

**TOWN OF AMHERST  
Regular Council Meeting  
Minutes**

**Date:** February 27, 2017  
**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  
 Ian Naylor, Police Chief  
 Bill Schurman, Director Recreation  
 Greg Jones, Fire Chief  
 Rebecca Purdy, Executive Assistant

**Others Present** Andrew Fisher, Plamer

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**1. CALL TO ORDER**

**1.1 Introduction of Special Guests**

Mayor Kogon called the meeting to order at 7:00 PM and welcomed Youth Councillor Austin Coates and national anthem singer, Abby Letcher.

**2. O'CANADA - Abby Letcher**

**3. PRESENTATIONS**

**3.1 Cumberland Public Libraries (4460)**

Denise Corey made a presentation on behalf of the Cumberland Public Libraries. She invited all of Council to a public meeting on the future of the Library to be held April 6 at 7 PM at the Four Fathers Library.

**4. APPROVAL OF AGENDA/MINUTES**

**4.1 Approval of the Agenda (Rhindress)**

Moved By Councillor MacKenzie  
 Seconded By Deputy Mayor Christie  
 To approve the agenda

**Motion Carried**

**4.2 Approval of Minutes - January 23, 2017 Regular Meeting (4564) (Rhindress)**

Moved By Councillor Rhindress  
 Seconded By Councillor Byrne  
 To approve the minutes of the January 23, 2017 regular meeting of Council

**Motion Carried**

**5. REQUESTS FOR DECISION**

**5.1 PAC Recommendation - Mallard Drive (4261) (Christie)**

Moved By Deputy Mayor Christie  
 Seconded By Councillor Rhindress  
 That Council approve first reading of the proposed Development Agreement

**for 34 and 36-40 Mallard Drive to allow construction of two four-unit townhouse dwellings in addition to the existing four-unit townhouse dwelling on properties located at 34 Mallard Drive (PID 25499872) and 36-40 Mallard Drive (PID# 25497553) and that a Public Hearing on the matter be scheduled for March 27, 2017 at 6:30 pm**

**Motion Carried**

Concerns were expressed about the liability the Town may have should there be a flood in the area of this development. D/CAO will have that information available for the public hearing on March 27.

Case No: DA-2017-02

This Agreement made this \_\_\_\_\_ Day of \_\_\_\_\_ 2017.

Between:

**Ocean Breeze Estates Limited** (owner of property located at 34 Mallard Drive [PID 25499872] and 36-40 Mallard Drive [PID 25497553], hereinafter called the "Owner"),

of the one part, and

**The Town of Amherst** (a body corporate in the Province of Nova Scotia, hereinafter called the "Town"),

of the other part.

WHEREAS the Owner wishes to obtain permission pursuant to Policy RP-9 of the Municipal Planning Strategy of the Town of Amherst, to construct two 4-unit townhouse dwellings in addition to the existing 4-unit townhouse dwelling on properties located at 34 Mallard Drive (PID 25499872) and 36-40 Mallard Drive (PID# 25497553).

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 \_\_\_\_\_<sup>th</sup> Day of \_\_\_\_\_ 2017, 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) Schedule 'B' - Property Location Map
- (c) Schedule 'C' - Site Plan
- (d) Schedule 'D' - Building Elevation

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.
- 2) That the Owner may construct a maximum of twelve (12) dwellings units on the said Lands, subject to Schedules A, B, C, and D 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

**THE TOWN OF AMHERST**

David Kogon MD, Mayor

Gregory D. Herrett, CAO

**FOR THE OWNER**

Andrew Cameron

**Schedule A                      34 & 36-40 Mallard Drive - Development Agreement**

Terms and Conditions:

