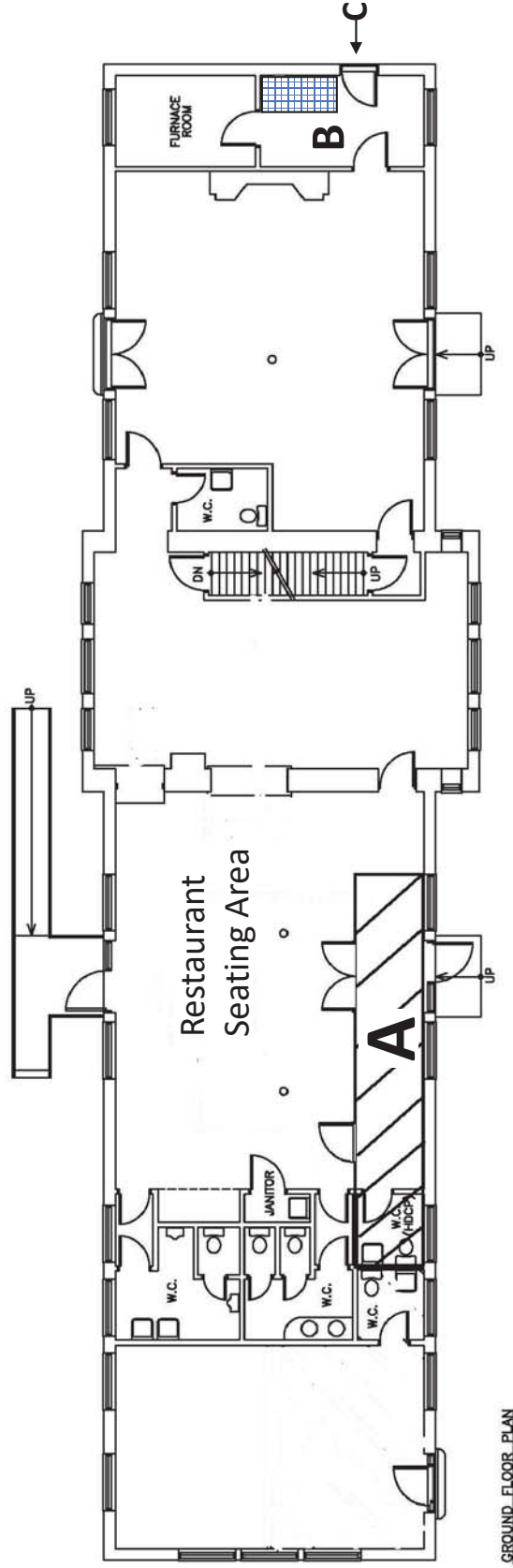
Report prepared by Andrew Fisher
Report and Financial approved by:

SCHEDULE A

	Parking Lot:	Lot 18-1 PID 25503152 (Town)
	Parking Lot:	Lot 18-3 PID 25503178 (Town)
	Station Property:	Lot 18-2 PID 25503160 (Town)
	Platform:	Lot 18-4 PID 25503186 (VIA)
	Station Street:	Lot 18-5 PID 25503194 (Town)



SCHEDULE A



A – Designated Waiting Area: approximately 125 sq.ft. plus barrier-free washroom. VIA shall have access to this space at all times through the exterior door. The Landlord shall have access to all doors.

B – Via Technology Space: Up to 50 sq.ft. to be occupied by VIA technology contained within a locked enclosure and positioned such that all doors are accessible. VIA shall have access through exterior door “C” at all times.

GROUND FLOOR PLAN

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made the ___ day of January 2019.

BETWEEN:

TOWN OF AMHERST, a municipal corporation in the Province of Nova Scotia,
(hereinafter called the "Town")

-and-

VIA RAIL CANADA INC, a corporation incorporated under the laws of Canada with
Head Office in the City of Montreal in the Province of Quebec,
(hereinafter called the "VIA")

WHEREAS VIA has determined to convey certain real property within the boundaries of
the Town of Amherst to the Town, subject to certain terms and conditions as set out herein;

THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In the Agreement, the parties agree to the following terms and conditions:
 - a. "Common Area Lands" means the Parking Lots;
 - b. "Lands" mean the lands owned by VIA except the rail passenger platform in the Town of Amherst as shown on Schedule "A" hereto and being:
 - i. PIDs 25503152 [lot 18-1 & PID 25503178 [lot 18-3] -the Parking Lots
 - ii. PID 25503160 [lot 18-2] the Station Property; and
 - iii. PID 25503194 [lot 18-5] Station Street;
all of which are shown on the plan attached hereto as Schedule "A";
 - c. "Station Property" mean PID 25503160 together with the VIA railway station located thereon; and
 - d. "VIA's Terms and Conditions" means the terms required by VIA for the future use of the Station Property as attached hereto as Schedule "B".
2. In consideration of the terms, conditions, covenants and provisions herein contained and the payments to be made as herein specified, VIA agrees to convey to the Town the Lands on the terms and conditions as provided in this agreement. For greater certainty, the parties confirm that VIA is retaining ownership of PID 25503186, being the rail passenger platform.
3. Transfer of title of the Lands will be by deed, drawn at the expense of the Town and the title and use of the Common Area Lands and the Station Property shall be subject to VIA's Terms and Conditions as set out in Schedules "B" hereto and as affirmed in the Lease annexed hereto as Schedule "C" hereto and the Access and Use Agreement annexed hereto as Schedule "D" .

4. The Lands and all improvements are being transferred to the Town “*as is, where is*” with no warranty or guarantee of any nature. Notwithstanding the foregoing, the Town has received an environmental assessment report on the condition of the railway station building at this time, the whole for information purposes only and without any liability whatsoever.
5. VIA shall pay to the Town one payment for \$90,000 payable on the Closing Date. For greater certainty, this amount will not be payable if there is no closing.
6. On the Closing Date, the Town and VIA shall enter into the following agreements:
 - a. A lease of a portion of the Station Property in the form attached hereto as Schedule “C”; and
 - b. An agreement in relation to VIA’s continued use of the Common Area Lands in the form attached hereto as Schedule “D”.
7. The Town may transfer the Station Property to a party approved in writing by VIA and the following rules shall apply:
 - a. The approved transferee shall assume responsibility for assuming the terms of the lease in the form attached hereto as Schedule “C”; and
 - b. The Town shall be deemed to be released from responsibility for fulfilling the terms of the lease VIA’s Terms and Conditions in the lease in the form attached hereto as Schedule “C”.
8. VIA confirms that it has approved the eventual transfer of title to and immediate occupation of the Station Property by J. E. Bembridge Enterprises Limited (“Bembridge”) for its development of the Station Property as a restaurant or restaurants; provided however that Bembridge shall assume all responsibility for Station Lease attached hereto as Schedule “C”). For greater certainty, the Town acknowledges that Bembridge will not occupy the Station Property prior to closing.
9. The transfer of the Station Property has been approved by Parks Canada in accordance with the Canadian Heritage Railway Station Protection Act subject to following conditions which the Town undertakes to comply with:
 - 1) The Town will respect, protect and not impair or adversely affect the heritage character, as set out in the Heritage Character Statement prepared by the Parks Canada Agency for the Historic Sites and Monuments Board of Canada, dated March 1993, of the station.
 - 2) At the time of transfer of ownership, the Town designates the station pursuant to the relevant provincial or municipal legal authorities to ensure the continuing protection of the heritage character of the station within provincial jurisdiction.

- 3) At the time of transfer of ownership, the Town has taken the necessary steps to have the station also considered for a designation by the province that is equal or greater than the designated referred to in section 2 above.

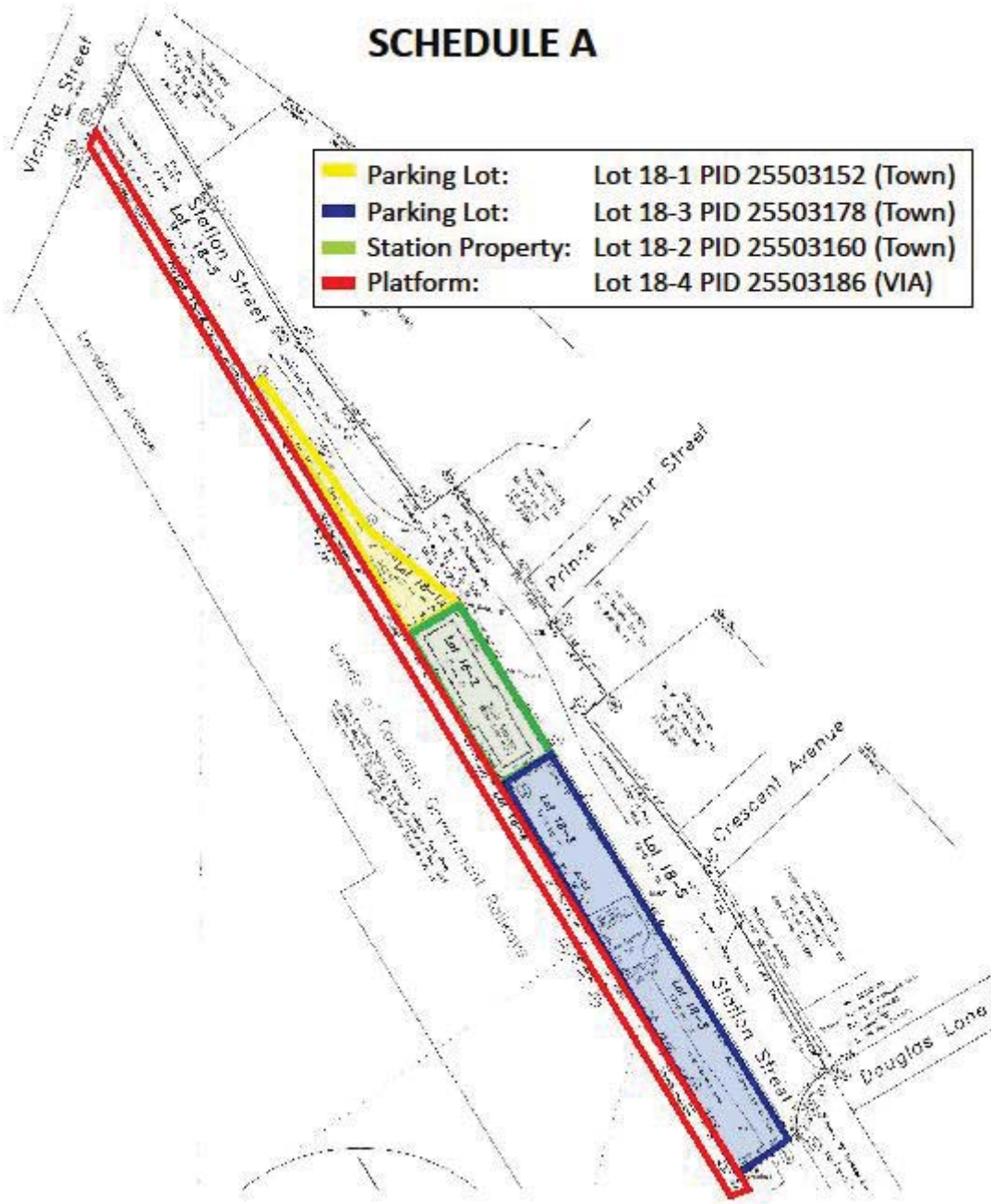
The above terms and conditions recognize the importance of this station, designated, as heritage railway station for the purposes of the *Heritage Railway Stations Protection Act*, for the reasons set out in the Heritage Character Statement referred to in section 1 above.

- 10. The Town shall enter into documentation for the easement between the Town and Canadian National Railway concerning the right of Canadian National Railway to maintain its utility poles and all communication wires strung on its line of utility poles lines along the northeast side of Station Street on terms and conditions to be mutually agreed, if such easement agreement is requested by Canadian National Railway, being understood that it may be completed post-closing.
- 11. The Closing Date shall be March 1, 2019.
- 12. This agreement is not assignable by the Town.
- 13. This agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns.
- 14. For greater certainty, the agreement of purchase and sale entered into by the parties on February 15, 2016 is cancelled and replaced by this agreement upon its execution.

SIGNED AND DELIVERED)	TOWN OF AMHERST
IN THE PRESENCE OF:)	
)	_____
)	Per:
)	Name and title:
)	
)	
)	_____
)	Per:
)	Name and Title:
)	
)	VIA RAIL CANADA INC.
)	
)	_____
)	Per:
)	Name and Title:

**SCHEDULE A
PLAN OF LANDS**

SCHEDULE A



SCHEDULE B
VIA TERMS AND CONDITIONS

1. The Town may use the Station Property for any purposes but will ensure that the Station Property remains a railway station and will designate a portion of the Station Property to be used by VIA in the manner specified herein and that the Town's use of the Station Property shall not cause an adverse effect upon VIA's operations.
2. VIA shall retain ownership and full use of the rail passenger platform adjacent to the CNR tracks and the Town will provide snow removal services for the rail passenger platform.
3. VIA shall have access to sufficient parking spaces for its customers, free of rent, maintenance, operating or capital costs. The Town shall comply with CNR's conditions.
4. VIA shall have use of a heated/lighted waiting area for its customers and to host technology inside the building either in a separate space used by the business occupying the space or incorporated in the space being used by this business. Space shall be provided free of rent, maintenance, operating or capital costs.
5. VIA shall retain the right to maintain its corporate and business signage, free of any charges.
6. VIA shall retain a right of first refusal, should the Town decide to divest of the Station Property or any parts thereof, as more fully described in the Station Lease, provided however that VIA shall waive such right of first refusal if the Town decide to divest the Property to an entity, including J. E. Bembridge Enterprises Ltd., which undertakes to be bound by all the terms and conditions of the Agreement between VIA and the Town, including this right of first refusal;
7. The Town shall indemnify VIA and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Station Property caused by the Town's breach of its obligations towards VIA or by the negligence of the Town or its representatives.
8. Without limiting the generality of Section 6:
 - a. The Town shall maintain Commercial General Liability Insurance covering the liability of the Town and its representatives for bodily injury, including death, for a minimum coverage of \$5,000,000 per occurrence. The insurance shall contain no exclusion related to services or work in proximity to the railway

tracks. The insurance shall include VIA as an additional insured but only with respect to the Town's obligations towards VIA and shall include coverage for:

- i. Personal injury;
- ii. Bodily injury;
- iii. Property damage, including loss of use of property;
- iv. Contingent employer's liability;
- v. Contractual liability;
- vi. Cross liability and/or severability of interest; and
- vii. Non-owned automobile liability

and shall not provide for any exclusion in relation to railway activity.

- b. The Owner shall maintain the All Risks Insurance upon the building on the Station Property for the full replacement cost of the building.
- c. A Standard Owners Form Automobile Liability Insurance in respect of licensed vehicles covering owned and leased vehicles or vehicles operated for the Town and its representatives for limits for a minimum amount of \$2,000,000 per occurrence for bodily injury, death and damage to property with no pollution exclusion. The Town shall supply the same coverage for its own vehicles, subcontractors, agents and distributors.

The policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

9. Prior to the commencement of the Agreement, the Town shall provide VIA with certificates of insurance issued in the name of VIA, dated and signed by an authorized representative of the Town's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to VIA within thirty (30) days after renewal should such renewal occur during the Agreement. The above insurance policies shall include an endorsement whereby VIA shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.
10. The acquisition and maintenance in force of the above insurance provided for in this Section of the Agreement by the Town shall in no manner be construed as to restrict or waive the liabilities, responsibilities or obligations of the Town and its representatives under the Agreement.
11. As of the effective date of the transfer of ownership of the Station, VIA shall remove the Station from its insurance, as the case may be, whether VIA has received a certificate of insurance from the Town or not.

The above terms and conditions shall be confirmed in a formal lease from the Town to VIA containing VIA's standard terms and conditions, for a term of 20 years commencing on March 1, 2019 with a renewal option for an additional term of 20 years. This formal lease shall be mutually agreed upon by the parties no later than March 1, 2019.

**SCHEDULE C
STATION LEASE**

VIA Contract No:

LEASE AGREEMENT

THIS LEASE AGREEMENT is

BETWEEN:

TOWN OF AMHERST
98 East Victoria Street
Amherst, Nova Scotia
B4H 1X6

(hereinafter referred to as the "**Landlord**")

OF THE FIRST PART

AND:

VIA RAIL CANADA INC.
3 Place Ville Marie
Montreal, Quebec
H3B 2C9

(hereinafter referred to as the "**Tenant**")

OF THE SECOND PART

WHEREAS concurrently with the signature of this Lease Agreement, the parties shall enter into an Access and Use Agreement whereby the Town of Amherst agrees to provide irrevocable access to VIA Rail Canada Inc. to the parking lots and rail passenger platform of the Station Property;

WHEREAS in consideration of the rents, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1.0 LEASE

1.1 Subject to the terms and conditions herein the Landlord agrees to lease to the Tenant and the Tenant agrees to lease from the Landlord (the "**Premises**"):

1. for exclusive use, sufficient, adequate and suitable space at the Amherst Station at 27 Station Street, Amherst, NS and being PID 25503160 (the “**Station Property**”) for the Tenant’s technology and operational requirements as shown on and described in **Schedule “A”**. In any event, the location and square footage of the space provided by the Landlord for the Premises shall be sufficient for the Tenant’s requirements as identified in Schedule A attached, provided that the Landlord may relocate the Premises in the future upon sixty (60) days’ prior written notice and upon paying the costs of relocating all of the Tenant’s equipment into the relocated premises with similar leasehold improvements as existed before the relocation, subject to the Tenant’s prior written approval which approval may not be unreasonably withheld.
 2. for use in common with others, of the common areas of the Station Property, waiting room, public washrooms (including handicap accessible washrooms) along with the Station Property lands i.e. the lands within the boundaries of PID 25503160 and outside the Station Property.
- 1.2 The parties agree that the Premises shall be in the Location marked as VIA Designated Waiting Area and approximately 50 square feet of a room for VIA technology as shown in Schedule “A”.
 - 1.3 The Premises shall be used by the Tenant only for the operation of rail passenger services and related activities in the Station Property similar to the use currently operated by the Tenant in the Station Property.
 - 1.4 For greater certainty, the Landlord acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Station Property. The Landlord acknowledges that such Emissions, at any time of day or night, are necessarily incidental to the Tenant’s railway operations. The Landlord has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. The Tenant shall not be responsible to the Landlord for any damage to property or persons located on the Station Property as a result of its railway operations. In addition to its other obligations under this Lease, the Landlord agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the Tenant or any governmental authority.
 - 1.5 The Landlord recognises that the Tenant is a major tenant and shall provide facilities and services accordingly and shall seek the approval in writing of the Tenant for any substantive changes to the operation of the Premises, such approval not to be unreasonably withheld. The Landlord may use the Station Property for any purposes but will ensure that the Station Property remains a railway station and will designate a portion of the Station Property to be used by the Tenant in the manner specified herein and that the Landlord’s use of the Station Property shall not cause an adverse effect upon the Tenant’s operations.

2.0 **TERM**

2.1 This Lease shall be for a term of Twenty (20) years commencing on the 1st day of March 2019 being the date the Tenant shall transfer to the Landlord Station Street, the Station Property, and its other land in Amherst, Nova Scotia and being PIDs 25503152,25503160,25503178, and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

2.2 It understood that the Tenant will not have access for itself or its customers to the waiting area and washrooms in the Premises in the Station Property building until the initial renovations are completed on the building by the Landlord or the occupier J.E. Bembridge Enterprises Limited. Such renovations shall commence by May 1st, 2019 and completed no later than the 31st day of December 2019. Such renovations shall take into consideration that the Tenant's technology shall be accommodated.

3.0 **RENT**

3.1 The Tenant shall pay the Landlord a rent of one-dollar (\$1.00) (the "**Rent**") payable on or before the Commencement Date.