1.0 USE OF LAND AND BUILDINGS

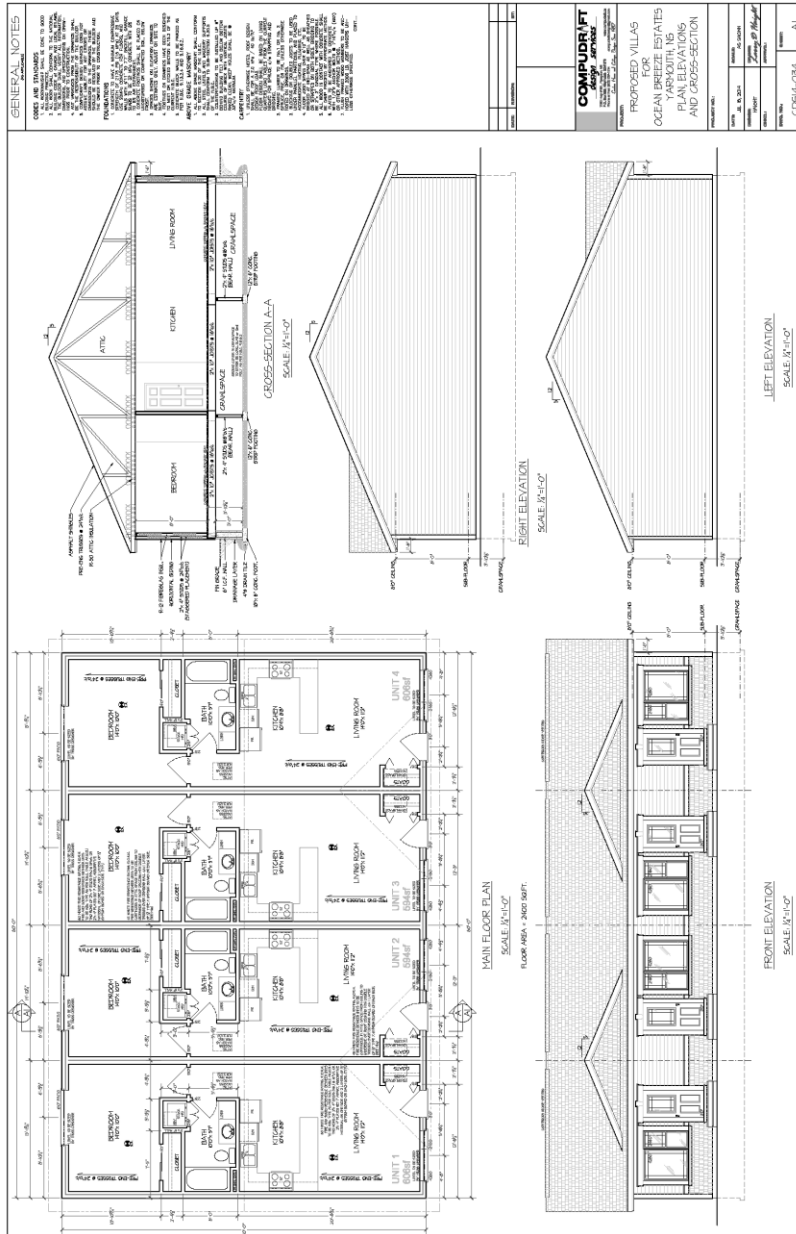
- 1.1 The use of the property shall be limited to residential uses within a maximum of twelve (12) dwelling units in three detached, 4-unit townhouse dwellings in the general location shown on Schedule 'C'.
- 1.2 A minimum of one (1) parking space shall be provided for each dwelling unit on the Lands and shall be generally configured as shown on Schedule 'C'. For greater clarity, no more than four (4) parking spaces shall be permitted in the front yard of the existing townhouse dwelling that fronts directly onto Mallard Drive.
- 1.4 Accessory buildings may be permitted on the Lands in accordance with the *Town of Amherst Land Use Bylaw*.
- 1.5 The townhouse dwellings shall generally conform to the designs shown on Schedule 'D'. Variations to the architectural details may be permitted, to the satisfaction of the Development Officer.
- 1.6 The Owner shall be responsible for the installation and ongoing maintenance of a visual barrier in the locations shown as "Vegetation Barrier" on Schedule 'C'. A visual barrier shall be installed within six (6) months of receiving an Occupancy Permit, and shall be designed to have a minimum height of 1.5 metres.
- 1.7 The Owners shall be responsible for the planting and ongoing maintenance of a vegetation barrier, or four (4) juvenile trees at least 1.5 metres in height along one side of the driveway.
- 1.8 Rear decks along the northeast townhouse shall be at minimum 3 metres (10 feet) wide for each dwelling unit, measured along the length of the building.
- 1.9 The Owner shall be responsible for maintaining a screened solid waste containment area.

2.0 GENERAL REQUIREMENTS

- 2.1 The Owner shall keep the Lands and buildings and any portion thereof clean and in good repair. All elements of the development on the Lands shall be regularly maintained and kept in a tidy state, and free from unkept materials of any kind.
- 2.2 Signage on the property shall conform to the Town of Amherst *Land Use Bylaw*.
- 2.3 The Owner shall ensure that exterior lighting does not shine directly onto adjacent properties.
- 2.4 Solid waste management shall be in conformance with the Town of Amherst *Solid Waste Bylaw*.
- 2.5 The Owner shall be responsible for storm water management during and after construction.



**SCHEDULE 'D'**



**5.2 PAC Recommendation - 150 Victoria Street East (4262) (MacKenzie)**

*Councillor Byrne declared a potential conflict as he has a professional relationship with some of the individuals involved in this development agreement; he excused himself from the Council table for the discussion and decision on this agenda item.*

**Moved By Councillor MacKenzie  
 Seconded By Councillor Blanch**

**That Council approve first reading to the Development Agreement to convert the property located at 150 East Victoria Street from a 21 unit motel to an 11 unit apartment complex; and further, that a public hearing be scheduled for Monday, March 27, 2017 at 6:30 pm**

**Motion Carried 5-1  
 Against (1): Deputy Mayor Christie**

Case No. DA-2017-01

This Agreement made this \_\_\_\_\_ Day of \_\_\_\_\_ 2017.

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 20-unit motel into an 11-unit apartment complex 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 \_\_\_\_\_ 2017, 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) Schedule '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 21-unit motel to an 11-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

FOR THE TOWN OF AMHERST

in the presence of

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 an 11-unit, 2-building apartment complex.
2. The bulk and height of the buildings shall not be altered, and the exterior 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 11 parking spaces 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. The existing freestanding sign and its support structure on the Victoria Street end of the property shall be removed.
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. One hanging flower basket be installed yearly and maintained, in front of each unit.
8. No outdoor storage shall be permitted on the property.
9. Exterior lighting shall be carefully designed to not shine directly onto adjacent properties.
10. The exterior rear wall of the lower building, including the foundation, shall be scraped and painted prior to August 1, 2017.
11. The subject properties, including buildings, shall be kept in good repair, and be continuously maintained to be aesthetically pleasing.
12. 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.
13. A minimum of 3 benches and / or three patio and chair sets be provided out of doors for the residents of the property.
14. Variations from the requirements of this development agreement in relation to the built structures are permitted in order to meet the National Building Code and Nova Scotia Building Code Regulations. 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

**5.3 PAC Recommendation - Commercial Assessment Phase-In Tool (4022)  
(Christie)**

**Moved By Deputy Mayor Christie**

**Seconded By Councillor Blanch**

**That Council approve first reading of a bylaw to amend the Municipal Planning Strategy Bylaw, P-1-7, to establish a Commercial Development District to provide for a commercial assessment phase-in tool, and scheduling a Public Hearing on the matter for March 27, 2017 at 6:30 pm.**

**Motion Carried**

**Town of Amherst**

**By-law to Amend the Municipal Planning Strategy By-law, P-1**

1. The purpose of this by-law is to create Policy GP-13 of the Municipal Planning Strategy of the Town of Amherst with respect to establishment of a Commercial Development Distr
2. The Municipal Planning Strategy of the Town of Amherst is hereby amended by adding the following policy:

*It shall be the intention of Council to designate all areas of the Town designated as Commercial, Industrial, and CDD on the Generalized Future Land Use Map as the Commercial Development District. The Commercial Development District shall include the eligible properties under the Commercial Development Improvement Bylaw.*

**Moved By Deputy Mayor Christie  
Seconded By Councillor Byrne  
That Council approve first reading of the Bylaw Respecting Commercial Developments, P-9**

**Motion Carried**

**TOWN OF AMHERST  
BYLAW RESPECTING COMMERCIAL DEVELOPMENT IMPROVEMENTS IN THE TOWN OF AMHERST**

WHEREAS it is desirable to permit the phasing-in, over a period of up to 10 years, of an increase to the taxable assessed value of commercial properties located in the Town of Amherst Commercial Development District and further to provide a partial rebate of taxes paid by the owner during the phasing-in period;

AND WHEREAS Chapter 13 of the Acts of 2016 amended the Municipal Government Act (Chapter 18 of the Acts of 1998) to create Sections 71C and 71D, which allows the Town with the approval of the Minister of Municipal Affairs to pass this Bylaw;

The Council of the Town of Amherst, under the authority of the Municipal Government Act, pursuant to Section 71C and subject to approval of the Minister in Section 71D, enacts the following Bylaw:

**SHORT TITLE**

- 1. This Bylaw shall be known as Bylaw No. P-9, and may be cited as the “Commercial Development Improvement Bylaw” (also known as “CDI Bylaw”).

**APPLICATION**

- 2. This Bylaw shall apply to a property which meets the definition of an eligible property as defined in subsection 71C(1) of the *Municipal Government Act*, if that property is located within the **Commercial Development District (CDD)** as prescribed in the *Town of Amherst Municipal Planning Strategy* and as depicted in the Industrial, Commercial, and CDD in the attached Appendix A.

**DEVELOPMENT REBATE PROGRAM**

- 3. The **Development Rebate Program** is established to provide assistance to owners of eligible property by providing the possibility of an annual partial rebate on taxes paid by the owner if the owner has undertaken development of their property in the CDD. The rebates are designed to stimulate building construction and the expansion of the economy of the Town.
- 4. The Development Rebate Program may provide a participating owner with a partial rebate on taxes paid on an eligible property by utilizing all or a portion of the “Rebate Eligible Assessment.”
- 5. Prior to receiving a development rebate, an owner of an eligible property must enter into Phased In Assessment Agreement with the Town.

**DEVELOPMENT**

- 6. An eligible property must undergo development before the owner of the property can participate in the Development Rebate Program.

**DEFINITIONS**

- 7. **Development** means investment that results in an increase in the productive use of a property or a building on a property within the CDD, and includes, but is not limited to a new building construction enterprise, or the expansion of an existing building to realize more effective utilization of the property’s potential.
- 8. **Rebate Eligible Assessment** means the amount calculated using the following formula:  
  
Rebate Eligible Assessment = Actual Taxable Assessed Value – Base Year Taxable Assessed Value
- 9. **Base Year Taxable Assessed Value** means the Taxable Assessed Value applicable for the taxation year in which a Phased In Assessment Agreement is signed for the eligible property upon which development is to be constructed.
- 10. The Base Year Taxable Assessed Value means the Taxable Assessed Value shall be fixed in this manner for the purpose of determining the Rebate Eligible Assessment for the development of the eligible property subject to any adjustment arising from assessment appeals or changes to the Taxable Assessed Value made

- 11. by the Property Valuation Service Corporation (PVSC) through requests for reconsideration, and shall remain unchanged for the duration of the term of the Development Rebate Program for the eligible property.
- 12. **Actual Taxable Assessed Value** means the Taxable Assessed Value applicable for the taxation year in which the Rebate Eligible Assessment is to be determined, subject to any adjustments to taxes arising from assessment appeals or charges to the Taxable Assessed Value made by PVSC through requests for reconsideration.

**PHASED IN ASSESSMENT AGREEMENT**

- 13. (1) As a condition of the Development Rebate Program, an owner of an eligible property must enter into an agreement with the Town (hereinafter referred to as the “**Phased In Assessment Agreement**”). The Phased In Assessment Agreement signed by the parties will be substantially the same as the form agreement attached as Appendix B to this Bylaw and forming part of the Bylaw.
- (2) A Phase In Assessment Agreement is intended to compliment and provide specifics for the subject property. The eligibility criteria for the Development Rebate Program and the limits on the program are as established in this Bylaw. In the event of a conflict between a Phased In Assessment Agreement and the Bylaw, the provisions of this Bylaw shall prevail.

**REBATE CALCULATION**

- 14. An annual development rebate amount shall be calculated each year as the following percentage of the equivalent of the Rebate Eligible Assessment:

Year	Rebate (as % of tax increment)
1	90
2	80
3	70
4	60
5	50
6	50
7	40
8	30
9	20
10	10

**REBATE LIMITS**

- 15. The total of development rebates provided to an owner over the term of participation in the program must not result in calculation of the total increase in taxes payable during the phase-in period being less than fifty percent of the total increase in taxes that would be payable during the same period in the absence of the application of the program formula.

**ADJUSTMENTS**

- 16. In the event there are any subsequent changes to the total taxes payable in any year due to reductions resulting from assessment appeals, and where such tax changes occur after rebate amounts have been paid, future year rebate entitlements may be reduced accordingly. Any overpayment of rebate amounts arising from subsequent assessment or tax reductions will be deemed to be a debt owing to the Town.

**DURATION**

- 17. Development rebates will only become payable to the owner after the eligible property is first reassessed by PVSC to fully reflect the development that the owner is receiving the rebate for.
- 18. All rebates will cease if during the program term the building is demolished except to expand an eligible use. Rebate amounts that would have been payable in the year in which the demolition occurs will be adjusted on a pro-rated bases to reflect the date of the demolition.

**STAGED DEVELOPMENT**

- 19. In the case of a staged development, where one portion of a property is developed in advance of others, each portion of the property will be treated as a separate property. The first rebate payment of the component of the Development Rebate Program will be based on the Rebate Eligible Assessment arising from the increased assessment on the first portion of the development. As other portions of the property are developed, and which result in further assessment increases, the property owner may apply to further participate in the Development Rebate Program based on the additional Rebate Eligible Assessment, subject to the continued available of the Development Rebate Program and the owner’s ability to meet the eligibility requirements and rebate entitlements in place at that time.

**CONDOMINIUMS**

- 20. If a development of an eligible property is condominiumized, each condominium unit will be treated as a stand-alone development and must be able to meet all eligibility requirements of the Development Rebate Program, independent of other condominium units.

**REPEAL**

- 21. (1) In the event that this Bylaw, or any portion thereof, is repealed, any owner who has been accepted to participate in the Development Rebate Program prior to the date of repeal will benefit from the program, as applicable, in accordance with this Bylaw, despite its whole or partial repeal.
- (2) In the event of a repeal in (1), for the owners who are accepted in the program as of the date of the repeal, this Bylaw will continue to be considered to be in force and effect only for the limited purpose of providing for the continuation of the Development Rebate Program for those owners until the ten year maximum term is completed or the owners participation in the program is discontinued.

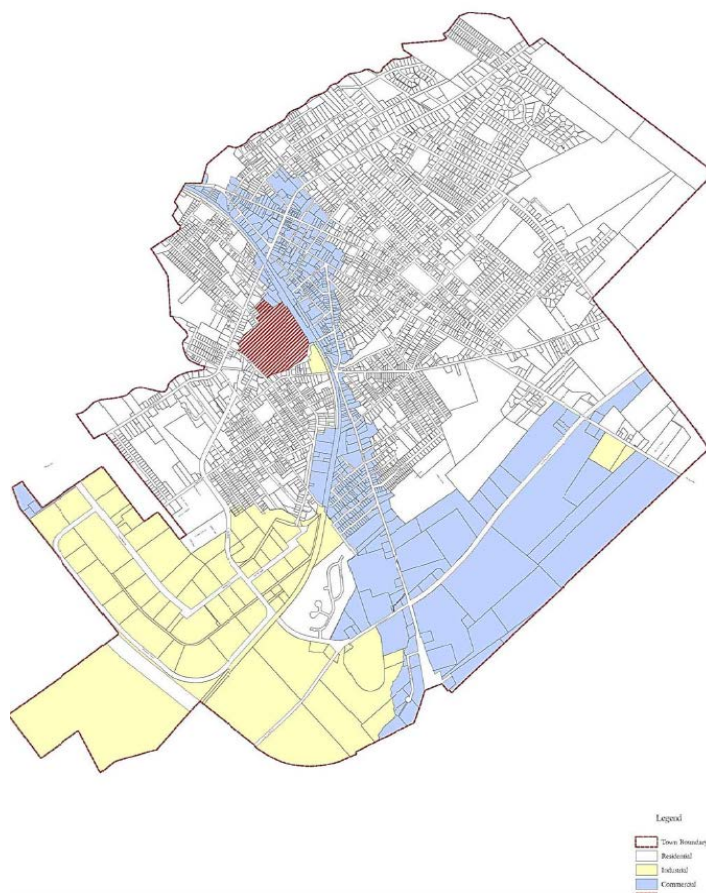
**OTHER CONDITIONS**

- 22. An owner's application to the Development Rebate Program must be made prior to the issuance of the first building permit for the development of the property.
- 23. All proposed development must conform to all Provincial laws, Town Bylaws, policies, and processes and all improvements must be made pursuant to an approved building permit and applicable zoning requirements and development approvals.
- 24. The applicant must be the owner of the eligible property or have the owner's written authorization to apply for the Development Rebate Program.
- 25. The owner of an eligible property must not be in arrears of property taxes or other fees and charges on the date that the Phased In Assessment Agreement is signed.

**PAYMENT**

- 26. Rebates may be provided once annually, in the last quarter of the year, provided that:
  - a. There are no outstanding taxes, water rates, or other sums owed to the Town with respect to the property;
  - b. There are no outstanding work orders or orders or requests to comply from any municipal or provincial entity; and
  - c. All other eligibility criteria and conditions are met.
- 27. Development rebates will not be applied as tax credits against property tax accounts.
- 28. In case of an assessment appeal, the Town reserves the right to withhold any further development rebates pending final disposition of the appeal.

**SCHEDULE 'A'**



**SCHEDULE "B"**  
**Town of Amherst**  
**Phased In Assessment Agreement**

**THIS AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

**BETWEEN:**

(the "**Applicant**")

- and -

TOWN OF AMHERST  
(the "**Town**")

WHEREAS the Town adopted Bylaw No. P-9 cited as the "Commercial Development Improvement Bylaw" (CDI Bylaw), a partial rebate program consisting of annual rebates to participating owners who undertake development on eligible property in the Central Business District;

AND WHEREAS the Applicant is the registered owner or the person having the owner's authorization, of an eligible property which is located within the Commercial Development District and has applied to the Town for participation in the Development Rebate Program for the Property described below in section 1 and in Schedule "A" of this Agreement (the "Property");

AND WHEREAS the Town requires that a Phased In Assessment Agreement be entered into between the Applicant and the Town;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the premises, covenants and agreements hereinafter contained on the part of the Applicant to be observed, fulfilled and performed as hereinafter required and the approval of the Applicant's application for participation in the Development Rebate Program by the Town, subject to and in accordance with, the terms and conditions of this Agreement, the parties covenant and agree as follows:

**1. PROPERTY INFORMATION:**

**Applicant:**

Name of registered Property Owner:

Address of Property:

Property Identification Number(s):

Mailing Address of Owner:

Name of Agreement Recipient:

Mailing Address of Recipient:

The Legal Description of the Property as set out in Schedule "A" of this Agreement.