3.2 Rent is inclusive of operating and capital costs, insurance and taxes.

4.0 **RENEWAL**

4.1 The Tenant may, without restriction and so long as it is not in default, renew the Lease for one (1) additional term of Twenty (20) years each by giving a sixty (60) day notice to the Landlord prior to the end date of the Lease, on the same terms and conditions as are applicable to the initial Lease, except with regard to rent.

5.0 **OPERATING COSTS**

5.1 For the initial Term and subsequent renewal term the Rent shall be inclusive of all property costs whatsoever namely costs for gas, electricity, water/sewer, maintenance, property taxes, snow removal, and common areas, which operating costs shall be borne solely by the Landlord. CN Flagging costs will be borne by the Tenant.

6.0 **REPAIRS, MAINTENANCE AND OPERATION**

6.1 The Landlord shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Station Property building and Premises, building services systems, improvements, fixtures and equipment, and any addition or alteration thereto, now or thereafter located thereon and, at its own expense, operate, maintain and keep the same in good order, repair and condition throughout, both exterior and interior, and promptly make all needed repairs and replacements, structural or otherwise, (of a quality and class at least

equal to the original) including the roof, foundations and appurtenances, water, sewer and gas connections, pipes and mains, electrical, heating, and ventilating equipment, and all other fixtures, machinery, facilities and equipment belonging to or connected with the Station Property building and Premises, subject to reasonable wear and tear, damage by the Tenant, and obligations of the Tenant to repair or pay cost thereof.

6.2 The Landlord shall pay all charges for the utilities and covenants at its sole cost and expense to:

- (a) Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation;
- (b) Provide all utility services to the Station Property including water, sewer, electrical, natural gas/oil and garbage removal;
- (c) Keep the lands appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (d) Remove snow and ice from the land appurtenant to the Station Property building and Premises;
- (e) Provide janitorial services and shall maintain the Premises in a good and reasonable state of cleanliness as outlined in Schedule B; and
- (f) To provide all other services set out in Schedule B.

7.0 REPAIR OR REPLACEMENT IN THE EVENT OF DAMAGE OR CONSTRUCTION AND ENTRY, CONSTRUCTION AND DEVELOPMENT

7.1 If the Premises are damaged by fire or any other hazard such that the Premises are rendered unusable or such that convenient access is prevented, then the Landlord shall, within thirty (30) days of the occurrence of the damage, initiate that repair or replacement of the Premises and forthwith allow an abatement of the Rent which recognizes the nature and extent of the damage, or inconvenience, until such time as the Premises have been rebuilt or access restored. If the Landlord does not initiate the restoration of the Premises or access within the said thirty (30) days, or having commenced the restoration, does not proceed to complete it with reasonable dispatch, then the Tenant may give the Landlord fourteen (14) days' notice and thereafter may undertake the restoration itself and the Landlord shall be responsible for all costs associated with such restoration. For greater clarity, initiate the repair or replacement shall mean any of inspection, design, applying for permits, repair, or replacement or other acts to prepare for or complete the work undertaken. Notwithstanding the foregoing in Section 7.1, the Tenant shall be responsible and pay for any damage or destruction caused by it or those for whom it is in law responsible. The Landlord may undertake work provided the Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate facilities required to maintain the Tenant's operation and Services.

7.2 The Landlord may undertake work provided:

1. The Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain the Tenant's operation and Services.
2. Access for emergency vehicles and maintenance vehicles to the Station and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to the Tenant, acting reasonably, being made.
4. During any period when the Station Property or the railway platform is inaccessible or when accessibility is substantially reduced, the Landlord shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of the Tenant's Services including necessary access to rail passenger platforms, Station Property, security, access to the temporary accommodation from the street and parking, parking for passengers within reasonable distance of the Lands, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Lands, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
5. Such alternate lands and facilities shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Lands and have a reasonable access to the rail passenger platform.
6. Any such alternative arrangements shall be at the Landlord's sole expense and shall be subject to the approval of both parties, acting reasonably.
7. If the Landlord does not provide acceptable alternate accommodations prior to the Premises or Lands becoming unusable then the Tenant may immediately undertake the provision of the reasonable alternate accommodations itself and the Landlord shall be responsible for all reasonable costs associated with such work or the Tenant may take whatever action under law is required to maintain its operation and Services.
8. The parties acknowledge that the Station Property does not have Lands for the provision of temporary facilities in the event of major damage to the Station Property Building. The parties agree that if temporary facilities are required outside the Building, these temporary facilities shall be within a moveable building or trailer to be moved by the Landlord unto the adjacent parking lot on PID 25503178 [Lot 18-3].

7.3 Any work in the vicinity of the platform, tracks or capable of falling into the railway corridor shall be approved by the Tenant and CN in writing and be protected by a flagman at the Tenant's cost.

8.0 ENVIRONMENTAL MATTERS

8.1 The Landlord shall be responsible for any environmental contamination caused by the Landlord, those for whom the Landlord is in law responsible and, subject to the Tenant's responsibilities in this Section 8.1, any third parties, and the Tenant shall be responsible for any environmental contamination caused by the Tenant or those for whom the Tenant is in law responsible or by the Tenant's customers.

9.0 NOTIFICATION OF DEFECT

The Tenant shall promptly give the Landlord notice in writing of any accident, defect or damage within the Premises, systems or services for which the Landlord has an obligation under this Lease and which have come to the Tenant's attention. Subject to Section 7.0, if the Landlord fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts the Tenant's use of the Premises, then the Tenant may undertake any necessary repairs and the Landlord will compensate the Tenant for all costs incurred.

10.0 ACCESS AND USE

10.1 The Landlord shall permit the public access to and use of the Premises for the purpose of embarking and disembarking from passenger trains and use of the Premises facilities including in particular without limiting the generality hereof, access to and use of waiting areas and washrooms.

10.2 The Landlord will ensure the Premises are open and such access and use shall be allowed during all periods when the Tenant's scheduled arrival time of the train services. In the event that the Tenant makes any change in the scheduled arrival times of the train services, Tenant shall make best efforts to provide sixty (60) days advance written notice to the Landlord and such changes shall be accommodated by the Landlord. It is expected that the Landlord will identify, in consultation with the Tenant, other means or alternative arrangements to accommodate VIA customers if train schedule is outside of the normal operating hours of the restaurant.

10.3 The Landlord shall allow the Tenant to install various equipment and signs needed for the operation and advertising of its services including but not limited to: electronic ticket machines; train information display monitors with either local or remote access; poster displays; remote access PA, the location of which shall be subject to the prior written approval of the Landlord which approval may not be unreasonably withheld. The Tenant shall retain the right to maintain its corporate and business signage, free of any charges.

10.4 The Landlord shall permit the Tenant, its employees, agents or servants to enter the Premises at any reasonable time as may be required by the Tenant. VIA'S employees shall be provided access to VIA's Technology space all times from the exterior door "C" as shown on Schedule "A".

11.0 QUIET ENJOYMENT

11.1 The Landlord hereby covenants with the Tenant for quiet enjoyment, subject to the terms of this Lease Agreement.

12.0 COMPLIANCE WITH LAWS

12.1 The Tenant and Landlord shall each comply with and observe all federal, provincial and local government laws, bylaws, rules, regulations, orders, permits and licenses in force with respect to the Premises and any alterations to the Premises with respect to each of their respective obligations under this Lease Agreement.

13.0 ASSIGNMENT

13.1 Subject to the Tenant's right of first refusal herein, the Station may be sold and this Lease may be concurrently assigned by the Landlord to the Landlord's successor in title without the Tenant's consent provided that the landlord's successor in title undertakes in writing to the Tenant to be bound by all the terms and conditions of the Lease and agreement between the Landlord and the Tenant. Upon sale of the Station Property and assignment of this Lease by the Landlord, the Landlord shall be released from the covenants of the Lease and the Landlord shall have no further obligation to the Tenant.

13.2 This Lease shall not be assigned or transferred by the Tenant without the prior written consent of the Landlord except to a successor corporation providing passenger railway service.

13.3 The Tenant shall retain a right of first refusal whereby the Landlord shall offer the Tenant the right to purchase the Station Property before the Landlord offers it to third parties (i.e. the Tenant shall be the first to make an offer to purchase rather than having to match an offer received by the Landlord from a third party) and the right to match an offer made by a third party if the Tenant does not initially made an offer itself, should the Landlord decide to divest of the Station Property, provided however that the Tenant shall waive such right of first refusal if the Landlord decide to divest the Station Property to an entity, including J. E. Bembridge Enterprises Ltd., which undertakes to be bound by all the terms and conditions of the Lease between the Tenant and the Landlord, including this right of first refusal. The Tenant specifically confirms that it has approved the sale of the Station Property to J. E. Bembridge Enterprises Ltd.

14.0 DIRECTION AS TO EMERGENCY AND PAYMENTS

- 14.1 The Landlord may from time to time direct the Tenant to use a telephone number designated by the Landlord for notifying the Landlord of any emergency situation.
- 14.2 Until further notice the Tenant shall pay Rent and any other amount payable under this Lease at the office of the Landlord set forth in Section 20.0.

15.0 INSURANCE

- 15.1 The Landlord undertakes to obtain and maintain, at its own expense, for the duration of this Lease, the following insurance coverage with insurers carrying a financial rating of "A" or better:
- a) Commercial general liability covering the liability of the Landlord and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include the Tenant as an additional insured and shall provide for the following coverage:
 - Personal injury
 - Bodily injury
 - Unlicensed vehicles / motorized equipment
 - Property damage, including loss of use of property
 - Contingent Employer's Liability
 - Contractual Liability assumed under this contract
 - Cross Liability and/or Severability of interests
 - Non-owned automobile liability
 - b) The Landlord shall maintain the All Risks Insurance upon the building on the Station Property for the full replacement cost of the building.
 - c) Automobile liability insurance covering the liability of the Landlord for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Landlord for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of the Lease, the Landlord shall provide the Tenant with certificates of insurance issued in the name of the Tenant, dated and signed by an authorized representative of the Landlord's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to the Tenant within thirty (30) days after renewal should such renewal occur during the Lease. The above insurance policies shall include an endorsement whereby the Tenant shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.

The acquisition and maintenance of insurance by the Landlord as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Landlord and its representatives under this Lease.

The Tenant confirms that it is self-insured and may provide a letter of confirmation upon request from the Landlord on or after the effective lease start date.

16.0 NO WASTE OR NUISANCE

16.1 The Tenant shall not:

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Premises; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

17.0 INDEMNITY

The Landlord shall indemnify the Tenant and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Station caused by the Landlord's breach of its obligations towards the Tenant or by the negligence of the Landlord or its representatives.

Neither party shall be liable to the other party in connection with this Lease, whether based on contract, tort (including negligence and strict liability), under warranty or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town's emergency call center for immediate response. If such material default is not remedied within the reasonable period indicated in VIA's notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Town's (or its successors) costs.

18.0 **YIELDING UP**

18.1 The Tenant shall surrender the Premises at the expiration or earlier termination, of the Term in good repair (together with chattels as the Tenant may elect to leave, if any) to the Landlord, excepting only reasonable wear and tear, damage from fire, storm, tempest and other casualty, and removal of tenant's chattels and the Tenant shall not be liable to pay compensation or to make any other payment to the Landlord in respect of restoration or repair of the Premises.

19.0 **TERMINATION**

The Tenant shall have the right to terminate this Lease by giving a notice in writing to the Landlord sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

20.0 **NOTICE**

20.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Landlord:

TOWN OF AMHERST
98 East Victoria Street
Amherst, NS
B4H 1X6
Attention: Greg Herrett CAO

if to the Tenant:

VIA RAIL CANADA INC.
3 Place Ville-Marie, Suite 500
Montréal, QC
H3B 2C9
Attention: Senior Manager, Real Estate

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by

strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

21.0 LAW TO THE CONTRARY

21.1 This Lease shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

22.0 SEVERANCE

22.1 If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Lease.

23.0 GOVERNING LAW

23.1 This Lease shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

24.0 WAIVER

24.1 Waiver by the Landlord of any default by the Tenant shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

25.0 REFERENCES

25.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

26.0 AMENDMENT

26.1 This Lease may not be modified or amended except by an instrument in writing signed by the Landlord and the Tenant.

27.0 REMEDIES NOT EXCLUSIVE

27.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

28.0 CHARGES ON TITLE

28.1 The Tenant shall abide by and observe all requirements and restrictions on the title to the Premises registered prior to the Commencement Date.

29.0 CAPTIONS

29.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

30.0 INTERPRETATION

30.1 Wherever the singular or masculine or neuter is used in this Lease, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

31.0 ENTIRE LEASE

31.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Lease along with the Access and Use Agreement upon their execution.

32.0 TIME OF ESSENCE

32.1 Time is of the essence of this Lease.

33.0 FURTHER ASSURANCES

33.1 The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Lease.

34.0 COVENANTS AND CONDITIONS

34.1 All of the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

35.0 CONFIDENTIALITY

35.1 This Lease and the information contained herein are confidential, subject to the provisions of any acts, notably the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

36.0 ACKNOWLEDGMENT

The parties acknowledge that:

- (1) this Lease is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Lease. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Lease from a legal advisor of their choice; and
- (2) the parties negotiated this Lease jointly and this Lease shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

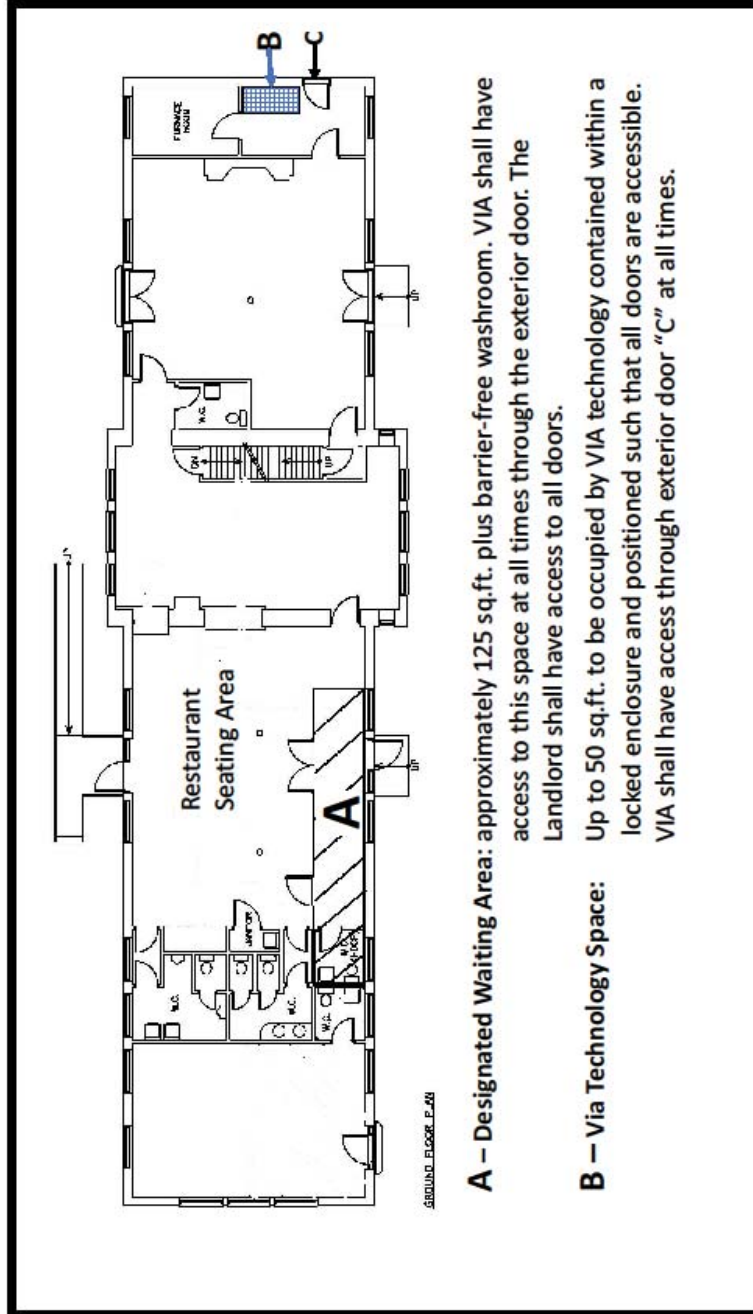
We have understood, consented to and signed two original copies of this Lease on the day and year below written.

VIA RAIL CANADA INC.		TOWN OF AMHERST		TOWN OF AMHERST	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

SCHEDULE "A"

DESCRIPTION OF PREMISES & PLANS

SCHEDULE A



A – Designated Waiting Area: approximately 125 sq.ft. plus barrier-free washroom. VIA shall have access to this space at all times through the exterior door. The Landlord shall have access to all doors.

B – Via Technology Space: Up to 50 sq.ft. to be occupied by VIA technology contained within a locked enclosure and positioned such that all doors are accessible. VIA shall have access through exterior door "C" at all times.

SCHEDULE "B"

LANDLORD'S SERVICES

The Landlord covenants to supply the following specified services:

1. **ELECTRICAL, MECHANICAL & PLUMBING INSTALLATIONS**

Provide all utilities and male, female and handicapped washrooms appropriate to the Premises and its use and the regular and proper maintenance of all electrical (including lamp fixture ballasts), mechanical and plumbing installations in the Premises and necessary for their adequate operation. Provide cleaning and maintenance of all lighting fixtures and installation of such new tubes and bulbs as may be required.

2. **HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS**

Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation.

3. **HOT AND COLD WATER**

Provide an adequate hot and cold water supply to the Premises.

4. **REDECORATION & REFURBISHMENT**

Undertake a regular program of repair of all public and common areas of the Premises to maintain them in a suitable condition for passenger use.

5. **REFUSE DISPOSAL**

Provide proper sanitary storage and weekly (or more often) disposal of all refuse as needed to ensure a clean and odour free facility to the extent reasonably possible.

6. **EMERGENCY FACILITIES AND SECURITY**

Provide regular and proper maintenance and testing of all emergency and security installations, including the maintenance of fire alarms, sprinklers, fire extinguishers, clear exit corridors and stairs, closure of fire doors, development of an Emergency Response Plan and the monitoring of intrusion alarms and hold-up alarms.

7. **PROVISION OF PAY PHONE AND SEATING**

To permit a pay phone and seating for Tenant passengers within the main waiting area of the Premises at the expense of VIA or the public utility or telecommunication providing the pay phone.

8. **PEST CONTROL**

Provide a regular service to ensure that no infestations of pests occur or that they are dealt with in a reasonable manner.

9. **JANITORIAL**

The regular and effective cleaning of the exterior of the Premises and its windows, the interior common areas and lobbies and washrooms in joint use with any other occupants together with the maintenance of proper and adequate supplies for those washrooms, plus the provision of janitorial services within the Premises, including but limited to:

- Daily cleaning of all porcelain surfaces, including toilets and sinks;
- Maintain the required amounts of toilet paper, towels, soap and deodorizers;
- Daily cleaning of all dispensers for toilet paper, towels and soap;
- Daily dusting, sweeping, and spot cleaning of all surfaces including windows as well as sweeping, vacuuming, washing and polishing of floors;
- Daily removal of litter and refuse from interior and exterior.

**SCHEDULE D
ACCESS AND USE AGREEMENT**

VIA Contract No:

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT is

BETWEEN:

TOWN OF AMHERST

98 East Victoria Street

Amherst, NS

B4H 1X6

(hereinafter referred to as the "**Town**")

OF THE FIRST PART

AND:

VIA RAIL CANADA INC.

3 Place Ville Marie

Montreal, Québec

H3B 2C9

(hereinafter referred to as the "**VIA**")

OF THE SECOND PART

WHEREAS concurrently with the signature of this Access and Use Agreement, the parties shall enter into a Lease Agreement whereby the Town of Amherst agrees to lease to VIA Rail Canada Inc. the Station Property;

WHEREAS in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1.0 ACCESS AND USE

- 1.1. Subject to the terms and conditions herein **the Town agrees to provide** irrevocable access to VIA to the parking lots adjacent to the Amherst Station located at 27 Station Street, Amherst, NS and being PID 25503160 (the "Station Property") for use in common with

others, which parking lots are Lot 18-1 and 18-3 as shown on the subdivision survey record in the Cumberland County Land Registration Office as document no. 112135141, which lots are respectively PIDs 25503152 and 25503178 for vehicle pick up and drop off area, vehicular crossings, walkways, parking areas including handicap parking, and any other Station Property lands and which parcels are referenced herein as the “Common Area Lands” and for which copy of drawings of all referenced lands and parcels are contained in Schedule “A”. For greater certainty, the Town agrees VIA shall have rights with respect to the **Common Area Lands** for:

- (a) access and use of the Common Area Lands in common with others;
- (b) access to the Station Property from Station Street and from the rail passenger platform;
- (c) access to the rail passenger platform from Station Street and from the Station Property; and
- (d) use of the said rail passenger platform, being PID 25503186 and Lot 18-4 on the subdivision survey of VIA’s land and as shown on Schedule A attached;

which rights shall be similar to the current rights of VIA on the Common Area Lands, notably with respect to use and operation of VIA’s Services, and are more specifically described as follows (collectively called the “**Access and Use Rights**”) for the Common Area Lands: the Town grants to VIA its employees, licensees, contractors and customers the right to enter the Common Area Lands at all times as pedestrians or with vehicles and equipment, for the operation of rail passenger services and related activities in the Station Property. The Town shall maintain clear and sufficient access to meet VIA’s operational requirements throughout the term of this Access and Use Agreement and shall not unreasonably block or impede the passage over the Common Area Lands.

- 1.2. The Town acknowledges that VIA is a major tenant and that the Common Area Lands shall be used by VIA only for the operation of rail passenger services and related activities around the Station Property. VIA shall have full access to the passenger platform adjacent to the CNR tracks and access to sufficient parking spaces for its customers, free of rent, maintenance, operating or capital costs. The Town shall comply with CNR’s conditions. For greater certainty, the Town acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Common Area Lands. The Town acknowledges that such Emissions, at any time of day or night, are necessarily incidental to VIA’s railway operations. The Town has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. VIA shall not be responsible to the Town for any damage to property or persons located on the Common Area Lands as a result of its railway operations. In addition to its other obligations under this Lease, the Town agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the VIA or any governmental authority.

2.0 **TERM**

2.1 This Access and Use Agreement shall be for a term of Twenty (20) years commencing on the 1st day of March, 2019 and being the date that VIA shall transfer to the Town Station Street, the Station Property and the Common Area Lands, and being PIDs 25503152, 25503160, 25503178 and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

3.0 **RENT**

3.1 VIA shall pay the Town a rent of one dollar (\$1.00) (the "**Rent**") for the access to and use of the Common Area Lands, the sufficiency of which use payable on or before the Commencement Date.

3.2 Rent is inclusive of all costs.

4.0 **RENEWAL**

4.1 VIA may, without restriction and so long as it is not in default, renew this Access and Use Agreement for one (1) additional term of Twenty (20) years provided it renews its Lease for the Station Property dated even date herewith by giving a sixty (60) day notice to the Town prior to the end date of this Access and Use Agreement, on the same terms and conditions as are applicable to the initial term of this Access and Use Agreement, except with regard to rent.

5.0 **OPERATING COSTS**

5.1 For the initial Term and subsequent renewal term, the Rent shall be inclusive of all property costs whatsoever namely maintenance (sweeping, lighting, painting, etc.), property taxes and snow removal, which operating costs shall be borne solely by the Town. CN Flagging costs will be borne by VIA.

5.2 The Town shall also remove snow from the rail passenger platform adjacent to the Common Areas and the Station Property.

6.0 **REPAIRS, MAINTENANCE AND OPERATION**

6.1 The Town shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Common Area Lands and parking lots subject to reasonable wear and tear, damage by the VIA, and obligations of the VIA to repair or pay cost thereof.

6.2 The Town shall at its sole cost and expense to:

- (a) Keep each and every sidewalk, motor vehicle parking area, and passageway adjoining, contiguous or appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (b) Remove snow and ice from the Common Area Lands and including the platform and common walkways as indicate.

6.3 The Town may undertake work on the Common Area Lands provided:

1. VIA has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain VIA's operation and Services.
2. Access for emergency vehicles and maintenance vehicles to the Station Property and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to VIA, acting reasonably, being made.
4. During any period when the Station or the railway platform is inaccessible or when accessibility is substantially reduced, the Town shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of VIA's Services including necessary access to rail passenger platform, street and parking, parking for passengers within reasonable distance of the Station Property, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Station Property, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
5. Such alternate lands shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Common Area Lands and have a reasonable access to the rail passenger platform.
6. Any such alternative arrangements shall be at the Town sole expense and shall be subject to the approval of both parties, acting reasonably.
7. If the Town does not provide acceptable alternate access prior to the Common Area Lands becoming unusable, then VIA may immediately undertake the provision of the reasonable alternate parking and access and the Town shall be responsible for all reasonable costs associated with such work or the VIA may take whatever action under law is required to maintain its operation and Services.

6.4 Any work in the vicinity of the railway platform or tracks or capable of falling in the railway corridor shall be approved by the VIA and CN in writing and be protected by a flagman at the Town's costs.

7.0 ENVIRONMENTAL MATTERS

7.1 The Town shall be responsible for any environmental contamination caused by the Town, those for whom the Town is in law responsible and VIA shall be responsible for any environmental contamination caused by the VIA or those for whom the VIA is in law responsible or by the VIA's customers.

8.0 NOTIFICATION OF DEFECT

8.1 The Town shall promptly give VIA notice in writing of any accident, defect or damage within the Common Area Lands, systems or services for which the Town has an obligation under this Access and Use Agreement and which have come to VIAs attention. Subject to Section 6.0, if the Town fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts VIA's use of the Common Area Lands, then VIA may undertake any necessary repairs and the Town will compensate VIA for all costs incurred.

9.0 ACCESS AND USE

9.1 The Town shall permit the public access to and use of the Common Area Lands for the purpose of embarking and disembarking from passenger trains and use of all passenger related facilities including in particular and without limiting the generality hereof, access to and use of the rail passenger platform, parking, vehicle pick up and drop off area.

The Town shall permit VIA, its employees, agents or servants to enter the Station Property from the Common Area Lands at any time as may be required by VIA.

10.0 QUIET ENJOYMENT

10.1 The Town hereby covenants with VIA for quiet enjoyment of the Common Area Lands in common with others.

11.0 ASSIGNMENT

11.1 This Access and Use Agreement shall not be assigned or transferred by the Town.

11.2 This Access and Use Agreement shall not be assigned or transferred by VIA without the prior written consent of the Town except to a successor corporation.

12.0 DIRECTION AS TO EMERGENCY

12.1 The Town may from time to time direct VIA to use a telephone number designated by the Town for notifying the Town of any emergency situation.

13.0 INSURANCE

13.1 The Town undertakes to obtain and maintain, at its own expense, for the duration of this Access and Use Agreement, the following insurance coverage with insurers carrying a financial rating of "A" or better:

- a) Commercial general liability covering the liability of the Town and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include VIA as an additional insured and shall provide for the following coverage:
 - Personal injury
 - Bodily injury
 - Unlicensed vehicles / motorized equipment
 - Property damage, including loss of use of property
 - Contingent Employer's Liability
 - Contractual Liability assumed under this contract
 - Cross Liability and/or Severability of interests
 - Non-owned automobile liability

- b) Automobile liability insurance covering the liability of the Town for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Town for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of this Access and Use Agreement, the Town shall provide the VIA with certificates of insurance issued in the name of VIA, dated and signed by an authorized representative of the Town's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to VIA within thirty (30) days after renewal should such renewal occur during the term of the Access and Use Agreement. The above insurance policies shall include an endorsement whereby VIA shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.

The acquisition and maintenance of insurance by the Town as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Town and its representatives under this Access and Use Agreement.

VIA confirms that it is self-insured and may provide a letter of confirmation upon request from the Town on or after the effective Access and Use Agreement start date.

14.0 NO WASTE OR NUISANCE

14.1 VIA shall not:

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Common Area Lands; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

15.0 INDEMNITY AND REPOSSESSION

The Town shall indemnify VIA and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Common Area Lands caused by the Town's breach of its obligations towards VIA or by the negligence of the Town or its representatives.

Neither party shall be liable to the other party in connection with this Access and Use Agreement, whether based on contract, tort (including negligence and strict liability), under warning or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town's emergency call center for immediate response. If such material default is not remedied within the reasonable period indicated in VIA's notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Town's (or its successors) costs.

16.0 TERMINATION

VIA shall have the right to terminate this Access and Use Agreement by giving a notice in writing to the Town sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

17.0 NOTICE

17.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Town:

TOWN OF AMHERST
98 East Victoria Street
Amherst, NS
B4H 1X6

Attention:

if to VIA:

VIA RAIL CANADA INC.
3 Place Ville-Marie
Suite 500
Montréal, QC
H3B 2C9

Attention: Senior Manager, Real Estate

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

18.0 LAW TO THE CONTRARY

18.1 This Access and Use Agreement shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

19.0 SEVERANCE

19.1 If any portion of this Access and Use Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Access and Use Agreement.

20.0 GOVERNING LAW

20.1 This Access and Use Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

21.0 WAIVER

21.1 Waiver by the Town of any default by VIA shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

22.0 REFERENCES

22.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

23.0 AMENDMENT

23.1 This Access and Use Agreement may not be modified or amended except by an instrument in writing signed by the Town and VIA.

24.0 REMEDIES NOT EXCLUSIVE

24.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

25.0 CHARGES ON TITLE

25.1 There shall be no charges on title of the Common Area Lands.

26.0 CAPTIONS

26.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

27.0 INTERPRETATION

27.1 Wherever the singular or masculine or neuter is used in this Access and Use Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

28.0 ENTIRE AGREEMENT

28.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Access and Use Agreement along with the Lease upon their execution.

29.0 TIME OF ESSENCE

29.1 Time is of the essence of this Lease.

30.0 FURTHER ASSURANCES

30.1 The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Access and Use Agreement.

31.0 COVENANTS AND CONDITIONS

31.1 All the provisions of this Access and Use Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

32.0 CONFIDENTIALITY

32.1 This Access and Use Agreement and the information contained herein are confidential, subject to the provisions of any acts, notably the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

33.0 ACKNOWLEDGMENT

The parties acknowledge that:

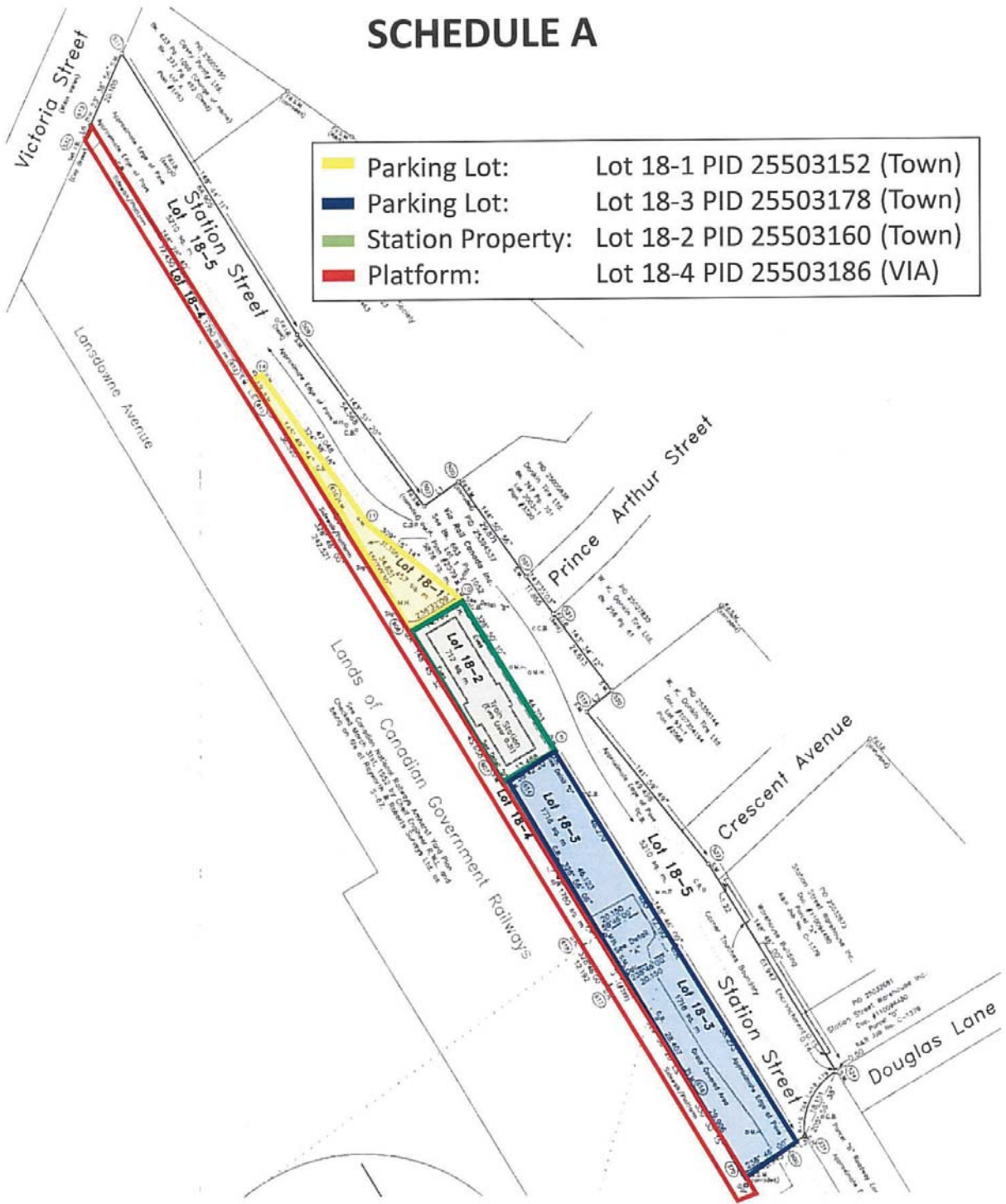
- (3) this Access and Use Agreement is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Access and Use Agreement. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Access and Use Agreement from a legal advisor of their choice; and
- (4) the parties negotiated this Access and Use Agreement jointly and this Access and Use Agreement shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

We have understood, consented to and signed two original copies of this Lease on the day and year below written.

VIA RAIL CANADA INC.		TOWN OF AMHERST		TOWN OF AMHERST	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

SCHEDULE A – DRAWINGS LANDS AND PARCELS

SCHEDULE A



VIA Contract No:

LEASE AGREEMENT

THIS LEASE AGREEMENT is

BETWEEN:

TOWN OF AMHERST
98 East Victoria Street
Amherst, Nova Scotia
B4H 1X6

(hereinafter referred to as the "**Landlord**")

OF THE FIRST PART

AND:

VIA RAIL CANADA INC.
3 Place Ville Marie
Montreal, Quebec
H3B 2C9

(hereinafter referred to as the "**Tenant**")

OF THE SECOND PART

WHEREAS concurrently with the signature of this Lease Agreement, the parties shall enter into an Access and Use Agreement whereby the Town of Amherst agrees to provide irrevocable access to VIA Rail Canada Inc. to the parking lots and rail passenger platform of the Station Property;

WHEREAS in consideration of the rents, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1.0 LEASE

1.1 Subject to the terms and conditions herein the Landlord agrees to lease to the Tenant and the Tenant agrees to lease from the Landlord (the "**Premises**"):

Landlord (Amherst)	Tenant (VIA)
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1. for exclusive use, sufficient, adequate and suitable space at the Amherst Station at 27 Station Street, Amherst, NS and being PID 25503160 (the “**Station Property**”) for the Tenant’s technology and operational requirements as shown on and described in **Schedule “A”**. In any event, the location and square footage of the space provided by the Landlord for the Premises shall be sufficient for the Tenant’s requirements as identified in Schedule A attached, provided that the Landlord may relocate the Premises in the future upon sixty (60) days’ prior written notice and upon paying the costs of relocating all of the Tenant’s equipment into the relocated premises with similar leasehold improvements as existed before the relocation, subject to the Tenant’s prior written approval which approval may not be unreasonably withheld.
2. for use in common with others, of the common areas of the Station Property, waiting room, public washrooms (including handicap accessible washrooms) along with the Station Property lands i.e. the lands within the boundaries of PID 25503160 and outside the Station Property.
- 1.2 The parties agree that the Premises shall be in the Location marked as VIA Designated Waiting Area and approximately 50 square feet of a room for VIA technology as shown in Schedule “A”.
- 1.3 The Premises shall be used by the Tenant only for the operation of rail passenger services and related activities in the Station Property similar to the use currently operated by the Tenant in the Station Property.
- 1.4 For greater certainty, the Landlord acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Station Property. The Landlord acknowledges that such Emissions, at any time of day or night, are necessarily incidental to the Tenant’s railway operations. The Landlord has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. The Tenant shall not be responsible to the Landlord for any damage to property or persons located on the Station Property as a result of its railway operations. In addition to its other obligations under this Lease, the Landlord agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the Tenant or any governmental authority.
- 1.5 The Landlord recognises that the Tenant is a major tenant and shall provide facilities and services accordingly and shall seek the approval in writing of the Tenant for any substantive changes to the operation of the Premises, such approval not to be unreasonably withheld. The Landlord may use the Station Property for any purposes but will ensure that the Station Property remains a railway station and will designate a portion of the Station Property to be used by the Tenant in the manner specified herein

Landlord (Amherst)	Tenant (VIA)
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and that the Landlord's use of the Station Property shall not cause an adverse effect upon the Tenant's operations.

2.0 TERM

2.1 This Lease shall be for a term of Twenty (20) years commencing on the 1st day of March, 2019 being the date the Tenant shall transfer to the Landlord Station Street, the Station Property, and its other land in Amherst, Nova Scotia and being PIDs 25503152, 25503160, 25503178, and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

2.2 It understood that the Tenant will not have access for itself or its customers to the waiting area and washrooms in the Premises in the Station Property building until the initial renovations are completed on the building by the Landlord or the occupier J.E. Bembridge Enterprises Limited. Such renovations shall commence by May 1st, 2019 and completed no later than the 31st day of December 2019. Such renovations shall take into consideration that the Tenant's technology shall be accommodated.

3.0 RENT

3.1 The Tenant shall pay the Landlord a rent of one-dollar (\$1.00) (the "**Rent**") payable on or before the Commencement Date.

3.2 Rent is inclusive of operating and capital costs, insurance and taxes.

4.0 RENEWAL

4.1 The Tenant may, without restriction and so long as it is not in default, renew the Lease for one (1) additional term of Twenty (20) years each by giving a sixty (60) day notice to the Landlord prior to the end date of the Lease, on the same terms and conditions as are applicable to the initial Lease, except with regard to rent.

5.0 OPERATING COSTS

5.1 For the initial Term and subsequent renewal term the Rent shall be inclusive of all property costs whatsoever namely costs for gas, electricity, water/sewer, maintenance, property taxes, snow removal, and common areas, which operating costs shall be borne solely by the Landlord. CN Flagging costs will be borne by the Tenant.

6.0 REPAIRS, MAINTENANCE AND OPERATION

6.1 The Landlord shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Station Property building and Premises, building services systems, improvements, fixtures and equipment, and any addition or alteration thereto, now or

Landlord (Amherst)	Tenant (VIA)
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thereafter located thereon and, at its own expense, operate, maintain and keep the same in good order, repair and condition throughout, both exterior and interior, and promptly make all needed repairs and replacements, structural or otherwise, (of a quality and class at least equal to the original) including the roof, foundations and appurtenances, water, sewer and gas connections, pipes and mains, electrical, heating, and ventilating equipment, and all other fixtures, machinery, facilities and equipment belonging to or connected with the Station Property building and Premises, subject to reasonable wear and tear, damage by the Tenant, and obligations of the Tenant to repair or pay cost thereof.