**2. DEFINITIONS:**

Save and except as may be otherwise defined in this Agreement, the definitions of terms used in this Agreement shall be the same as the definitions for those terms as set out in the CDI Bylaw, No. P-9, and Section 71C of the Municipal Government Act, C18 of the Acts of 1998.

*Please note: the terms Actual Taxable Assessed Value, Base Year Taxable Assessed Value, Development, Rebate Eligible Assessment are defined in the CDI Bylaw.*

The following terms shall have the meaning set out below:

- 2.1 **Agreement** means this Phased-In Assessment Agreement which is entered into between the parties pursuant to sections 71C and 71D of the *Municipal Government Act*, and the CDI Bylaw No. P-9 enacted by the Council of the Town of Amherst and as amended from time to time.
- 2.2 **Applicant** means the owner of the property or a person having the owner's authorization to apply for the Development Rebate Program.
- 2.3 **CAO** means the Chief Administrative Officer of the Town. The CAO is the approving authority for purposes of this Agreement where authority is not required to come from Council.
- 2.4 **Treasurer** means the Director of Finance of the Town.
- 2.5 **Development Rebate Program** means program established by CDI Bylaw for a maximum period of 10 years.

- 2.6 **Development Rebate** means annual rebate amount calculated each year as set out in section 13 of the CDI Bylaw.
- 2.7 **Eligible Costs** means:
- Construction/retrofit/expansion costs as shown by the main Building Permit for the development;
  - The cost of associated studies and surveys;
  - The cost of development of plans and specifications; and
  - The cost of implementation and administration of the project including staff and professional service costs for architectural, engineering, legal, financial and planning services.
- Eligible costs do not include any costs or portion thereof covered by any form of financial assistance from a Provincial or Federal government or a board or agency of such government.
- 2.8 **Eligible Use** means permitted commercial uses as set out in the Town of Amherst Municipal Planning Strategy and Land Use Bylaw.
- 2.9 **Owner** means the registered owner(s) of the Property at the date this Agreement is signed.
- 2.10 **Property** means the Property described in section 1 and Schedule "A" of this Agreement.
- 2.11 **Recipient** means the Applicant, authorized to receive a development rebate.
- 2.12 **Town Solicitor** means the lawyer appointed by the Town for the purpose of registering this Agreement in the Registry of Deeds or under the Land Registration System, whichever is applicable.

### 3. PARTICIPATION IN DEVELOPMENT REBATES PROGRAM

- 3.1 The Applicant's participation in the Development Rebate Program is conditional on the Applicant ensuring that at all times the following conditions are met:
- (a) The objectives and participation requirements of this Agreement and the CDI Bylaw, attached as Schedule "C" to this Agreement, are met from year to year;
  - (b) All applicable Provincial and Town requirements, policies and procedures are met;
  - (c) The Applicant is in compliance with all of the terms and conditions of this Agreement and is in conformance with all Building Permits and other regulatory approvals pertaining to the Property; and
  - (d) The property has undergone development.

### 4. DEVELOPMENT REBATE FUNDING CALCULATION

- 4.1 A development rebate is calculated by the TREASURER as a percentage of the Rebate Eligible Assessment as shown in Schedule "F" to this Agreement.
- 4.2 Prior to the commencement of the Development Rebate Program, the TREASURER shall determine the Base Year Taxable Assessed Value used to calculate the Annual Rebate Eligible Tax Assessment and the corresponding annual development rebate payable for development. Following this determination, Schedule "F" will be amended annually to show the Actual Taxable Assessed Value, the Rebate Eligible Taxes, and the annual development rebate amount payable as determined by the TREASURER.
- 4.3 The Applicant shall have an opportunity to review the TREASURER's calculation of the Base Year Taxable Assessed Value prior to the finalization of Schedule "F", however, the TREASURER's determination as to the calculation of the Base Year Taxable Assessed Value, and the amount of the development rebate, shall be final.
- 4.4 In calculating the annual Development Rebate payable for the development, the Rebate Eligible Assessment shall be calculated annually from the first year that the subject Development Rebate is payable, or the first year that the Owner elects to make the Annual Taxable Assessed Value election in accordance with this Agreement and CDI Bylaw.
- 4.5 The Development Rebate will be reduced by the TREASURER for the year in which a development rebate is paid, to reflect the amount of any rebate(s) of municipal taxes paid to the Owner, including but not limited to rebates to reflect charitable status tax rebates related to the development. Any such reductions shall be in an amount reflecting the product of the municipal portion of taxes rebated and the development rebate percentage level applicable to that year.
- 4.6 The total of development rebates paid over a ten year maximum term of the program must not result in the calculation of the total increase in taxes payable during the phase-in period being less than fifty percent (50%) of the total increase in taxes that would be payable during the same period in the absence of the application of the formula.