6.2 The Landlord shall pay all charges for the utilities and covenants at its sole cost and expense to:

- (a) Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation;
- (b) Provide all utility services to the Station Property including water, sewer, electrical, natural gas/oil and garbage removal;
- (c) Keep the lands appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (d) Remove snow and ice from the land appurtenant to the Station Property building and Premises;
- (e) Provide janitorial services and shall maintain the Premises in a good and reasonable state of cleanliness as outlined in Schedule B; and
- (f) To provide all other services set out in Schedule B.

7.0 REPAIR OR REPLACEMENT IN THE EVENT OF DAMAGE OR CONSTRUCTION AND ENTRY, CONSTRUCTION AND DEVELOPMENT

7.1 If the Premises are damaged by fire or any other hazard such that the Premises are rendered unusable or such that convenient access is prevented, then the Landlord shall, within thirty (30) days of the occurrence of the damage, initiate that repair or replacement of the Premises and forthwith allow an abatement of the Rent which recognizes the nature and extent of the damage, or inconvenience, until such time as the Premises have been rebuilt or access restored. If the Landlord does not initiate the restoration of the Premises or access within the said thirty (30) days, or having commenced the restoration, does not proceed to complete it with reasonable dispatch, then the Tenant may give the Landlord fourteen (14) days' notice and thereafter may undertake the restoration itself and the Landlord shall be responsible for all costs associated with such restoration. For greater clarity, initiate the repair or replacement shall mean any of inspection, design, applying for permits, repair, or replacement or other acts to prepare for or complete the work undertaken. Notwithstanding the foregoing in Section 7.1, the Tenant shall be responsible and pay for any damage or destruction caused by it or those for whom it is in law

Landlord (Amherst)	Tenant (VIA)
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responsible. The Landlord may undertake work provided the Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate facilities required to maintain the Tenant’s operation and Services.

7.2 The Landlord may undertake work provided:

1. The Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain the Tenant’s operation and Services.

2. Access for emergency vehicles and maintenance vehicles to the Station and railway platform is maintained at all times, in accordance with all applicable laws and regulations.

3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to the Tenant, acting reasonably, being made.

4. During any period when the Station Property or the railway platform is inaccessible or when accessibility is substantially reduced, the Landlord shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of the Tenant’s Services including necessary access to rail passenger platforms, Station Property, security, access to the temporary accommodation from the street and parking, parking for passengers within reasonable distance of the Lands, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Lands, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.

5. Such alternate lands and facilities shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Lands and have a reasonable access to the rail passenger platform.

6. Any such alternative arrangements shall be at the Landlord’s sole expense and shall be subject to the approval of both parties, acting reasonably.

7. If the Landlord does not provide acceptable alternate accommodations prior to the Premises or Lands becoming unusable then the Tenant may immediately undertake the provision of the reasonable alternate accommodations itself and the Landlord shall be responsible for all reasonable costs associated with such work or the Tenant may take whatever action under law is required to maintain its operation and Services.

8. The parties acknowledge that the Station Property does not have Lands for the provision of temporary facilities in the event of major damage to the Station Property Building. The parties agree that if temporary facilities are required outside the Building, these temporary facilities shall be within a moveable building or trailer to be moved by the Landlord unto the adjacent parking lot on PID 25503178 [Lot 18-3].

Landlord (Amherst)	Tenant (VIA)
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7.3 Any work in the vicinity of the platform, tracks or capable of falling into the railway corridor shall be approved by the Tenant and CN in writing and be protected by a flagman at the Tenant’s cost.

8.0 ENVIRONMENTAL MATTERS

8.1 The Landlord shall be responsible for any environmental contamination caused by the Landlord, those for whom the Landlord is in law responsible and, subject to the Tenant’s responsibilities in this Section 8.1, any third parties, and the Tenant shall be responsible for any environmental contamination caused by the Tenant or those for whom the Tenant is in law responsible or by the Tenant’s customers.

9.0 NOTIFICATION OF DEFECT

The Tenant shall promptly give the Landlord notice in writing of any accident, defect or damage within the Premises, systems or services for which the Landlord has an obligation under this Lease and which have come to the Tenant's attention. Subject to Section 7.0, if the Landlord fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts the Tenant’s use of the Premises, then the Tenant may undertake any necessary repairs and the Landlord will compensate the Tenant for all costs incurred.

10.0 ACCESS AND USE

10.1 The Landlord shall permit the public access to and use of the Premises for the purpose of embarking and disembarking from passenger trains and use of the Premises facilities including in particular without limiting the generality hereof, access to and use of waiting areas and washrooms.

10.2 The Landlord will ensure the Premises are open and such access and use shall be allowed during all periods when the Tenant’s scheduled arrival time of the train services. In the event that the Tenant makes any change in the scheduled arrival times of the train services, Tenant shall make best efforts to provide sixty (60) days advance written notice to the Landlord and such changes shall be accommodated by the Landlord. It is expected that the Landlord will identify, in consultation with the Tenant, other means or alternative arrangements to accommodate VIA customers if train schedule is outside of the normal operating hours of the restaurant.

10.3 The Landlord shall allow the Tenant to install various equipment and signs needed for the operation and advertising of its services including but not limited to: electronic ticket machines; train information display monitors with either local or remote access; poster displays; remote access PA, the location of which shall be subject to the prior written approval of the Landlord which approval may not be unreasonably withheld. The Tenant shall retain the right to maintain its corporate and business signage, free of any charges.

Landlord (Amherst)	Tenant (VIA)
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10.4 The Landlord shall permit the Tenant, its employees, agents or servants to enter the Premises at any reasonable time as may be required by the Tenant. VIA'S employees shall be provided access to VIA's Technology space all times from the exterior door "C" as shown on Schedule "A".

11.0 QUIET ENJOYMENT

11.1 The Landlord hereby covenants with the Tenant for quiet enjoyment, subject to the terms of this Lease Agreement.

12.0 COMPLIANCE WITH LAWS

12.1 The Tenant and Landlord shall each comply with and observe all federal, provincial and local government laws, bylaws, rules, regulations, orders, permits and licenses in force with respect to the Premises and any alterations to the Premises with respect to each of their respective obligations under this Lease Agreement.

13.0 ASSIGNMENT

13.1 Subject to the Tenant's right of first refusal herein, the Station may be sold and this Lease may be concurrently assigned by the Landlord to the Landlord's successor in title without the Tenant's consent provided that the landlord's successor in title undertakes in writing to the Tenant to be bound by all the terms and conditions of the Lease and agreement between the Landlord and the Tenant. Upon sale of the Station Property and assignment of this Lease by the Landlord, the Landlord shall be released from the covenants of the Lease and the Landlord shall have no further obligation to the Tenant.

13.2 This Lease shall not be assigned or transferred by the Tenant without the prior written consent of the Landlord except to a successor corporation providing passenger railway service.

13.3 The Tenant shall retain a right of first refusal whereby the Landlord shall offer the Tenant the right to purchase the Station Property before the Landlord offers it to third parties (i.e. the Tenant shall be the first to make an offer to purchase rather than having to match an offer received by the Landlord from a third party) and the right to match an offer made by a third party if the Tenant does not initially made an offer itself, should the Landlord decide to divest of the Station Property, provided however that the Tenant shall waive such right of first refusal if the Landlord decide to divest the Station Property to an entity, including J. E. Bembridge Enterprises Ltd., which undertakes to be bound by all the terms and conditions of the Lease between the Tenant and the Landlord, including this right of first refusal. The Tenant specifically confirms that it has approved the sale of the Station Property to J. E. Bembridge Enterprises Ltd.

Landlord (Amherst)	Tenant (VIA)
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14.0 DIRECTION AS TO EMERGENCY AND PAYMENTS

- 14.1 The Landlord may from time to time direct the Tenant to use a telephone number designated by the Landlord for notifying the Landlord of any emergency situation.
- 14.2 Until further notice the Tenant shall pay Rent and any other amount payable under this Lease at the office of the Landlord set forth in Section 20.0.

15.0 INSURANCE

- 15.1 The Landlord undertakes to obtain and maintain, at its own expense, for the duration of this Lease, the following insurance coverage with insurers carrying a financial rating of "A" or better:
 - a) Commercial general liability covering the liability of the Landlord and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include the Tenant as an additional insured and shall provide for the following coverage:
 - Personal injury
 - Bodily injury
 - Unlicensed vehicles / motorized equipment
 - Property damage, including loss of use of property
 - Contingent Employer's Liability
 - Contractual Liability assumed under this contract
 - Cross Liability and/or Severability of interests
 - Non-owned automobile liability
 - b) The Landlord shall maintain the All Risks Insurance upon the building on the Station Property for the full replacement cost of the building.
 - c) Automobile liability insurance covering the liability of the Landlord for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Landlord for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of the Lease, the Landlord shall provide the Tenant with certificates of insurance issued in the name of the Tenant, dated and signed by an authorized representative of the Landlord's insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to the Tenant within thirty (30) days after renewal should such renewal occur during the Lease. The above insurance policies shall include an endorsement whereby the Tenant shall be provided with a thirty (30) days advance

Landlord (Amherst)	Tenant (VIA)
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notice in case of any important modification, termination or resolution of the insurance coverage.

The acquisition and maintenance of insurance by the Landlord as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Landlord and its representatives under this Lease.

The Tenant confirms that it is self-insured and may provide a letter of confirmation upon request from the Landlord on or after the effective lease start date.

16.0 NO WASTE OR NUISANCE

16.1 The Tenant shall not:

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Premises; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

17.0 INDEMNITY

The Landlord shall indemnify the Tenant and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Station caused by the Landlord’s breach of its obligations towards the Tenant or by the negligence of the Landlord or its representatives.

Neither party shall be liable to the other party in connection with this Lease, whether based on contract, tort (including negligence and strict liability), under warranty or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town’s emergency call center for immediate response. If such material default is not remedied within the reasonable period indicated in VIA’s notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area

Landlord (Amherst)	Tenant (VIA)
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Lands or threatening train operations, itself (notably through a contractor), at the Town's (or its successors) costs.

18.0 YIELDING UP

18.1 The Tenant shall surrender the Premises at the expiration or earlier termination, of the Term in good repair (together with chattels as the Tenant may elect to leave, if any) to the Landlord, excepting only reasonable wear and tear, damage from fire, storm, tempest and other casualty, and removal of tenant's chattels and the Tenant shall not be liable to pay compensation or to make any other payment to the Landlord in respect of restoration or repair of the Premises.

19.0 TERMINATION

The Tenant shall have the right to terminate this Lease by giving a notice in writing to the Landlord sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

20.0 NOTICE

20.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Landlord:

TOWN OF AMHERST
 98 East Victoria Street
 Amherst, NS
 B4H 1X6
 Attention: Greg Herrett CAO

if to the Tenant:

VIA RAIL CANADA INC.
 3 Place Ville-Marie, Suite 500
 Montréal, QC
 H3B 2C9
 Attention: Senior Manager, Real Estate

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or

Landlord (Amherst)	Tenant (VIA)
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at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

21.0 LAW TO THE CONTRARY

21.1 This Lease shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

22.0 SEVERANCE

22.1 If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Lease.

23.0 GOVERNING LAW

23.1 This Lease shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

24.0 WAIVER

24.1 Waiver by the Landlord of any default by the Tenant shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

25.0 REFERENCES

25.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

26.0 AMENDMENT

26.1 This Lease may not be modified or amended except by an instrument in writing signed by the Landlord and the Tenant.

Landlord (Amherst)	Tenant (VIA)
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27.0 REMEDIES NOT EXCLUSIVE

27.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

28.0 CHARGES ON TITLE

28.1 The Tenant shall abide by and observe all requirements and restrictions on the title to the Premises registered prior to the Commencement Date.

29.0 CAPTIONS

29.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

30.0 INTERPRETATION

30.1 Wherever the singular or masculine or neuter is used in this Lease, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

31.0 ENTIRE LEASE

31.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Lease along with the Access and Use Agreement upon their execution.

32.0 TIME OF ESSENCE

32.1 Time is of the essence of this Lease.

33.0 FURTHER ASSURANCES

33.1 The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Lease.

Landlord (Amherst)	Tenant (VIA)
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34.0 COVENANTS AND CONDITIONS

34.1 All of the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

35.0 CONFIDENTIALITY

35.1 This Lease and the information contained herein are confidential, subject to the provisions of any acts, notably the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

36.0 ACKNOWLEDGMENT

The parties acknowledge that:

- (1) this Lease is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Lease. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Lease from a legal advisor of their choice; and
- (2) the parties negotiated this Lease jointly and this Lease shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

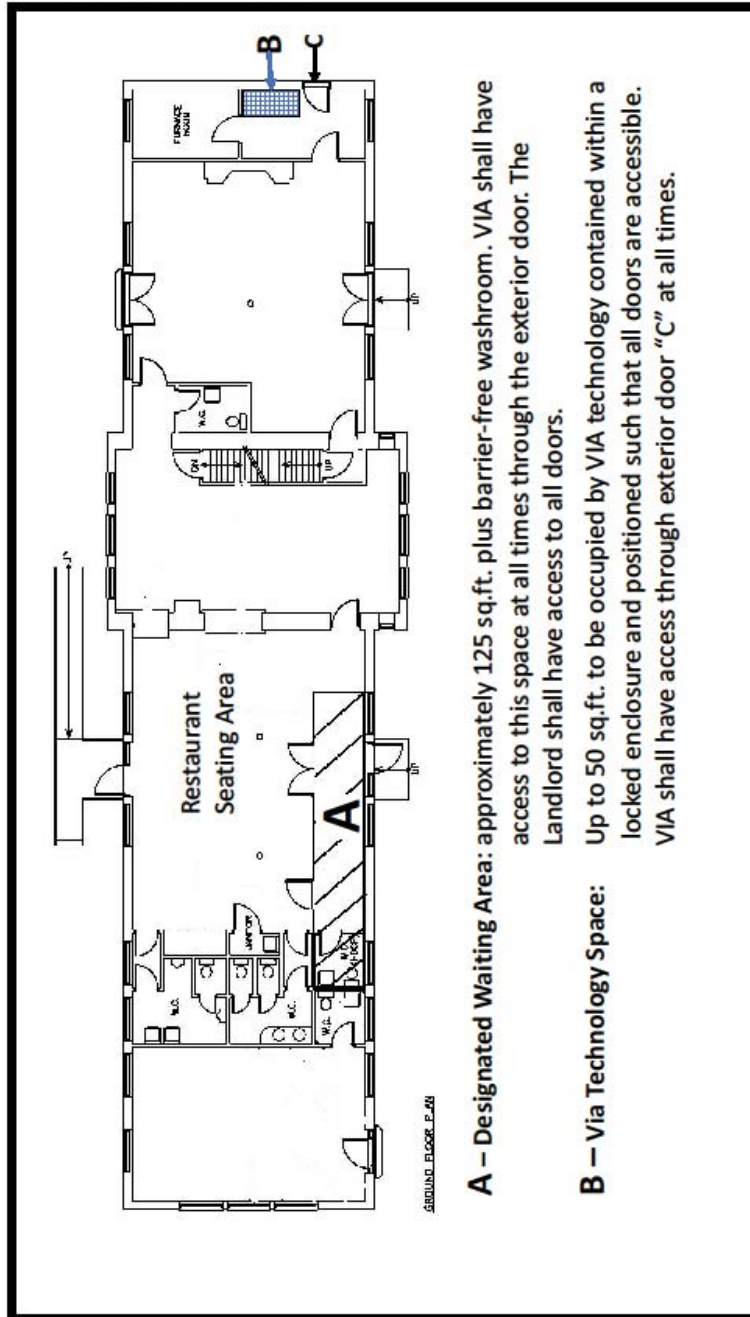
We have understood, consented to and signed two original copies of this Lease on the day and year below written.

VIA RAIL CANADA INC.		TOWN OF AMHERST		TOWN OF AMHERST	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

Landlord (Amherst)	Tenant (VIA)
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SCHEDULE "A"
DESCRIPTION OF PREMISES & PLANS

SCHEDULE A



A – Designated Waiting Area: approximately 125 sq.ft. plus barrier-free washroom. VIA shall have access to this space at all times through the exterior door. The Landlord shall have access to all doors.

B – Via Technology Space: Up to 50 sq.ft. to be occupied by VIA technology contained within a locked enclosure and positioned such that all doors are accessible. VIA shall have access through exterior door "C" at all times.

Landlord (Amherst)	Tenant (VIA)
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SCHEDULE "B"

LANDLORD'S SERVICES

The Landlord covenants to supply the following specified services:

1. ELECTRICAL, MECHANICAL & PLUMBING INSTALLATIONS

Provide all utilities and male, female and handicapped washrooms appropriate to the Premises and its use and the regular and proper maintenance of all electrical (including lamp fixture ballasts), mechanical and plumbing installations in the Premises and necessary for their adequate operation. Provide cleaning and maintenance of all lighting fixtures and installation of such new tubes and bulbs as may be required.

2. HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS

Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation.

3. HOT AND COLD WATER

Provide an adequate hot and cold water supply to the Premises.

4. REDECORATION & REFURBISHMENT

Undertake a regular program of repair of all public and common areas of the Premises to maintain them in a suitable condition for passenger use.

5. REFUSE DISPOSAL

Provide proper sanitary storage and weekly (or more often) disposal of all refuse as needed to ensure a clean and odour free facility to the extent reasonably possible.

Landlord (Amherst)	Tenant (VIA)
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6. EMERGENCY FACILITIES AND SECURITY

Provide regular and proper maintenance and testing of all emergency and security installations, including the maintenance of fire alarms, sprinklers, fire extinguishers, clear exit corridors and stairs, closure of fire doors, development of an Emergency Response Plan and the monitoring of intrusion alarms and hold-up alarms.

7. PROVISION OF PAY PHONE AND SEATING

To permit a pay phone and seating for Tenant passengers within the main waiting area of the Premises at the expense of VIA or the public utility or telecommunication providing the pay phone.

8. PEST CONTROL

Provide a regular service to ensure that no infestations of pests occur or that they are dealt with in a reasonable manner.

9. JANITORIAL

The regular and effective cleaning of the exterior of the Premises and its windows, the interior common areas and lobbies and washrooms in joint use with any other occupants together with the maintenance of proper and adequate supplies for those washrooms, plus the provision of janitorial services within the Premises, including but limited to:

- Daily cleaning of all porcelain surfaces, including toilets and sinks;
- Maintain the required amounts of toilet paper, towels, soap and deodorizers;
- Daily cleaning of all dispensers for toilet paper, towels and soap;
- Daily dusting, sweeping, and spot cleaning of all surfaces including windows as well as sweeping, vacuuming, washing and polishing of floors;
- Daily removal of litter and refuse from interior and exterior.

Landlord (Amherst)	Tenant (VIA)
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THIS RESTATED AND CONSOLIDATED LONG-TERM AGREEMENT OF PURCHASE AND SALE is made the ____ day of January 2019

BETWEEN:

TOWN OF AMHERST, a municipal corporation in the Province of Nova Scotia,
(hereinafter called the “Town”)

-and-

J.E. BEMBRIDGE ENTERPRISES LIMITED, a body corporate with head office in the Town of Amherst in the Province of Nova Scotia,
(hereinafter called the “Purchaser”)

WHEREAS the Town is acquiring from Via Rail Canada Inc. (“VIA”) the lands in the Town owned by VIA (the “VIA Lands”) as described herein which lands include a VIA Railway Station subject to terms and conditions herein for the continued use by VIA of a portion of the land transferred and a portion of the Railway Station;

AND WHEREAS the Town has resolved that it is in the public interest to dispose of that portion of the VIA Lands which includes the VIA Railway Station;

AND WHEREAS the Purchaser has agreed to purchase from the Town that portion of the VIA Lands which includes the VIA Railway Station and to assume full responsibility VIA’s terms and conditions for the Railway Station and in accordance with the terms and conditions of this Agreement and to replace the agreement between the parties dated in December of 2016;

THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In the Agreement, the parties agree that in the Agreement:
 - a. “Effective Date” means the date that VIA transfers title of the VIA Lands to the Town, which shall be the 1st day of March ,2018.
 - b. “Parking Areas” means PIDs 25503152 and 25503178 and being those lots designated as Lot 18-1 and 18-3 on the Subdivision Survey.
 - c. “Station Property” mean PID 25502160 and being Lot 18-2 on the Subdivision Survey and on which is located the VIA Railway Station.
 - d. “Subdivision Survey” means the subdivision of the VIA Lands dated January 17, 2017 and recorded in the Cumberland Land Registration Office as Plan No. 112135141 and creating five separate parcels identified as follows:
 - i. PID 25503152 being Lot 18-1 on the Subdivision Plan and being a parcel of land between Station Street and the rail passenger platform and immediately northwesterly of the Station Property;
 - ii. PID 25503182 and being Lot 18-2 on the Subdivision Plan and being the Station Property;
 - iii. PID 25503178 and being Lot 18-3 on the Subdivision Plan and being an area used for public parking bounded northwesterly by the Station property and between Station Street and the sidewalk/platform;

- iv. PID 25503194 and being Lot 18-4 on the Subdivision Plan and being the rail passenger platform used by VIA and its passengers and employees for ingress and egress from VIA trains and the Station property; and
 - v. PID 25503194 and being Lot 18-5 and the public way know as Station Street; (Herein collectively called the VIA Lands”).
- e. “Town Terms and Conditions” means the Purchaser’s undertakings for the development of the Station Property as agreed by the Town as set out in Schedule A;
 - f. “VIA” means VIA Rail Canada Inc.
 - g. “VIA Lease” means the lease between the Town and dated March 1, 2018, a true copy of which is attached hereto as Schedule “B”.
2. In consideration of the terms, conditions, covenants and provisions herein contained and of the terms, conditions and provisions herein contained and the payments to be made as herein specified, the Town agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Town the Station Property for the sum of sixty-four thousand nine-hundred eighty dollars (\$64,980.00) (the “Purchase Price”) plus HST which Purchase Price shall be paid by equal monthly installments of one thousand eighty three dollars (\$1,083.00) plus HST . The first installment being on the 1st day of March 2019 and on the 1st day of each and every month until the 1st day of February 2024 at which time the purchase price shall be paid in full. The start of the payments shall be deemed adjusted to the date that VIA conveys the VIA Lands to the Town and the monthly payments shall also be adjusted accordingly.
 3. The Purchaser covenants and agrees with the Town to pay to the Town the payments of the Purchase Price and HST on the days as provided herein. The Purchaser acknowledges that as of the date of this agreement, that VIA has not completed the transfer of title of the VIA Lands to the Town and that this agreement is effective concurrently with the date of transfer of title by VIA of the VIA Lands to the Town.
 4. On and from the Effective Date, all expenses, including but not limited to, water rates fuel, electricity, content and liability insurance, utilities, repairs and replacements, including structural replacement for the Property, become the responsibility of the Purchaser.
 5. During the term of this Agreement, the Purchaser shall assume all the obligations of the Town under the VIA Lease. and hold the Town harmless.
 6. The Town confirms its intention to maintain the Parking Areas for the benefit of:
 - a. the public;
 - b. VIA and its passengers and employees; and
 - c. the Purchaser and its employees and patronsand shall endeavor in conjunction with the Purchaser to assure it has access for a loading zone and spaces for accessible parking for its customers.
 7. Upon payment in full of the Purchase Price by the Purchaser and compliance with the Town Terms and Conditions, then the Town shall convey the Station Property to the Purchaser subject to the terms of the VIA Lease.
 8. The parties acknowledge that the Station Property does not have Lands for the provision of temporary facilities for VIA as required by the VIA Lease in the event of major damage to the Station Building. In the event of major damage to the Station Building, the parties agree that if temporary facilities are

required for VIA outside the envelope of the Station Building, these temporary facilities shall be within a moveable building or trailer to be moved by the Purchaser unto the adjacent parking lot on PID 25503178 [Lot 18-3] to be owned by the Town. The Town consents to the placement of temporary facilities by the Purchaser on PID 25503178 during the restoration of the Building. The Purchaser shall provide written prior notice to the Town of the need to use the parking lot for temporary facilities and shall remove those facilities immediately after completion of the restoration of the Station Building.

9. The Purchaser acknowledges that it has been provided a copy of a Phase 1 environmental assessment for the Station Property and the other VIA Lands completed by VIA and accepts the Station Property “as is where is”.
10. The Purchaser acknowledges that the Station Property has been designated as a Heritage Property by the Town and that the Town is required by VIA and Parks Canada to submit an application to the Province of Nova Scotia to register the Property as a Provincial Heritage Property under the N.S. Heritage Property Act as a condition of VIA conveying the Station Property to the Town.
11. The Purchaser acknowledges acceptance and agrees to be bound by the terms of divestiture of the Station Property by VIA set out on the Order in Council attached hereto as Schedule “C”.
12. The Purchaser acknowledges and agrees to be bound by certain terms and conditions for the benefit of VIA and required by VIA in its agreement to convey the Station Property to the Town which terms and conditions are as follows:
 - a. The Purchaser acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “Emissions”) which may affect the use and enjoyment of the Station Property. The Purchaser acknowledges that such Emissions, at any time of day or night, are necessarily incidental to VIA’s railway operations. The Purchaser has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. VIA or the Town shall not be responsible to the Purchaser for any damage to property or persons located on the Station Property as a result of VIA’s railway operations. In addition to its other obligations under this Agreement, the Purchaser agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by VIA or any governmental authority;
 - b. Any work in the vicinity of the platform, tracks or capable of falling into the railway corridor shall be approved by VIA and Canadian National Railway in writing and be protected by a flagman at the Town’s costs;
 - c. In addition to the above mentioned indemnity, in the event of a material breach by the Purchaser (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Purchaser (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Purchaser’s emergency call line for immediate response. If such material default is not remedied within the reasonable period indicated in VIA’s notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Purchaser’s (or its successors) costs.
13. The Purchaser shall have possession of the Station Property on the Effective Date and covenants and

agrees:

- a. To maintain the Property and develop the Property in accordance with the Town Terms and Conditions attached hereto as Schedule A;
 - b. to comply with VIA Lease as provided herein; and
 - c. to provide such assurances to VIA concerning the VIA Lease for the Station Property as VIA requires acting reasonably.
14. The Purchaser covenants to remove the existing non-functional boiler and install a new natural gas boiler within 30 days of the Effective Date. The Purchaser shall invoice the Town for the cost of removal and installation of the new natural gas boiler to maximum of \$7,000.00 and shall permit the Town to inspect the work when completed and provide a copy of the invoice from its contractor in proof of the cost of removal and installation. The Purchaser shall be solely responsible for the removal the existing non-functional boiler subject to the maximum participation of the Town as provided herein.
15. Upon payment in full of the purchase price as herein provided and compliance with the Town Terms and Conditions, the Town covenants to deliver to the Purchaser a good and sufficient deed of the lands and premises, the deed to be prepared at the expense of the Purchaser; subject to the terms of conditions of the VIA Lease and the terms of this agreement for the benefit of VIA.
16. The Purchaser shall insure the building on the Station Property against loss or damage by fire and the usual perils insured against to their full insurable value and will pay the premiums and will produce to the Town evidence of continuation of the insurance at least 30 days before the expiry thereof. The Town shall be first loss payee on the policy or joint insured as determined correct by the Purchaser's insurer. The policy shall include public liability coverage for the benefit of the Town, VIA and the Purchaser for a minimum of Two Million Dollars (\$2,000,000.00) per incident.
17. If the Purchaser defaults in making any of the payments herein for 30 days, or be otherwise in default under this agreement, the Town may, by notice or in writing, cancel this agreement and declare it null and void; or may give the Purchaser 30 days' notice in writing demanding payment of the sum in default, or performance of any covenant or term of this agreement to be performed by the Purchaser, and if the default shall continue for the period of the notice, this agreement shall, at the expiration of the notice, be null and void and of no further effect, and the Purchaser shall forthwith give up possession of the lands and premises, and any amount paid by the Purchaser and improvements made shall be retained by the Town as liquidated damages and not as a penalty; and thereafter the Town may sell, and deal with the lands and premises freed and discharged of any claim of the Purchaser. The notice of the above referenced may be given to the Purchaser's President, or by leaving the notice at the premises, or by mailing the same by registered prepaid mail to the Purchaser's postal address to:
- P.O. Box 279
Amherst, NS
B4H 3Z2
18. The Purchaser covenants that it will keep the building and improvements on the lands in good and substantial repair. If the Purchaser commits any act of waste upon the land or does or permits any other thing by which the value thereof may be diminished, the balance of the Purchase Price shall, at the option of the Town, become due and payable immediately.
19. The Purchaser acknowledges and agrees that it is a condition of the Town in entering into this

**SCHEDULE A
TOWN TERMS AND CONDITIONS**

The Purchaser shall:

- a. Renovate the Station Property within twelve months of the date of the Agreement for use as a restaurant or restaurants;
- b. Open the restaurant or restaurants no later than the 31st day of December 2019.

Landlord (Amherst)	Tenant (VIA)
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SCHEDULE B

VIA Contract No:

LEASE AGREEMENT

THIS LEASE AGREEMENT is

BETWEEN:

TOWN OF AMHERST
98 East Victoria Street
Amherst, Nova Scotia
B4H 1X6

(hereinafter referred to as the "**Landlord**")

OF THE FIRST PART

AND:

VIA RAIL CANADA INC.
3 Place Ville Marie
Montreal, Quebec
H3B 2C9

(hereinafter referred to as the "**Tenant**")

OF THE SECOND PART

WHEREAS concurrently with the signature of this Lease Agreement, the parties shall enter into an Access and Use Agreement whereby the Town of Amherst agrees to provide irrevocable access to VIA Rail Canada Inc. to the parking lots and rail passenger platform of the Station Property;

WHEREAS in consideration of the rents, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1.0 LEASE

1.1 Subject to the terms and conditions herein the Landlord agrees to lease to the Tenant and the Tenant agrees to lease from the Landlord (the "**Premises**"):

Landlord (Amherst)	Tenant (VIA)
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1. for exclusive use, sufficient, adequate and suitable space at the Amherst Station at 27 Station Street, Amherst, NS and being PID 25503160 (the “**Station Property**”) for the Tenant’s technology and operational requirements as shown on and described in **Schedule “A”**. In any event, the location and square footage of the space provided by the Landlord for the Premises shall be sufficient for the Tenant’s requirements as identified in Schedule A attached, provided that the Landlord may relocate the Premises in the future upon sixty (60) days’ prior written notice and upon paying the costs of relocating all of the Tenant’s equipment into the relocated premises with similar leasehold improvements as existed before the relocation, subject to the Tenant’s prior written approval which approval may not be unreasonably withheld.
 2. for use in common with others, of the common areas of the Station Property, waiting room, public washrooms (including handicap accessible washrooms) along with the Station Property lands i.e. the lands within the boundaries of PID 25503160 and outside the Station Property.
- 1.2 The parties agree that the Premises shall be in the Location marked as VIA Designated Waiting Area and approximately 50 square feet of a room for VIA technology as shown in Schedule “A”.
 - 1.3 The Premises shall be used by the Tenant only for the operation of rail passenger services and related activities in the Station Property similar to the use currently operated by the Tenant in the Station Property.
 - 1.4 For greater certainty, the Landlord acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Station Property. The Landlord acknowledges that such Emissions, at any time of day or night, are necessarily incidental to the Tenant’s railway operations. The Landlord has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. The Tenant shall not be responsible to the Landlord for any damage to property or persons located on the Station Property as a result of its railway operations. In addition to its other obligations under this Lease, the Landlord agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the Tenant or any governmental authority.
 - 1.5 The Landlord recognises that the Tenant is a major tenant and shall provide facilities and services accordingly and shall seek the approval in writing of the Tenant for any substantive changes to the operation of the Premises, such approval not to be unreasonably withheld. The Landlord may use the Station Property for any purposes but will ensure that the Station Property remains a railway station and will designate a portion of the Station Property to be

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used by the Tenant in the manner specified herein and that the Landlord's use of the Station Property shall not cause an adverse effect upon the Tenant's operations.

2.0 TERM

2.1 This Lease shall be for a term of Twenty (20) years commencing on the 1st day of March, 2019 being the date the Tenant shall transfer to the Landlord Station Street, the Station Property, and its other land in Amherst, Nova Scotia and being PIDs 25503152, 25503160, 25503178, and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

2.2 It understood that the Tenant will not have access for itself or its customers to the waiting area and washrooms in the Premises in the Station Property building until the initial renovations are completed on the building by the Landlord or the occupier J.E. Bembridge Enterprises Limited. Such renovations shall commence by May 1st, 2019 and completed no later than the 31st day of December 2019. Such renovations shall take into consideration that the Tenant's technology shall be accommodated.

3.0 RENT

3.1 The Tenant shall pay the Landlord a rent of one-dollar (\$1.00) (the "**Rent**") payable on or before the Commencement Date.

3.2 Rent is inclusive of operating and capital costs, insurance and taxes.

4.0 RENEWAL

4.1 The Tenant may, without restriction and so long as it is not in default, renew the Lease for one (1) additional term of Twenty (20) years each by giving a sixty (60) day notice to the Landlord prior to the end date of the Lease, on the same terms and conditions as are applicable to the initial Lease, except with regard to rent.

5.0 OPERATING COSTS

5.1 For the initial Term and subsequent renewal term the Rent shall be inclusive of all property costs whatsoever namely costs for gas, electricity, water/sewer, maintenance, property taxes, snow removal, and common areas, which operating costs shall be borne solely by the Landlord. CN Flagging costs will be borne by the Tenant.

6.0 REPAIRS, MAINTENANCE AND OPERATION

6.1 The Landlord shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Station Property building and Premises, building services systems,

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improvements, fixtures and equipment, and any addition or alteration thereto, now or thereafter located thereon and, at its own expense, operate, maintain and keep the same in good order, repair and condition throughout, both exterior and interior, and promptly make all needed repairs and replacements, structural or otherwise, (of a quality and class at least equal to the original) including the roof, foundations and appurtenances, water, sewer and gas connections, pipes and mains, electrical, heating, and ventilating equipment, and all other fixtures, machinery, facilities and equipment belonging to or connected with the Station Property building and Premises, subject to reasonable wear and tear, damage by the Tenant, and obligations of the Tenant to repair or pay cost thereof.

6.2 The Landlord shall pay all charges for the utilities and covenants at its sole cost and expense to:

- (a) Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation;
- (b) Provide all utility services to the Station Property including water, sewer, electrical, natural gas/oil and garbage removal;
- (c) Keep the lands appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (d) Remove snow and ice from the land appurtenant to the Station Property building and Premises;
- (e) Provide janitorial services and shall maintain the Premises in a good and reasonable state of cleanliness as outlined in Schedule B; and
- (f) To provide all other services set out in Schedule B.

7.0 REPAIR OR REPLACEMENT IN THE EVENT OF DAMAGE OR CONSTRUCTION AND ENTRY, CONSTRUCTION AND DEVELOPMENT

7.1 If the Premises are damaged by fire or any other hazard such that the Premises are rendered unusable or such that convenient access is prevented, then the Landlord shall, within thirty (30) days of the occurrence of the damage, initiate that repair or replacement of the Premises and forthwith allow an abatement of the Rent which recognizes the nature and extent of the damage, or inconvenience, until such time as the Premises have been rebuilt or access restored. If the Landlord does not initiate the restoration of the Premises or access within the said thirty (30) days, or having commenced the restoration, does not proceed to complete it with reasonable dispatch, then the Tenant may give the Landlord fourteen (14) days' notice and thereafter may undertake the restoration itself and the Landlord shall be responsible for all costs associated with such restoration. For greater clarity, initiate the repair or replacement shall mean any of inspection, design, applying for permits, repair, or replacement or other acts to prepare for or complete the work undertaken. Notwithstanding the foregoing in Section 7.1, the Tenant shall be responsible and pay for any damage or destruction caused by

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it or those for whom it is in law responsible. The Landlord may undertake work provided the Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate facilities required to maintain the Tenant’s operation and Services.

7.2 The Landlord may undertake work provided:

1. The Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain the Tenant’s operation and Services.
2. Access for emergency vehicles and maintenance vehicles to the Station and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to the Tenant, acting reasonably, being made.
4. During any period when the Station Property or the railway platform is inaccessible or when accessibility is substantially reduced, the Landlord shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of the Tenant’s Services including necessary access to rail passenger platforms, Station Property, security, access to the temporary accommodation from the street and parking, parking for passengers within reasonable distance of the Lands, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Lands, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
5. Such alternate lands and facilities shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Lands and have a reasonable access to the rail passenger platform.
6. Any such alternative arrangements shall be at the Landlord’s sole expense and shall be subject to the approval of both parties, acting reasonably.
7. If the Landlord does not provide acceptable alternate accommodations prior to the Premises or Lands becoming unusable then the Tenant may immediately undertake the provision of the reasonable alternate accommodations itself and the Landlord shall be responsible for all reasonable costs associated with such work or the Tenant may take whatever action under law is required to maintain its operation and Services.
8. The parties acknowledge that the Station Property does not have Lands for the provision of temporary facilities in the event of major damage to the Station Property Building. The parties agree that if temporary facilities are required outside the Building, these temporary facilities shall be within a moveable building or trailer to be moved by the Landlord unto the adjacent parking lot on PID 25503178 [Lot 18-3].

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7.3 Any work in the vicinity of the platform, tracks or capable of falling into the railway corridor shall be approved by the Tenant and CN in writing and be protected by a flagman at the Tenant's cost.

8.0 ENVIRONMENTAL MATTERS

8.1 The Landlord shall be responsible for any environmental contamination caused by the Landlord, those for whom the Landlord is in law responsible and, subject to the Tenant's responsibilities in this Section 8.1, any third parties, and the Tenant shall be responsible for any environmental contamination caused by the Tenant or those for whom the Tenant is in law responsible or by the Tenant's customers.

9.0 NOTIFICATION OF DEFECT

The Tenant shall promptly give the Landlord notice in writing of any accident, defect or damage within the Premises, systems or services for which the Landlord has an obligation under this Lease and which have come to the Tenant's attention. Subject to Section 7.0, if the Landlord fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts the Tenant's use of the Premises, then the Tenant may undertake any necessary repairs and the Landlord will compensate the Tenant for all costs incurred.

10.0 ACCESS AND USE

10.1 The Landlord shall permit the public access to and use of the Premises for the purpose of embarking and disembarking from passenger trains and use of the Premises facilities including in particular without limiting the generality hereof, access to and use of waiting areas and washrooms.

10.2 The Landlord will ensure the Premises are open and such access and use shall be allowed during all periods when the Tenant's scheduled arrival time of the train services. In the event that the Tenant makes any change in the scheduled arrival times of the train services, Tenant shall make best efforts to provide sixty (60) days advance written notice to the Landlord and such changes shall be accommodated by the Landlord. It is expected that the Landlord will identify, in consultation with the Tenant, other means or alternative arrangements to accommodate VIA customers if train schedule is outside of the normal operating hours of the restaurant.

10.3 The Landlord shall allow the Tenant to install various equipment and signs needed for the operation and advertising of its services including but not limited to: electronic ticket machines; train information display monitors with either local or remote access; poster displays; remote access PA, the location of which shall be subject to the prior written

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approval of the Landlord which approval may not be unreasonably withheld. The Tenant shall retain the right to maintain its corporate and business signage, free of any charges.

10.4 The Landlord shall permit the Tenant, its employees, agents or servants to enter the Premises at any reasonable time as may be required by the Tenant. VIA’S employees shall be provided access to VIA’s Technology space all times from the exterior door “C” as shown on Schedule “A”.