## REBATE ELIGIBLE ASSESSMENT

- 4.7 Subject to sections 4.9 and 4.10 of this Agreement, the Base Year Taxable Assessed Value shall remain fixed for the duration of the Development Rebate Program.
- 4.8 The Rebate Eligible Assessment will be amended by the TREASURER, as necessary, to reflect changes to the total Municipal Property Taxes payable in any year, as a result of successful assessment appeals, requests for reconsideration, equity changes, gross errors or other changes to Actual Taxable Assessed Value that have the effect of changing the amount used to calculate the Actual Taxable Assessed Value.
- 4.9 Where the Rebate Eligible Assessment is amended in accordance with section 4.8, future development rebates shall be adjusted accordingly for the duration of the Development Rebate Program period. Such adjustments may reflect any overpayment of development rebate arising from successful assessment appeals that occur subsequent to the commencement of payment of development rebates.
- 4.10 If at any time the Owner appeals any assessment relating to the development that, in the opinion of the CAO, may impact the calculation of the Rebate Eligible Assessment, the Town shall withhold any or all of the Development Rebate that would otherwise be paid for the development, based on a reasonable estimate of the reduction in assessment being sought, pending final disposition of the appeal. If as a result of the decision of the appeal body, the Actual Taxable Assessed Value is reduced below the amount determined in calculating the Rebate Eligible Assessment, then the reduced Rebate Eligible Assessment shall be the basis for determining the development rebate payable under this Agreement.
- 4.11 Where section 4.9 and 4.10 apply, any overpayment of a development rebate arising from subsequent assessment or tax reductions will be deemed to be a debt owing to the Town which the Owner shall pay forthwith together with the same interest charged for overdue accounts by the Town.
- 4.12 If at any point after the development is complete, additional work is proposed on the Property that is not part of the original Program application, but may serve to further increase the current year tax assessed value, such additional work shall not be included in the calculation of the development rebate in this Agreement, but may be the subject of a further Development Rebate Program application, subject to the continued availability of the Development Rebate Program and the eligibility requirements and rebate entitlements in effect at that time.

## 5. FUNDING PAYMENT

- 5.1 Subject to Section 6 of this Agreement, development rebate payments to a maximum of ten (10) annual payments will commence being paid the first taxation year in which the Rebate Eligible Assessment is capable of being determined.
- 5.2 Development rebates cannot be applied as tax credits against the Property Tax Account.

## 6. CONDITIONS OF PAYMENT

- 6.1 The CAO shall determine whether the Applicant has satisfied the participation requirements of this Agreement and the Schedules attached hereto.
- 6.2 A development rebate will only become payable after the property is first reassessed by the PVSC to fully reflect the development for which the Applicant might receive a rebate.
- 6.3 A rebate can only be paid once annually, in the last quarter of the year, provided that:
- (a) There are no outstanding taxes, water rates or other sums owed to the Town with respect to the property;
  - (b) There are no outstanding work orders and/or orders or requests to comply from any municipal or provincial entity; and
  - (c) All other required criteria and conditions are met.

## 7. OWNERS OBLIGATIONS

### Compliance with Rebate Application

- 7.1 The Applicant shall undertake the development in accordance with the Development Rebate Program.

### Compliance with Town Directives

- 7.2 The Applicant shall strictly comply with and observe all material requirements, stipulations, guidelines and directives related to the Development Rebate Program as required by the Town, and shall undertake all necessary courses of action to ensure compliance.
- 7.3 The Applicant agrees that the development shall be completed in compliance with all required Building Permits, and constructed in accordance with the Nova Scotia Building Code Act and all applicable Land Use Bylaw requirements, Municipal requirements and other approvals required at law.

**Demolition/Conversion**

- 7.4 The Applicant covenants to the Town that the development will not be demolished, in whole or in part or converted to an ineligible use, in whole or in part, prior to the advance of all of the payments over the term of this Agreement unless such demolition is required to enable property enhancement approved by the Town under the terms of this Agreement.
- 7.5 The Applicant shall ensure that the Property is maintained in its redeveloped condition in accordance with this Agreement.
- 7.6 The Applicant further covenants that if at any time during the Development Rebate Program the building which underwent development is demolished, in whole or in part, or converted to an ineligible use, in whole or in part, the CAO in his or her sole discretion will cease to advance future development rebates or reduce the amount of future development rebates on a pro-rated basis to reflect the date of the demolition or conversion.

**Payment of Costs**

- 7.7 The Applicant acknowledges that without limiting the generality of the other provisions of this Agreement:
- a) The onus and responsibility is upon the Applicant at all times to assume all costs of development and to apply for and obtain, at the Applicant's expense, all approvals and permits required from the Town and all other agencies including but not limited to all Municipal Planning Strategy Amendments, Land Use Bylaw Amendments, minor variances, site plan approval and building permits in accordance with all applicable legislation; and
  - b) The Owner remains responsible at all times for the payment in full of all amounts in respect of property taxes, water and any other charges that may be levied by the Town relating to the Property as and when they fall due.

**Development Permits**

- 7.8 Applications for Development Rebate Program must be made prior to the issuance of the first Building Permit for the development.

**8. ASSIGNMENT**

- 8.1 The Applicant covenants to the Town that if the Owner intends to sell, transfer or assign the Property or if for any reason the Property ceases to be registered in the Owner's name prior to the advance of all of the development rebate payments, the Applicant will immediately notify the CAO in writing of such change or proposed change of ownership.
- 8.2 The payment of development rebates shall cease upon the sale, transfer or assignment of the Property, unless, prior to the completion of such sale, transfer or assignment, the Owner and the new owner enter into an agreement with the Town, in a form and content satisfactory to the CAO and the Town Solicitor, in which it is agreed that either:
- a) the new owner shall have the right to participate in the Development Rebate Program; or
  - b) the Applicant shall continue to receive the Development rebates
- Provided that:**
- c) the new owner shall assume the Applicant's obligations under this Agreement from and after the date of completion of such sale, transfer or assignment;
- and**
- d) the new owner shall require that any subsequent owner(s) of the Property shall assume the Applicant's obligations under this Agreement.
- 8.3 Where the applicant wishes to assign the right to receive the development rebates to a recipient who is not a new owner, the CAO, in the CAO's sole discretion, may agree to the assignment provided that the Recipient with the written consent of the owner enter into an agreement with the Town, in a form and content satisfactory to the CAO and the Town Solicitor, acting reasonably, in which it is agreed, that such assignment shall not relieve the Applicant of any of the Applicant's obligations and responsibilities under this Agreement, nor shall it affect in any way the Town's rights under this Agreement.
- 8.4 It is the responsibility of the Applicant or Owner to provide in writing to the CAO change in Recipient. It is at the discretion of the CAO to determine if an adjustment to the development rebate identification of a new Recipient by the Applicant.