11.0 **QUIET ENJOYMENT**

11.1 The Landlord hereby covenants with the Tenant for quiet enjoyment, subject to the terms of this Lease Agreement.

12.0 **COMPLIANCE WITH LAWS**

12.1 The Tenant and Landlord shall each comply with and observe all federal, provincial and local government laws, bylaws, rules, regulations, orders, permits and licenses in force with respect to the Premises and any alterations to the Premises with respect to each of their respective obligations under this Lease Agreement.

13.0 **ASSIGNMENT**

13.1 Subject to the Tenant’s right of first refusal herein, the Station may be sold and this Lease may be concurrently assigned by the Landlord to the Landlord’s successor in title without the Tenant’s consent provided that the landlord’s successor in title undertakes in writing to the Tenant to be bound by all the terms and conditions of the Lease and agreement between the Landlord and the Tenant. Upon sale of the Station Property and assignment of this Lease by the Landlord, the Landlord shall be released from the covenants of the Lease and the Landlord shall have no further obligation to the Tenant.

13.2 This Lease shall not be assigned or transferred by the Tenant without the prior written consent of the Landlord except to a successor corporation providing passenger railway service.

13.3 The Tenant shall retain a right of first refusal whereby the Landlord shall offer the Tenant the right to purchase the Station Property before the Landlord offers it to third parties (i.e. the Tenant shall be the first to make an offer to purchase rather than having to match an offer received by the Landlord from a third party) and the right to match an offer made by a third party if the Tenant does not initially made an offer itself, should the Landlord decide to divest of the Station Property, provided however that the Tenant shall waive such right of first refusal if the Landlord decide to divest the Station Property to an entity, including J. E. Bembridge Enterprises Ltd., which undertakes to be bound by all the terms and conditions of

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the Lease between the Tenant and the Landlord, including this right of first refusal. The Tenant specifically confirms that it has approved the sale of the Station Property to J. E. Bembridge Enterprises Ltd.

14.0 DIRECTION AS TO EMERGENCY AND PAYMENTS

14.1 The Landlord may from time to time direct the Tenant to use a telephone number designated by the Landlord for notifying the Landlord of any emergency situation.

14.2 Until further notice the Tenant shall pay Rent and any other amount payable under this Lease at the office of the Landlord set forth in Section 20.0.

15.0 INSURANCE

15.1 The Landlord undertakes to obtain and maintain, at its own expense, for the duration of this Lease, the following insurance coverage with insurers carrying a financial rating of “A” or better:

- a) Commercial general liability covering the liability of the Landlord and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include the Tenant as an additional insured and shall provide for the following coverage:
 - Personal injury
 - Bodily injury
 - Unlicensed vehicles / motorized equipment
 - Property damage, including loss of use of property
 - Contingent Employer's Liability
 - Contractual Liability assumed under this contract
 - Cross Liability and/or Severability of interests
 - Non-owned automobile liability
- b) The Landlord shall maintain the All Risks Insurance upon the building on the Station Property for the full replacement cost of the building.
- c) Automobile liability insurance covering the liability of the Landlord for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Landlord for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of the Lease, the Landlord shall provide the Tenant with certificates of insurance issued in the name of the Tenant, dated and signed by an authorized

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representative of the Landlord’s insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to the Tenant within thirty (30) days after renewal should such renewal occur during the Lease. The above insurance policies shall include an endorsement whereby the Tenant shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.

The acquisition and maintenance of insurance by the Landlord as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Landlord and its representatives under this Lease.

The Tenant confirms that it is self-insured and may provide a letter of confirmation upon request from the Landlord on or after the effective lease start date.

16.0 NO WASTE OR NUISANCE

16.1 The Tenant shall not:

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Premises; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

17.0 INDEMNITY

The Landlord shall indemnify the Tenant and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Station caused by the Landlord’s breach of its obligations towards the Tenant or by the negligence of the Landlord or its representatives.

Neither party shall be liable to the other party in connection with this Lease, whether based on contract, tort (including negligence and strict liability), under warranty or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town’s emergency call center for

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immediate response. If such material default is not remedied within the reasonable period indicated in VIA’s notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Town’s (or its successors) costs.

18.0 YIELDING UP

18.1 The Tenant shall surrender the Premises at the expiration or earlier termination, of the Term in good repair (together with chattels as the Tenant may elect to leave, if any) to the Landlord, excepting only reasonable wear and tear, damage from fire, storm, tempest and other casualty, and removal of tenant's chattels and the Tenant shall not be liable to pay compensation or to make any other payment to the Landlord in respect of restoration or repair of the Premises.

19.0 TERMINATION

The Tenant shall have the right to terminate this Lease by giving a notice in writing to the Landlord sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

20.0 NOTICE

20.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Landlord:

TOWN OF AMHERST
 98 East Victoria Street
 Amherst, NS
 B4H 1X6
 Attention: Greg Herrett CAO

if to the Tenant:

VIA RAIL CANADA INC.
 3 Place Ville-Marie, Suite 500
 Montréal, QC
 H3B 2C9
 Attention: Senior Manager, Real Estate

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Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

21.0 LAW TO THE CONTRARY

21.1 This Lease shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

22.0 SEVERANCE

22.1 If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Lease.

23.0 GOVERNING LAW

23.1 This Lease shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

24.0 WAIVER

24.1 Waiver by the Landlord of any default by the Tenant shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

25.0 REFERENCES

25.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

26.0 AMENDMENT

26.1 This Lease may not be modified or amended except by an instrument in writing signed by the Landlord and the Tenant.

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27.0 REMEDIES NOT EXCLUSIVE

27.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

28.0 CHARGES ON TITLE

28.1 The Tenant shall abide by and observe all requirements and restrictions on the title to the Premises registered prior to the Commencement Date.

29.0 CAPTIONS

29.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

30.0 INTERPRETATION

30.1 Wherever the singular or masculine or neuter is used in this Lease, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

31.0 ENTIRE LEASE

31.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Lease along with the Access and Use Agreement upon their execution.

32.0 TIME OF ESSENCE

32.1 Time is of the essence of this Lease.

33.0 FURTHER ASSURANCES

33.1 The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Lease.

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34.0 COVENANTS AND CONDITIONS

34.1 All of the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

35.0 CONFIDENTIALITY

35.1 This Lease and the information contained herein are confidential, subject to the provisions of any acts, notably the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

36.0 ACKNOWLEDGMENT

The parties acknowledge that:

- (1) this Lease is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Lease. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Lease from a legal advisor of their choice; and
- (2) the parties negotiated this Lease jointly and this Lease shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

We have understood, consented to and signed two original copies of this Lease on the day and year below written.

VIA RAIL CANADA INC.		TOWN OF AMHERST		TOWN OF AMHERST	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

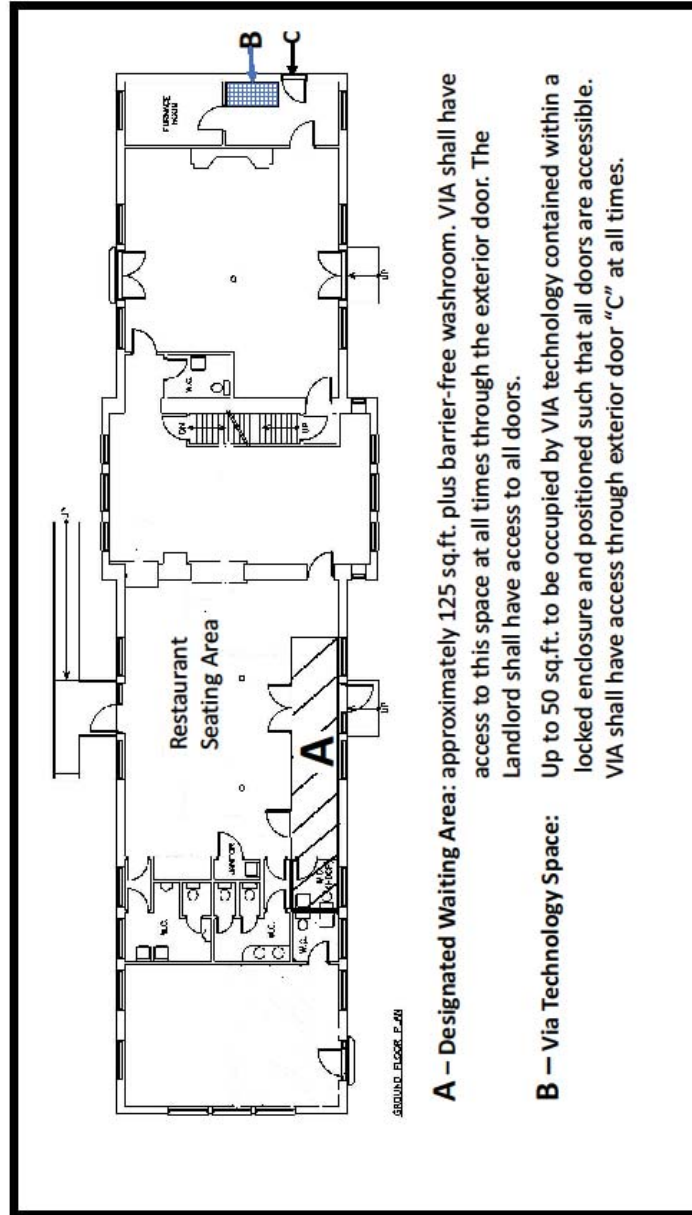
CONFIDENTIAL

VIA Rail Canada Inc.

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SCHEDULE "A"
DESCRIPTION OF PREMISES & PLANS

SCHEDULE A



SCHEDULE "B"

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LANDLORD'S SERVICES

The Landlord covenants to supply the following specified services:

1. **ELECTRICAL, MECHANICAL & PLUMBING INSTALLATIONS**

Provide all utilities and male, female and handicapped washrooms appropriate to the Premises and its use and the regular and proper maintenance of all electrical (including lamp fixture ballasts), mechanical and plumbing installations in the Premises and necessary for their adequate operation. Provide cleaning and maintenance of all lighting fixtures and installation of such new tubes and bulbs as may be required.

2. **HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS**

Heat the Station Property to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation.

3. **HOT AND COLD WATER**

Provide an adequate hot and cold water supply to the Premises.

4. **REDECORATION & REFURBISHMENT**

Undertake a regular program of repair of all public and common areas of the Premises to maintain them in a suitable condition for passenger use.

5. **REFUSE DISPOSAL**

Provide proper sanitary storage and weekly (or more often) disposal of all refuse as needed to ensure a clean and odour free facility to the extent reasonably possible.

6. **EMERGENCY FACILITIES AND SECURITY**

Provide regular and proper maintenance and testing of all emergency and security installations, including the maintenance of fire alarms, sprinklers, fire extinguishers, clear

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exit corridors and stairs, closure of fire doors, development of an Emergency Response Plan and the monitoring of intrusion alarms and hold-up alarms.

7. **PROVISION OF PAY PHONE AND SEATING**

To permit a pay phone and seating for Tenant passengers within the main waiting area of the Premises at the expense of VIA or the public utility or telecommunication providing the pay phone.

8. **PEST CONTROL**

Provide a regular service to ensure that no infestations of pests occur or that they are dealt with in a reasonable manner.

9. **JANITORIAL**

The regular and effective cleaning of the exterior of the Premises and its windows, the interior common areas and lobbies and washrooms in joint use with any other occupants together with the maintenance of proper and adequate supplies for those washrooms, plus the provision of janitorial services within the Premises, including but limited to:

- Daily cleaning of all porcelain surfaces, including toilets and sinks;
- Maintain the required amounts of toilet paper, towels, soap and deodorizers;
- Daily cleaning of all dispensers for toilet paper, towels and soap;
- Daily dusting, sweeping, and spot cleaning of all surfaces including windows as well as sweeping, vacuuming, washing and polishing of floors;
- Daily removal of litter and refuse from interior and exterior.

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SCHEDULE C



Historic Sites and Monuments Board of Canada and Parks Canada

30 Victoria Street (PC-03-M)
Gatineau QC J8X 0B3

Commission des lieux et monuments historiques du Canada et Parcs Canada

30 rue Victoria (PC-03-M)
Gatineau QC J8X 0B3



November 8, 2017

Mr. Allan Fisher
Senior Manager, Real Estate
VIA Rail Canada, Inc.
3, Place Ville-Marie, bureau 500
Montréal (Québec) H3B 2C9

Dear Mr. Fisher :

As you know, VIA Rail Canada filed an application on April 11, 2016, under Section 6 of the *Heritage Railway Stations Protection Act (HRSPA)*, for authorization to sell its Heritage Railway Station in Amherst, Nova Scotia to the Town of Amherst.

I am pleased to forward you a certified copy of Order-in-Council P.C. 2017-1063 authorizing the sale of this station building, pursuant to section 8 of the HRSPA.

Sincerely,

Mandy McCarthy
Director, Heritage Designations and Programs Branch
Executive Secretary, Historic Sites and Monuments Board of Canada
Parks Canada

Historic Sites and Monuments Board of Canada
hsmbc-clmhc.gc.ca (website) | hsmbc-clmhc@pc.gc.ca (email)
1.855.283.8730 (toll free phone number) | 819.420.9260 (fax)

Enclosure



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P.C. 2017-1063
August 14, 2017

His Excellency the Governor General in Council,
on the recommendation of the Minister of the Environment,
pursuant to section 8 of the *Heritage Railway Stations
Protection Act*, authorizes VIA Rail Canada Inc. to sell its railway
station in Amherst, Nova Scotia, to the Town of Amherst, in
accordance with the terms and conditions set out in the attached
schedule.

CERTIFIED TO BE A TRUE COPY—COPIE CERTIFIÉE CONFORME

CLERK OF THE PRIVY COUNCIL—GREFFIER DU CONSEIL PRIVÉ

CONFIDENTIAL

VIA Rail Canada Inc.

Landlord (Amherst)	Tenant (VIA)
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C.P. 2017-1063
14 août 2017

Sur recommandation de la ministre
de l'Environnement et en vertu de l'article 8 de la *Loi sur
la protection des gares ferroviaires patrimoniales*, Son Excellence
le Gouverneur général en conseil autorise VIA Rail Canada Inc. à
vendre sa gare ferroviaire située à Amherst (Nouvelle-Écosse) à
la ville de Amherst, selon les modalités figurant à l'annexe
ci-jointe.

CERTIFIED TO BE A TRUE COPY—COPIE CERTIFIÉE CONFORME

CLERK OF THE PRIVY COUNCIL—GREFFIER DU CONSEIL PRIVÉ

CONFIDENTIAL

VIA Rail Canada Inc.

Landlord (Amherst)	Tenant (VIA)
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P.C. 2017-1063

SCHEDULE

It is recommended that VIA Rail Canada Inc. be authorized to sell its railway station in Amherst, Nova Scotia to the Town of Amherst, on terms and conditions as follows:

- 1) VIA Rail Canada Inc. has obtained the agreement of the Town of Amherst that it will respect, protect and not impair or adversely affect the heritage character, as set out in the Heritage Character Statement prepared by the Parks Canada Agency for the Historic Sites and Monuments Board of Canada, dated March 1993, of the station, and Via Rail Canada Inc. has included in its deed or document of transfer all the necessary provisions setting out this agreement;
- 2) At the time of the transfer of ownership, the Town of Amherst designates the station pursuant to the relevant provincial or municipal legal authorities to ensure the continuing protection of the heritage character of the station within provincial jurisdiction;
- 3) At the time of the transfer of ownership, the Town of Amherst has taken the necessary steps to have the station also considered for a designation by the province that is equal or greater than the designation referred to in section 2.

The above terms and conditions recognize the importance of this station, designated, as a heritage railway station for the purposes of the *Heritage Railway Stations Protection Act*, for the reasons set out in the Heritage Character Statement referred to in section 1 of this Schedule.

Landlord (Amherst)	Tenant (VIA)
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C.P. 2017-1063

ANNEXE

Il est recommandé d'autoriser VIA Rail Canada Inc. à vendre sa gare ferroviaire située à Amherst (Nouvelle-Écosse) à la ville de Amherst, selon les modalités suivantes :

- 1) VIA Rail Canada Inc. a obtenu l'accord de la ville de Amherst selon lequel celle-ci respectera, protégera et évitera de porter atteinte ou de nuire à la valeur patrimoniale de la gare, tel que l'indique l'énoncé de la valeur patrimoniale préparé par l'Agence Parcs Canada pour la Commission des lieux et monuments historiques du Canada, et daté de mars 1993 et VIA Rail Canada Inc. a inclus dans son acte ou document de transfert de propriété toutes les dispositions nécessaires dans le cadre de cet accord;
- 2) au moment du transfert de propriété, la ville de Amherst désigne la gare en vertu des instruments juridiques provinciaux ou municipaux applicables pour assurer la protection continue de la valeur patrimoniale de la gare sous la compétence provinciale;
- 3) au moment du transfert de propriété, la ville de Amherst aura pris les mesures nécessaires pour que la province examine la possibilité d'accorder à la gare une désignation égale ou supérieure à celle indiquée à l'article 2.

Ces modalités tiennent compte de l'importance de cette gare, désignée gare ferroviaire patrimoniale en vertu de la *Loi sur la protection des gares ferroviaires patrimoniales*, pour les raisons exposées dans l'énoncé de valeur patrimoniale préparé par l'Agence Parcs Canada mentionné à l'article 1 de la présente annexe.

CONFIDENTIAL

VIA Rail Canada Inc.

Landlord (Amherst)	Tenant (VIA)
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VIA Contract No:

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT is

BETWEEN:

TOWN OF AMHERST

98 East Victoria Street
Amherst, NS
B4H 1X6

(hereinafter referred to as the "Town")

OF THE FIRST PART

AND:

VIA RAIL CANADA INC.

3 Place Ville Marie
Montreal, Québec
H3B 2C9

(hereinafter referred to as the "VIA")

OF THE SECOND PART

WHEREAS concurrently with the signature of this Access and Use Agreement, the parties shall enter into a Lease Agreement whereby the Town of Amherst agrees to lease to VIA Rail Canada Inc. the Station Property;

WHEREAS in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1.0 ACCESS AND USE

1.1. Subject to the terms and conditions herein **the Town agrees to provide** irrevocable access to VIA to the parking lots adjacent to the Amherst Station located at 27 Station Street, Amherst, NS and being PID 25503160 (the "Station Property") for use in common with others, which parking lots are Lot 18-1and 18-3 as shown on the

CONFIDENTIAL

VIA Rail Canada Inc.

Landlord (Amherst)	Tenant (VIA)
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subdivision survey record in the Cumberland County Land Registration Office as document no. 112135141, which lots are respectively PIDs 25503152 and 25503178 for vehicle pick up and drop off area, vehicular crossings, walkways, parking areas including handicap parking, and any other Station Property lands and which parcels are referenced herein as the “Common Area Lands” and for which copy of drawings of all referenced lands and parcels are contained in Schedule “A”. For greater certainty, the Town agrees VIA shall have rights with respect to the **Common Area Lands** for:

- (a) access and use of the Common Area Lands in common with others;
- (b) access to the Station Property from Station Street and from the rail passenger platform;
- (c) access to the rail passenger platform from Station Street and from the Station Property; and
- (d) use of the said rail passenger platform, being PID 25503186 and Lot 18-4 on the subdivision survey of VIA’s land and as shown on Schedule A attached;

which rights shall be similar to the current rights of VIA on the Common Area Lands, notably with respect to use and operation of VIA’s Services, and are more specifically described as follows (collectively called the “**Access and Use Rights**”) for the Common Area Lands: the Town grants to VIA its employees, licensees, contractors and customers the right to enter the Common Area Lands at all times as pedestrians or with vehicles and equipment, for the operation of rail passenger services and related activities in the Station Property. The Town shall maintain clear and sufficient access to meet VIA's operational requirements throughout the term of this Access and Use Agreement and shall not unreasonably block or impede the passage over the Common Area Lands.

1.2. The Town acknowledges that VIA is a major tenant and that the Common Area Lands shall be used by VIA only for the operation of rail passenger services and related activities around the Station Property. VIA shall have full access to the passenger platform adjacent to the CNR tracks and access to sufficient parking spaces for its customers, free of rent, maintenance, operating or capital costs. The Town shall comply with CNR’s conditions. For greater certainty, the Town acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Common Area Lands .The Town acknowledges that such Emissions, at any time of day or night, are necessarily incidental to VIA’s railway operations. The Town has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. VIA shall not be responsible to the Town for any damage to property or persons located on the Common Area Lands as a result of its railway operations. In addition to its other obligations under this Lease, the Town agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by the VIA or any governmental authority.

Landlord (Amherst)	Tenant (VIA)
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2.0 TERM

2.1 This Access and Use Agreement shall be for a term of Twenty (20) years commencing on the 1st day of March, 2019 and being the date that VIA shall transfer to the Town Station Street, the Station Property and the Common Area Lands, and being PIDs 25503152, 25503160, 25503178 and 25503194 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

3.0 RENT

3.1 VIA shall pay the Town a rent of one dollar (\$1.00) (the "**Rent**") for the access to and use of the Common Area Lands, the sufficiency of which use payable on or before the Commencement Date.

3.2 Rent is inclusive of all costs.

4.0 RENEWAL

4.1 VIA may, without restriction and so long as it is not in default, renew this Access and Use Agreement for one (1) additional term of Twenty (20) years provided it renews its Lease for the Station Property dated even date herewith by giving a sixty (60) day notice to the Town prior to the end date of this Access and Use Agreement, on the same terms and conditions as are applicable to the initial term of this Access and Use Agreement, except with regard to rent.

5.0 OPERATING COSTS

5.1 For the initial Term and subsequent renewal term, the Rent shall be inclusive of all property costs whatsoever namely maintenance (sweeping, lighting, painting, etc.), property taxes and snow removal, which operating costs shall be borne solely by the Town. CN Flagging costs will be borne by VIA.

5.2 The Town shall also remove snow from the rail passenger platform adjacent to the Common Areas and the Station Property.

6.0 REPAIRS, MAINTENANCE AND OPERATION

6.1 The Town shall, at its own expense, except for the cost of flagging, take good and reasonable care of the Common Area Lands and parking lots subject to reasonable wear and tear, damage by the VIA, and obligations of the VIA to repair or pay cost thereof.

Landlord (Amherst)	Tenant (VIA)
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6.2 The Town shall at its sole cost and expense to:

- (a) Keep each and every sidewalk, motor vehicle parking area, and passageway adjoining, contiguous or appurtenant to the Station Property, in a good, clean and safe condition, and in good repair;
- (b) Remove snow and ice from the Common Area Lands and including the platform and common walkways as indicate.

6.3 The Town may undertake work on the Common Area Lands provided:

- 1. VIA has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain VIA’s operation and Services.
- 2. Access for emergency vehicles and maintenance vehicles to the Station Property and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
- 3. It does not render the Station Property inaccessible from Station Street or the railway platform inaccessible from the Station Property without alternate provisions acceptable to VIA, acting reasonably, being made.
- 4. During any period when the Station or the railway platform is inaccessible or when accessibility is substantially reduced, the Town shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of VIA’s Services including necessary access to rail passenger platform, street and parking, parking for passengers within reasonable distance of the Station Property, handicap parking within reasonable distance of the Station Property in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Station Property, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
- 5. Such alternate lands shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Common Area Lands and have a reasonable access to the rail passenger platform.
- 6. Any such alternative arrangements shall be at the Town sole expense and shall be subject to the approval of both parties, acting reasonably.
- 7. If the Town does not provide acceptable alternate access prior to the Common Area Lands becoming unusable, then VIA may immediately undertake the provision of the reasonable alternate parking and access and the Town shall be responsible for all reasonable costs associated with such work or the VIA may take whatever action under law is required to maintain its operation and Services.

Landlord (Amherst)	Tenant (VIA)
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6.4 Any work in the vicinity of the railway platform or tracks or capable of falling in the railway corridor shall be approved by the VIA and CN in writing and be protected by a flagman at the Town’s costs.

7.0 ENVIRONMENTAL MATTERS

7.1 The Town shall be responsible for any environmental contamination caused by the Town, those for whom the Town is in law responsible and VIA shall be responsible for any environmental contamination caused by the VIA or those for whom the VIA is in law responsible or by the VIA’s customers.

8.0 NOTIFICATION OF DEFECT

8.1 The Town shall promptly give VIA notice in writing of any accident, defect or damage within the Common Area Lands, systems or services for which the Town has an obligation under this Access and Use Agreement and which have come to VIAs attention. Subject to Section 6.0, if the Town fails to correct the defect or damage within 15 days of notification or to initiate any repairs, and if the damage or defect impacts VIA’s use of the Common Area Lands, then VIA may undertake any necessary repairs and the Town will compensate VIA for all costs incurred.

9.0 ACCESS AND USE

9.1 The Town shall permit the public access to and use of the Common Area Lands for the purpose of embarking and disembarking from passenger trains and use of all passenger related facilities including in particular and without limiting the generality hereof, access to and use of the rail passenger platform, parking, vehicle pick up and drop off area.

The Town shall permit VIA, its employees, agents or servants to enter the Station Property from the Common Area Lands at any time as may be required by VIA.

10.0 QUIET ENJOYMENT

10.1 The Town hereby covenants with VIA for quiet enjoyment of the Common Area Lands in common with others.

11.0 ASSIGNMENT

11.1 This Access and Use Agreement shall not be assigned or transferred by the Town.

11.2 This Access and Use Agreement shall not be assigned or transferred by VIA without the prior written consent of the Town except to a successor corporation.

Landlord (Amherst)	Tenant (VIA)
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12.0 DIRECTION AS TO EMERGENCY

12.1 The Town may from time to time direct VIA to use a telephone number designated by the Town for notifying the Town of any emergency situation.

13.0 INSURANCE

13.1 The Town undertakes to obtain and maintain, at its own expense, for the duration of this Access and Use Agreement, the following insurance coverage with insurers carrying a financial rating of “A” or better:

- a) Commercial general liability covering the liability of the Town and its employees for a minimum of Five Million dollars (\$5,000,000) combined per occurrence limit. The insurance policy must include VIA as an additional insured and shall provide for the following coverage:
 - Personal injury
 - Bodily injury
 - Unlicensed vehicles / motorized equipment
 - Property damage, including loss of use of property
 - Contingent Employer's Liability
 - Contractual Liability assumed under this contract
 - Cross Liability and/or Severability of interests
 - Non-owned automobile liability

- b) Automobile liability insurance covering the liability of the Town for bodily injury, death and property damage arising out of or attributable to the use or operation of vehicles owned, rented or leased by the Town for a minimum limit of Two million dollars (\$2,000,000).

The above policies shall not contain any exclusions or limitations pertaining to railroad/railway and railroad/railway activity.

Prior to the commencement of this Access and Use Agreement, the Town shall provide the VIA with certificates of insurance issued in the name of VIA, dated and signed by an authorized representative of the Town’s insurers evidencing all insurance requirements mentioned above. New insurance certificates evidencing renewal of insurance policy shall be submitted to VIA within thirty (30) days after renewal should such renewal occur during the term of the Access and Use Agreement. The above insurance policies shall include an endorsement whereby VIA shall be provided with a thirty (30) days advance notice in case of any important modification, termination or resolution of the insurance coverage.

Landlord (Amherst)	Tenant (VIA)
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The acquisition and maintenance of insurance by the Town as provided for in this section shall in no manner limit or restrict the liabilities or responsibilities of the Town and its representatives under this Access and Use Agreement.

VIA confirms that it is self-insured and may provide a letter of confirmation upon request from the Town on or after the effective Access and Use Agreement start date.

14.0 NO WASTE OR NUISANCE

14.1 VIA shall not:

- (a) commit or permit any willful or voluntary waste, spoil or destruction on the Common Area Lands; or
- (b) do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

15.0 INDEMNITY AND REPOSSESSION

The Town shall indemnify VIA and save it harmless from and against all claims, actions, damages, liabilities and related attorney fees and costs, including those of third parties, in connection with loss of life, personal injury, damage to property or other damages arising from any occurrence on the Common Area Lands caused by the Town’s breach of its obligations towards VIA or by the negligence of the Town or its representatives.

Neither party shall be liable to the other party in connection with this Access and Use Agreement, whether based on contract, tort (including negligence and strict liability), under warning or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, including loss of use of equipment or facilities and loss of profits or revenues.

In addition to the above mentioned indemnity, in the event of a material breach by the Town (or its successors) of its obligations towards VIA, such as a serious threat to train or passenger safety or serious station operational disruption, VIA shall have the right to remedy such serious occurrences subject to first providing the Town (or its successors) with a 24 hour prior written notice to remedy such material default or, if such prior written notice is undesirable, such as for life threatening, contact the Town’s emergency call center for immediate response. If such material default is not remedied within the reasonable period indicated in VIA’s notice, VIA shall have the right to address and remedy such serious safety or operational threat or disruption with the Common Area Lands or threatening train operations, itself (notably through a contractor), at the Town’s (or its successors) costs.

Landlord (Amherst)	Tenant (VIA)
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16.0 **TERMINATION**

VIA shall have the right to terminate this Access and Use Agreement by giving a notice in writing to the Town sixty (60) days prior to the termination, including, without limitation, in the event that passenger rail service is cancelled.

17.0 **NOTICE**

17.1 It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given:

- (a) if delivered - at the time of delivery; and
- (b) if mailed from any government post office by prepaid registered mail addressed or facsimile as follows:

if to the Town:

TOWN OF AMHERST
 98 East Victoria Street
 Amherst, NS
 B4H 1X6

Attention:

if to VIA:

VIA RAIL CANADA INC.
 3 Place Ville-Marie
 Suite 500
 Montréal, QC
 H3B 2C9

Attention: Senior Manager, Real Estate

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, three business days after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have

Landlord (Amherst)	Tenant (VIA)
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not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

18.0 LAW TO THE CONTRARY

18.1 This Access and Use Agreement shall enure to the benefit of and be binding on the parties and their successors notwithstanding any rule of law or equity to the contrary.

19.0 SEVERANCE

19.1 If any portion of this Access and Use Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Access and Use Agreement.

20.0 GOVERNING LAW

20.1 This Access and Use Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and any laws of Canada applicable therein.

21.0 WAIVER

21.1 Waiver by the Town of any default by VIA shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.

22.0 REFERENCES

22.1 Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

23.0 AMENDMENT

23.1 This Access and Use Agreement may not be modified or amended except by an instrument in writing signed by the Town and VIA.

24.0 REMEDIES NOT EXCLUSIVE

24.1 No remedy conferred upon or reserved to the parties is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

Landlord (Amherst)	Tenant (VIA)
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25.0 CHARGES ON TITLE

25.1 There shall be no charges on title of the Common Area Lands.

26.0 CAPTIONS

26.1 The captions appearing in this Lease have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Lease.

27.0 INTERPRETATION

27.1 Wherever the singular or masculine or neuter is used in this Access and Use Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

28.0 ENTIRE AGREEMENT

28.1 The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. For greater certainty, the Lease entered into by the parties on December 2, 2016 is cancelled and replaced by this Access and Use Agreement along with the Lease upon their execution.

29.0 TIME OF ESSENCE

29.1 Time is of the essence of this Lease.

30.0 FURTHER ASSURANCES

30.1 The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Access and Use Agreement.

31.0 COVENANTS AND CONDITIONS

31.1 All the provisions of this Access and Use Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

Landlord (Amherst)	Tenant (VIA)
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32.0 CONFIDENTIALITY

32.1 This Access and Use Agreement and the information contained herein are confidential, subject to the provisions of any acts, notably the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

33.0 ACKNOWLEDGMENT

The parties acknowledge that:

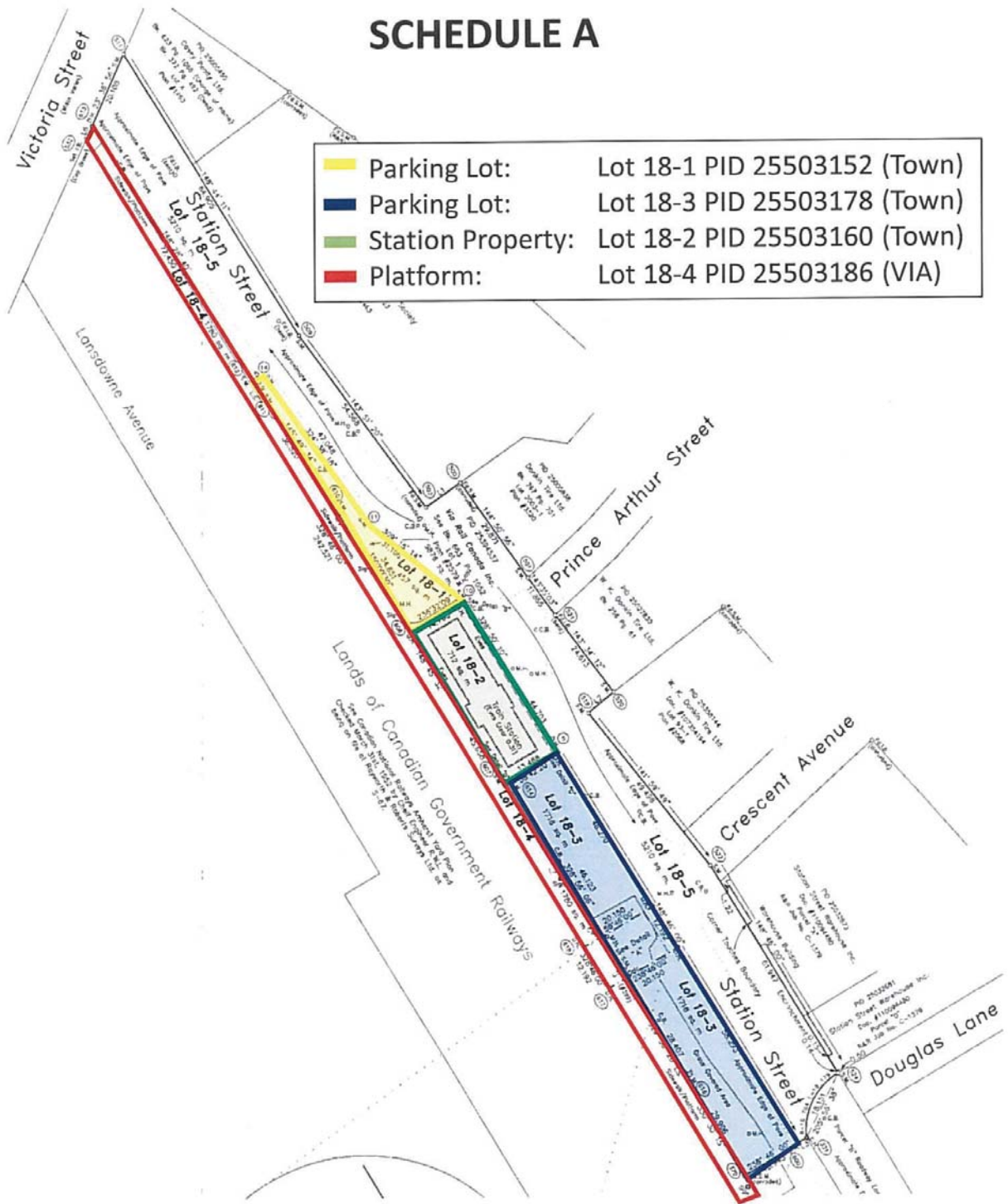
- (1) this Access and Use Agreement is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Access and Use Agreement. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Access and Use Agreement from a legal advisor of their choice; and
- (2) the parties negotiated this Access and Use Agreement jointly and this Access and Use Agreement shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

We have understood, consented to and signed two original copies of this Lease on the day and year below written.

VIA RAIL CANADA INC.		TOWN OF AMHERST		TOWN OF AMHERST	
Signature:		Signature:		Signature:	
Name:	Robert St-Jean	Name:	David Kogon	Name:	Greg Herrett
Title:	Chief Asset Management Officer	Title:	Mayor	Title:	CAO
Location:	Montreal	Location:	Amherst	Location:	Amherst
Date:		Date:		Date:	

Landlord (Amherst)	Tenant (VIA)
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SCHEDULE A – DRAWINGS LANDS AND PARCELS



CONFIDENTIAL

VIA Rail Canada Inc.

Landlord (Amherst)	Tenant (VIA)
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THIS CONTRIBUTION AGREEMENT is made the 29th day of January, 2019.

BETWEEN:

TOWN OF AMHERST, a municipal corporation in the Province of Nova Scotia,
(hereinafter called the "Town")

-and-

VIA RAIL CANADA INC, a corporation incorporated under the laws of Canada with
Head Office in the City of Montreal in the Province of Quebec
(hereinafter called the "VIA")

-and-

J.E. BEMBRIDGE ENTERPRISES LIMITED, a body corporate with head office in the
Town of Amherst in the Province of Nova Scotia,
(hereinafter called the "Bembridge")

WHEREAS VIA has determined:

- a. To convey its real property within the boundaries of the Town of Amherst to the Town including the VIA rail station ("the Station") in accordance with an agreement of purchase and sale on the 29th day of January, 2019 ("the "Agreement"); and
- b. To lease certain facilities ("VIA's facilities") in the Station from the Town for its railway passengers and technology ("the Lease")
- c. VIA's facilities are not presently in tenantable condition;
- d. The Town is concurrently with the Agreement entering into an agreement with Bembridge for Bembridge to take possession of the Station and to complete the renovations required to make VIA's facilities in tenantable condition;

THIS AGREEMENT WITNESSES as follows:

1. Upon Bembridge completing the renovations and VIA's facilities being in tenantable condition, Bembridge shall submit to VIA an invoice for \$5,000.00 plus HST as VIA's contribution to lease hold improvements.
2. VIA shall pay the Bembridge's invoice upon acceptance of VIA's facilities as being in tenantable condition and within 30 days of the date of receipt of the invoice.
3. The parties agree:
 - a. That the Town and/or Bembridge have agreed to submit detailed working drawings to VIA for any work which is required or proposes to do in the Station at the Town and/or Bembridge's expense in a good and workmanlike manner and in accordance with VIA's reasonable requirements and subject to VIA's approval, which shall not be unreasonably deny or delay.
 - b. that the Town and/or Bembridge have agreed to provide to VIA a dedicated

- space for the storage and operation of its technology;
 - c. VIA shall relocate its technology to the dedicated space upon completion of the construction of the dedicated room; and;
 - d. VIA shall be responsible for the relocation of the technology to the dedicated room at its expense.
4. VIA and the Town agree that if Bembridge does not complete VIA's facilities in accordance with the terms of the lease of VIA's facilities then:
- a. The Town shall complete VIA's facilities at its expense in accordance with the terms of the lease; and
 - b. The Town shall invoice VIA \$5,000 plus HST upon VIA's facilities being in tenantable condition; and
 - c. VIA shall pay the Town's invoice immediately upon acceptance of VIA's facilities as being in tenantable condition.
5. The Contribution Agreement is supplemental to the Lease and enforceable in accordance with the terms of the Lease.

SIGNED AND DELIVERED

in the presence of:

) TOWN OF AMHERST
)
) _____
) Per:
) Name & Title:
)
)
) VIA RAIL CANADA INC.
)
) _____
) Per:
) Name & Title:
)
)
) J.E. BEMBRIDGE ENTERPRISES LIMITED
)
)
) _____
) Per: JEFFREY BEMBRIDGE, President

SYNOPSIS

12 HAVELOCK STREET REVISED LEASE

In 2013, the Town entered into a lease with the building owner (Kevin Nelson) to allow for a six-foot-wide walkway providing access to the new entrance on the side of the building. To facilitate the lease Council declared this property surplus to its needs, and established market rate by an Altus Group appraisal. The 2012 appraisal recommended a lease rate of \$0.30 per square foot per annum. The 2013 agreement leased the property for \$100 per year. Adjusted for CPI, the current lease would be \$106 per year.

The 2013 lease agreement is renewable for three five-year terms. The attached agreement is the same as the 2013 agreement, except for the following changes:

1. Minor changes to reflect the dates and a CPI adjustment;
2. Provision for one ground sign that advertises the business at 2 Ratchford Street, a tenant within the 10 Havelock Street building.