## 9. TOWN RIGHTS

### No Representation

- 9.1 Nothing in this Agreement shall be construed to be a representation by the Town regarding compliance of the Property with any applicable legislation, regulations, policies, standards, permits, approvals or Bylaws.

### No Claim for Compensation or Reimbursement

- 9.2 In the event that any of the conditions of this Agreement are not fulfilled and a development rebate is not advanced, or required to be repaid, or the development rebate payments cease, or are delayed, the Applicant or Owner agrees that notwithstanding any costs or expenses incurred by the Applicant or Owner, the Applicant or Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the Town and that the Town is not liable to the Applicant or Owner for losses, damages, interest, or claims which the Applicant or Owner may bear as a result of the lapse of time (if any) where the Town is exercising its rights herein to either delay a payment pending the Applicant or Owner's compliance with this Agreement or to terminate this Agreement.

## 10. DEFAULT AND REMEDIES

- 10.1 Subject to section 10.3, on the occurrence of a Default under this Agreement, the Town shall be entitled to all available remedies to terminate or enforce this Agreement, including but not limited to:
- a) immediate termination and cessation or delay of the release of a development rebate otherwise payable to the Applicant; and
  - b) requiring the Applicant or Owner to immediately repay to the Town all or a portion of any development rebates paid to the Applicant or Owner together with interest at the established Town rates.
- 10.2 A default under this Agreement ("**Default**") shall be deemed to occur upon the failure of the Applicant or Owner to perform any of the obligations of the Applicant or Owner contained in this Agreement or to comply with all of the terms and conditions contained in this Agreement, included but not limited to the following:
- a) failure by the Applicant or Owner to satisfy the minimum requirements as set out in this Agreement and the CDI Bylaw;
  - b) failure by the Applicant or Owner in any material respect, to perform any of the obligations contained in this Agreement;
  - c) failure by the Applicant or Owner to pay and keep in good standing all real property taxes with respect to the Property and all other charges against the Property in favour of the Town, including but not limited to development charges, special assessments, local improvement charges, sewer and water and utility rates.
  - d) the making of an assignment by the Applicant or owner for the benefit of creditors, or if the Applicant or Owner assigns in bankruptcy or takes advantage of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors; receipt of a receiving order against the Applicant or Owner, or if the Applicant or Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged mortgage or other obligation, or if the Property or the interest of the Applicant or Owner in the Property is taken or sold by any creditors or under any writ of execution or other like process.
  - e) failure by the Applicant or Owner to remain in contact with the Town such that the Town is unable to contact the Applicant or Owner for a period of time exceeding one (1) year.
  - f) Any representation or warranty made by the Applicant or Owner in this Agreement or the Development Rebate Program is incorrect in any material respect.
  - g) Willful defaults by the Applicant or Owner in the payment of moneys to any contractor, supplier or creditor, who has undertaken the works that are the subject of this Agreement.
- 10.3 If a Default occurs, the Town shall give written notice to the Applicant or Owner specifying the nature of the Default. The Applicant or Owner shall then have sixty (60) days, or such additional time as may be agreed to by the Town, acting reasonably, from the receipt of such notice of Default to rectify the Default, during which time all Development rebate payments pay, in the CAO's sole discretion, be suspended, provided that if the Default is such that it cannot with due diligence be wholly rectified within sixty (60) days, or such additional period of time as may be agreed to by the CAO, and the Applicant or Owner has commenced and continues diligently working to correct the Default, the Applicant or Owner shall not be deemed to be in Default of this Agreement so long as it proceeds with due diligence to rectify the Default. If the Applicant or Owner fails to rectify the Default within the sixty (60) day time period or such additional time as may be agreed to by the CAO, and provided that the Applicant or Owner has not commenced and continued diligently working to correct the subject Default, the CAO shall have the option, in the CAO's sole discretion, to exercise the remedies under Subsection 10.1.

- 10.4 Wherever in this Agreement the Town requires repayment of all or part of any Development rebate and the Applicant or Owner fails to repay as required the unpaid amounts shall be deemed to be a debt owing to the Town, and may be added to the tax roll for the property, together with interest at the Town rate.

## 11. INDEMNIFY

- 11.1 The Applicant or Owner shall indemnify, save, defend and keep harmless from time to time and at all times, the Town and its elected officials, officers, employees and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly:
- a) in respect of any failure by the Applicant or Owner to fulfill its obligations under this Agreement; and
  - b) in respect of any loss, damage or injury (including death resulting from injury) to any person or property, however caused, directly or indirectly resulting or sustained by reason of an act or omission of the Applicant or Owner or any person for whom the Applicant or Owner is in law responsible in connection with any of the purposes set out in this Agreement or the failure by the Applicant or Owner to fulfill its obligations under this Agreement;

This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

## 12. ADDITIONAL PROVISIONS

### Term

- 12.1 This Agreement shall remain in effect from the date of its execution by the Town to the earlier of:
- a) the Applicant informing the Town in writing prior to the first development rebate payment that it has decided not to accept any development rebates;
  - b) subject to the provisions of section 10 of this Agreement, the Town informing the Applicant or Owner in writing that due to the non-fulfillment of a required condition or due to Default, this Agreement is at an end;
  - c) the expiry of the Development Rebate Program period after 10 years; and
  - d) the Applicant informing the Town in writing at any point after receiving the first development rebate payment that it no longer wishes to receive development rebates.

### Time of the Essence

- 12.2 Time shall be of the essence with respect to all covenants, agreements and matters contained in this Agreement.

### Extension of Time

- 12.3 Where a time limit or deadline is provided for under this Agreement, the CAO, acting reasonably, may extend such time limit or deadline without an amendment to this Agreement.