MOTION:

That Council approve the renewal of a 5-year lease agreement with the owner of 10 Havelock Street to lease a portion of the park space at 12 Havelock Street for the purpose of a walkway and a ground sign.



AMHERST TOWN COUNCIL

RFD# 2018150

Date: January 28, 2019

TO: Mayor Kogon and Members of Amherst Town Council

SUBMITTED BY: Andrew Fisher, Manager of Planning & Strategic Initiatives

DATE: January 28, 2019

SUBJECT: 12 Havelock Street – Lease renewal of Town Land

ORIGIN: In 2013 Council entered into a 5-year renewable lease with the property owner of 10 Havelock Street. Attached is the renewing lease with minor changes to allow a ground sign for the tenant at 2 Ratchford Street (currently Birkinshaw's Tea Room).

LEGISLATIVE AUTHORITY: Municipal Government Act (MGA) section 50(5) requires that Town-owned land must be leased at market rates.

RECOMMENDATION: That Council approve the renewal of a 5-year lease agreement with the owner of 10 Havelock Street to lease a portion of the park space at 12 Havelock Street for the purpose of a walkway and a ground sign.

BACKGROUND: In 2013, the Town entered into a lease with the building owner (Kevin Nelson) to allow for a six-foot-wide walkway providing access to the new entrance on the side of the building. To facilitate the lease Council declared this property surplus to its needs, and established market rate by an Altus Group appraisal. The 2012 appraisal recommended a lease rate of \$0.30 per square foot per annum. The 2013 agreement leased the property for \$100 per year. Adjusted for CPI, the current lease would be \$106 per year.

The 2013 lease agreement is renewable for three five-year terms. The attached agreement is the same as the 2013 agreement, except for the following changes:

1. Minor changes to reflect the dates and a CPI adjustment;
2. Provision for one ground sign that advertises the business at 2 Ratchford Street, a tenant within the 10 Havelock Street building.

In May 2018, Council approved a lease for a separate portion of 12 Havelock north of the walkway with Birkinshaw's Tea Room to allow for an outdoor patio. While that lease was not executed in 2018, staff anticipate Birkinshaw's will be interested in entering into the lease for the 2019 patio season.

FINANCIAL IMPLICATIONS: The 2012 Altus Group determined the property value of \$3.50 per square foot, with an 8-9 % capitalization rate to convert this value into an annual ground rent. The property was subsequently leased for \$100 annually, which is equal to or exceeds the rent rate.

COMMUNITY ENGAGEMENT: Not necessary for this issue.



ENVIRONMENTAL IMPLICATIONS: There are no foreseeable environmental implications.

SOCIAL JUSTICE IMPLICATIONS: There are no expected social justice implications

ALTERNATIVES: Do not renew the lease agreement.

ATTACHMENTS: Draft lease agreement

Report prepared by: Andrew Fisher, Manager of Planning & Strategic Initiatives
Report and Financial approved by:

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THIS LEASE made this ___ day of _____, 2018 effective as of _____

BETWEEN:

TOWN OF AMHERST, a body corporate,
(herein called the "Lessor")

OF THE ONE PART

- and -

Kevin Nelson of the County of Cumberland, Province of Nova Scotia
(herein after called the "Lessee")

OF THE OTHER PART

WITNESSETH THAT:

1. In this Lease,
 - (a) The "Lessor's Lands" means the lands of the Lessor situate at 12 Havelock Street, Amherst, Cumberland County, Province of Nova Scotia (PID No. 25028713);
 - (b) "Demised Premises" means the lot of land forming part of the Lessor's lands known as PD 25028713, 12 Havelock Street, Amherst, County of Cumberland, Nova Scotia, and more particularly shown in Schedule "A" to this Lease;
 - (c) "Lessor" means Town of Amherst, a body corporate;
 - (d) "Lessee" means Kevin Nelson, owner of 10 Havelock Street, successors, assigns, servants, agents, licensees, workmen, contractors and guests;

DEMISE

2. In consideration of the rents hereby reserved and the covenants herein contained, the Lessor hereby leases to the Lessee the Demised Premises, for a term of five (5) years beginning December 1, 2013 and ending January/November 31, 2023/18 and upon agreement of both parties renewable for ~~three~~two five-year terms thereafter, for the following purposes:

(a) A six (6) foot wide walkway on the Demised Premises from the sidewalk on Ratchford Street to the side of the building located at 10 Havelock Street, the purpose of said walkway being to allow employees and patrons access to the said building.

(b) A ground sign in compliance with the Amherst Land Use Bylaw and no greater than eight (8) square feet in area located within ten (10) feet of said walkway to be used for the sole purpose of advertising the business located at 2 Ratchford Street, a tenant of the Lessee.

RENT

3. The Lessee shall pay to the Lessor as rent the sum of One Hundred ~~and Six~~ Dollars (\$10~~06~~) per year together with the Harmonized Sales Tax, payable yearly in advance from the date upon which the lease term commences.

The rent for any additional five year term shall be adjusted upward (but not downward) in an amount proportionate to the increase, if any, ~~of~~ the value of the Demised Premises as established by the "Consumer Price Index" published by Statistics Canada and compounded annually as appropriate.

LESSOR'S COVENANTS

4. The Lessor covenants with the Lessee as follows:
- (a) The Lessor has good and marketable title to the Demised Premises and full and absolute right to lease the Demised Premises and so long as the Lessee is not in default of any of the terms of this Lease, the Lessee shall have the right to utilize the Demised Premises for employee and customer access to the building located at 10 Havelock Street;
 - (b) The Lessee may terminate this Agreement upon three (3) months' written notice given by the Lessee to the Lessor, provided however any rent paid in advance to the Lessor shall not be refundable to the Lessee;
 - (c) The Lessee may not sub-lease any portion of the land or sign to another party without written consent of the Lessor. Such consent may cause a change in the amount of rent paid by the Lessee to the Lessor.

LESSEE'S COVENANTS

5. The Lessee covenants with the Lessor as follows:
- (a) The Lessee shall indemnify and save harmless the Lessor from and against all or any actions, claims or demands that may be lawfully brought against the Lessor by reason of anything done by the Lessee, its agents or contractors or anything placed on the Demised Premises by the Lessee its agents or contractors;
 - (b) Upon expiry or earlier termination of this Lease, and within three months thereafter, the Lessee shall remove the walkway and restore the Demised Premises to its original condition.
 - (c) The Lessee will promptly discharge any Mechanics Liens filed against the Demised Premises with respect to work done for the benefit of or at the request of the Lessee, provided that the Lessee may in good faith contest any lien in a court or tribunal having jurisdiction and, further provided that the entry into this Lease by the Lessor shall not

constitute a consent by the Lessor under the *Builders' Lien Act*, R.S.N.S., 1989, c. 277 in respect of Section 8(2) of the *Act*.

- (d) The Lessee will make good any damage to the Lessor's Lands resulting from installation of and subsequent maintenance to the Walkway and related equipment.
- (e) The Lessee will, in its occupancy of the Demised Premises, comply with all laws, regulations and rulings of any government or governmental organization having lawful jurisdiction.
- (f) The Lessee shall not have exclusive rights over the Demised Premises and for further clarity, members of the public utilizing the park located at 12 Havelock Street shall have the right to cross the walkway in their utilization of the said park.
- (g) The Lessee shall not install any obstruction, fence, barrier or other device which will obstruct the full utilization of the park located at 12 Havelock Street.
- (h) The Lessor may terminate this Agreement upon three (3) months' written notice given by the Lessor to the Lessee.

FOREFEITURE AND RE-ENTRY

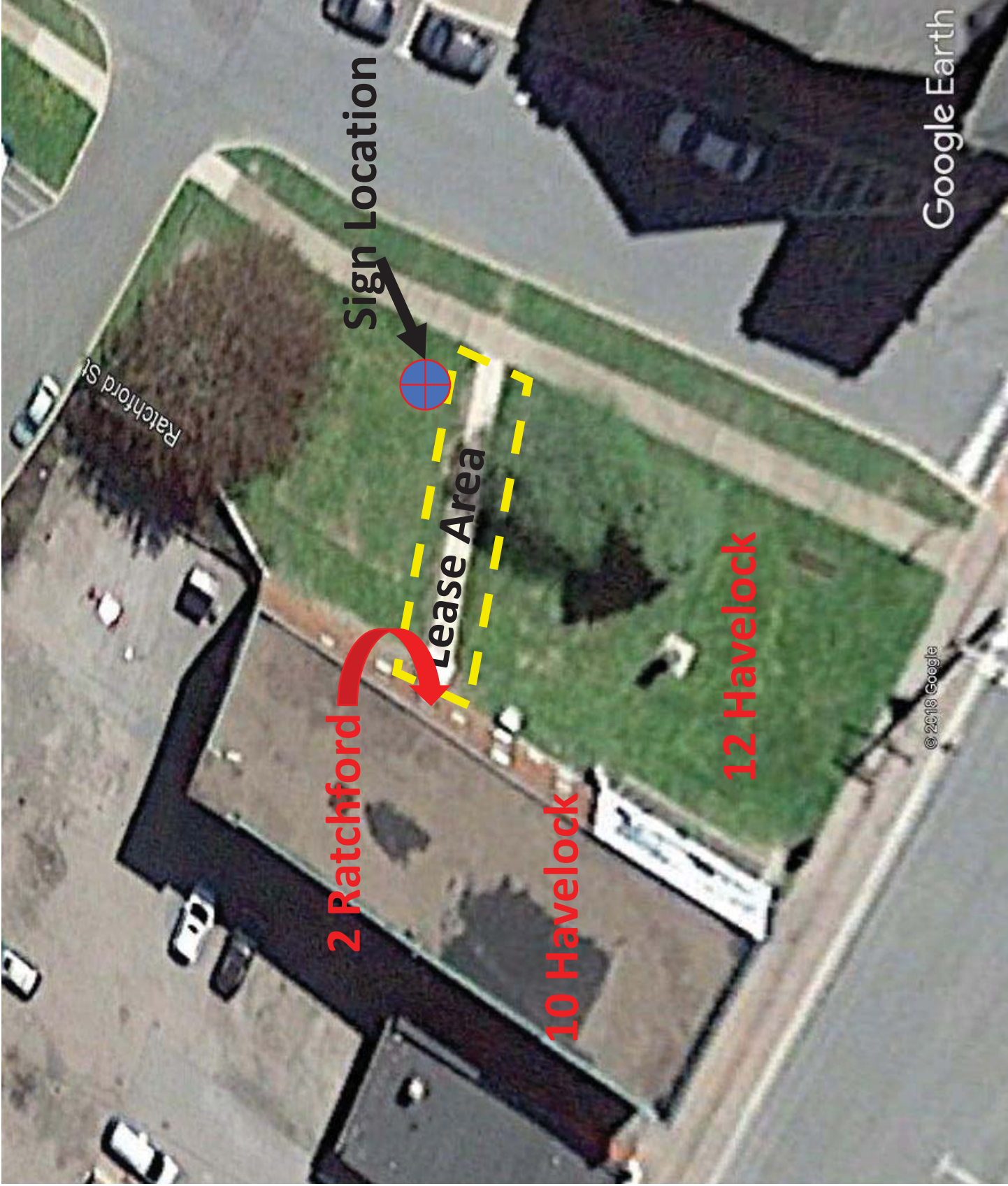
- 6. If the Lessee should be in default of any of the terms of this Lease and if the Lessee should fail to cure such default within thirty (30) days after the Lessor gives the Lessee written notice of such default or if the Lessee shall become bankrupt or make a general assignment for the benefit of its creditors, then the Lessor may enter upon the Demised Premises and every part thereof and thence forth this Lease shall be void; provided, however, if the default by the Lessee can only be cured by the performance of labour or the furnishing of materials and if such labour cannot easily be completed or such materials reasonably obtained and utilized within thirty (30) days, such default shall not be deemed to continue if the Lessee proceeds promptly with such work as may be necessary to cure the default and continues diligently to complete the same. The Lessee shall thereupon remove all its fixtures in accordance with Article 5 of this Lease.

ARBITRATION

- 7. Any unresolved disputes between the parties arising out of this Lease shall be resolved by arbitration between the parties by reference to a single arbitrator subject to the provisions of the *Commercial Arbitration Act* of Nova Scotia.

NOTICES

- 8. Any notice in writing which either party may give to the other with regard to any matter or thing in this Lease may be validly given by mailing the same by prepaid registered post addressed, if intended for the Lessor, to:



2 Ratchford

Sign Location

Lease Area

10 Havelock

12 Havelock

Ratchford St

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Google Earth 196

Internal Committee Report

Planning Advisory Committee

January 2019

At their December meeting the Planning Advisory Committee recommended that Council enter into a development agreement in order to convert 5 motel units into 5 apartment units on the property located at 150 Victoria Street.

In addition to the above, there have been a number of significant dangerous and unsightly premises files dealt with over the last few months as follows:

72 Station Street

- Demolition was ordered by the Planning Advisory Committee.
- Demolition work was procured and awarded to Baxter Trucking.
- Due to the condition of the structure and associated safety considerations a detailed site investigation could not be undertaken to identify the contents of the interior of the building.
- On the first day of demolition, November 2, a wall of the building fell on the contractor's trailer causing work to stop on site for a number of hours.
- Also on the first day of demolition an unidentified material was found on site. This caused work to stop until a proper plan was in place to deal with the material in the event it proved to be hazardous.
- Upon re-commencement of work on November 19 no hazardous materials were found and work proceeded until the building was fully demolished and all materials were disposed of in accordance with provincial regulations.
- As there was insufficient land available on site, in order to properly sort the material from the building, the material was taken to the contractor's C&D site in Mount Pleasant. Material was sorted and 619 tonnes of C&D was disposed of at this facility. An additional 1.35 tonnes of solid waste was taken to Little Forks Landfill for disposal. No hazardous materials were found.
- Town staff attended the Mount Pleasant site on three occasions to verify the sorting and disposal of the material from the property.
- Due to weather conditions the final placement of top soil and seed will take place in the spring.

196 East Victoria Street

- The Planning Advisory Committee ordered that the buildings on this property be demolished.
- The owner has appealed this decision.
- A special meeting of Council is being organized to hear this appeal.

59 Church Street

- On January 18 the Planning Advisory Committee ordered this property to be demolished.
- The owner has appealed this decision and a special meeting of Council is being organized to hear this appeal.

16 Prince Arthur Street

- The Planning Advisory Committee ordered that the building on this property be demolished.
- The property owner did not appeal this decision.
- The property owner has applied to the Nova Scotia Supreme Court for a judicial review of this order.
- A court date was set for the morning of January 10, 2019 – the property owner did not appear. The hearing was adjourned until the afternoon and the property owner still did not appear. The Town asked that the judicial review proceed at this time. The judge decided to adjourn the review until February 8. In addition a teleconference was set up with the judge, our solicitor and the property owner in advance of the court date. The property owner did not participate in that teleconference.
- Staff will attend the court date for the judicial review on February 8.

2 Industrial Park Drive

- On January 18 the Planning Advisory Committee ordered this property to be demolished.
- In addition to the regular notification, staff have also sent this order to the property owners' solicitor in order to ensure that all notification efforts were made given the rumored health issues of the owner.
- The appeal period lapses on January 25.

23 Spring Street

- The administrator placed an order requiring an engineer review of the structure of the building. The time period has lapsed for that information to be provided.
- We were contacted by the owner's solicitor in December who requested a meeting to discuss this issue. We have not heard from the solicitor since that time.
- The PAC will receive a recommendation on this property at their March meeting.

1 Spring Street

- The PAC will receive a recommendation on this property at their February meeting.

8 Albion Street

- This property was the former gas station located at Croft and Albion Street. It is now owned by Couch Tarde based in Quebec. Upon receiving a letter from the Administrator and phone calls from the Deputy CAO, the company decided to demolish the building which was completed prior to the new year.
- This demolition was undertaken voluntarily by the property owner and was not subject to an order of the Committee.

Amherst Youth Town Council January Monthly Report

This month, the Amherst Youth Town Council had two meetings. The first on Thursday, January 3rd, and the second on Thursday, January 24th. These meetings were focused on our plans for the upcoming Mental Health Week, the Nuisance Bylaw, and some other miscellaneous youth issues. In regard to Mental Health Week, the AYTC has decided on an alternative series of dates in May, to avoid scheduling conflicts with exam week at ARHS. Our planning is continuing to expand on last year's survey. We've booked a speaker to speak at ARHS about mental health, and we're going to offer information sessions and literature to bring awareness to mental health and mental illness in Amherst, in hopes to reduce some of the stigma around it.

Our conversations around the Smoke-Free Recreational Places Bylaw, and, more recently, the Nuisance Bylaw, have also continued to be in regards to last year's survey. We met with Police Chief Pike at our most recent meeting on January 24th to discuss the Police Department's proposed bylaw, and shared our thoughts, opinions, and concerns.

In addition to these two main topics of conversation, we've also had a number of other miscellaneous items that we've discussed at our meetings this month, including providing feedback to the Recreation Department about the Cookie Crawl last month, and some ideas about how we can make Amherst a safer place for all young people, that we plan to expand on in the next couple of months.

Finally, we've also had a couple of community functions recently where Youth Town Councillors have been involved, including the New Year's event at the stadium, and we're planning to do the same with the town's Valentine's Run next month, where we're going to have as many Youth Town Councillors as possible present.



External Committee Report

YMCA Report

January 2019

Membership: Total Members = 1139 (2018-884) Subsidized Members = 171 (2018-146)

Numbers are increasing nicely due to December sales of Gift Certificates for memberships, as well as for personal training and family swims. Work is ongoing for corporate membership marketing materials to be able to share with new and existing corporate members. All of our Corporate Memberships have been updated and include:

Town of Amherst 8%
Indigenous and Northern Affairs Canada 8%
Government of Nova Scotia 15%
Emmerson Packaging increases to 15%
CCRCE increases to 15%
Nova Scotia Health Authority increases to 20%
Corrections Canada 8%

If you work at one of these locations please inquire at the YMCA for what type of discount you may be eligible for if you were to purchase a membership.

Child Care Numbers:

Full Day

ELC 76	Budgeted 70
Before School 18	Budgeted 15
Afterschool 52	Budgeted 55
Kindergarten 15	Budgeted 16
Preschool 10	Budgeted 8

Offsite

Cumberland North 36	Budgeted 42
West Highlands 15	Budgeted 12
Oxford 4	Budgeted 6

Friday Night Fun participation numbers for December 14th and 21st, 2018 were an average 14 each night for ages 5-8 year olds, and an average of 15 each night for 9-14 year olds. Renovations have started in the new infant room and the wall has been changed in the 18 month old room which is now licensed for 6 toddlers.

Donations and Fundraising

A Holiday Silent Auction was held, with a total of \$3,671 raised. Coming up in February we have the 5th Annual Cues for Kids on February 8th, tickets are now on sale for \$20 at the YMCA front desk and at Dooly's. Coldest Night of the Year will take place on February 23, 2019 and there has been a good response to the launch, which took place in early December. There are six teams signed up to date.

Philanthropy Committee: The Board has agreed to create a Philanthropy Committee. As members from the Board are identified, they will be starting with ongoing meetings.



CUMBERLAND JOINT SERVICES MANAGEMENT AUTHORITY
SOLID WASTE SERVICES

External Committee Report – January 24, 2019

Draft Budget FY 2019/2020

Board Directors made a motion to send the draft FY 2019/2020 draft budget as presented to the municipal units for consideration. The draft budget will then be brought forward at the March Board meeting for approval.

Recycling Update

Replacement of the MRF will require temporary borrowing resolutions from municipal units at a later date.

An RFI will be issued to see if the private sector is interested in developing recycling partnerships.

Drug and Alcohol Policy

Due to the legalization of cannabis and in order to ensure a safe workplace, CJSMA has adopted a new drug and alcohol policy.

Next Meeting

March 21, 2019 at 5:30 pm