### Registration

- 12.4 Upon executing of this Agreement the Town at the Owner's expense, shall register or cause this Agreement to be registered on title to the Property immediately following execution by the Town.

### Schedules

- 12.5 The following Schedules are attached to and form part of this Agreement:
- Schedule "A" Legal Description of the Property
  - Schedule "B" Example of Development Rebate Calculation
  - Schedule "C" CDI
  - Schedule "D" Development Rebate Program
  - Schedule "E" List of Development Plans
  - Schedule "F" Development Rebate Calculation

### Survival of Covenants

- 12.6 Any terms or conditions of this Agreement that require performance by the Town or the Applicant or Owner after the expiration or other termination of this Agreement remain enforceable notwithstanding such expiration or other termination of this Agreement for any reason whatsoever.

**Notice**

12.7 Any notice required to be given by either party to the other shall be given in writing and delivered in person or by facsimile transmission to:

a) **In the case of the Town to:**  
  
Town of Amherst, Attention: CAO  
PO Box 516  
Amherst, Nova Scotia  
B4H 4A1

b) **in the case of the Applicant to:**

c) **in the case of the Owner to:**

Notice shall be deemed to have been received on the day of personal delivery or facsimile transmission if such a day is a business day and delivery is made prior to 4:00 p.m. and otherwise on the next business day. The parties agree to notify each other immediately, in writing, of any changes of address from those set out above.

**Entire Agreement**

12.8 This Agreement and the Schedules attached to it constitute the entire Agreement between the parties and there are no agreements collateral to it other than as referred to herein and no representations or warranties, express or implied, written or verbal, statutory or otherwise, other than as expressly set forth or referred to in this Agreement.

**Municipal Government Act**

12.9 Nothing in this Agreement limits or fetters the Town in exercising its statutory jurisdiction under the *Municipal Government Act*, or under any other legislative authority or Bylaw and in the event that the Town decides to grant or deny any request or oppose or appeal any decision made pursuant to any such legislation, such action by the Town is not in any manner affected or limited by reason of the Town entering into this Agreement.

**Governing Law**

12.10 This Agreement will be exclusively governed, construed and enforced in accordance with the laws of the Province of Nova Scotia and the Owner agrees to attorn to the jurisdiction of the Province of Nova Scotia.

**Waiver and Consent**

12.11 No consent or waiver, express or implied, by either party to or of any breach or Default by either party of any or all of its obligations under this Agreement or any amendment of this Agreement will:

- a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this Agreement;
- b) be relied upon as a consent or waiver to or of any other breach or Default of the same or any other obligation;
- c) constitute a general waiver under this Agreement; or
- d) eliminate or modify the need for a specific consent or waiver pursuant to this section in any other instance.

**Headings**

12.12 The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. These articles, sections, subsections and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and should not be considered part of this Agreement.

**Extended Meanings**

12.13 Words expressed in the singular include the plural and vice-versa and words in one gender include all genders.

**Severability**

12.14 If any provision of this Agreement is invalid, illegal or unenforceable, it shall not affect the validity, legality or enforceability of any other provision of this Agreement.

**Further Assurances**

12.15 The parties agree that they shall each execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be required or as the other party may reasonably request in order to give full effect to this Agreement.

**Force Majeure**

12.16 If either party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of an Act of God, strike, labour dispute, lockout, threat of imminent strike, fire, flood, interruption or delay in transportation, war, acts of terrorism, insurrection or mob violence, requirement or regulation of government, or statute, unavoidable casualties, shortage of labour, equipment or material, plant breakdown or failure of operation, equipment or any disabling cause (other than lack of funds) without regard to the foregoing enumeration, beyond the control of the parties which cannot be overcome by the means normally employed in performance, then and in every such event, any such prevention or delay shall not be deemed a breach of this Agreement but performance of any of the said obligations or requirements shall be suspended during such period of disability and the period of all such delays resulting from any such causes shall be excluded in computing the time within which anything required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is done, or made pursuant thereto shall be extended by the total period of all such delays.

**Successors and Assigns**

12.17 The terms and provisions of this Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**IN WITNESS WHEREOF** the parties have executed this Agreement by their duly authorized representatives effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**TOWN OF AMHERST**

\_\_\_\_\_  
 Gregory D. Herrett, CPA, CA  
 CAO

\_\_\_\_\_  
 Name:  
 Title:

**SCHEDULE A**

**LEGAL DESCRIPTION OF OWNER'S LAND**

**SCHEDULE B**

**EXAMPLE OF DEVELOPMENT REBATE CALCULATION**

**A. Pre-Development Base Year Taxable Assessed Value:**

(1)	
Base Year	Base Year Taxable Assessed Value
2007	\$150,000

**B. Post-Development Actual Taxable Assessment Value:**

Years	Rebate Year	(2)                      (3)	
		Actual Taxable Assessed Value	Current Commercial Municipal Tax
1	2008	\$350,000	3.78
2	2009	\$350,000	3.98
3	2010	\$375,000	4.21
4	2011	\$375,000	4.52
5	2012	\$325,000	4.52
6	2013	\$325,000	4.52
7	2014	\$325,000	4.51
8	2015	\$325,000	4.45
9	2016	\$300,000	4.39
10	2017	\$300,000	4.31

**C. Development Rebates:**

	(4)	(5)=(2-1)	(6) = (5 x 3)	(7) = (6 x 4)	(8)
Years	Rebate %	Rebate Eligible Assessment	Rebate Eligible Taxes	Rebate Amount \$	Cumulative % Payable
1	90	\$200,000	\$7,560.00	\$6,804.00	90%
2	80	\$200,000	\$7,960.00	\$6,368.00	85%
3	70	\$225,000	\$9,472.50	\$6,630.75	80%
4	60	\$225,000	\$10,170.00	\$6,102.00	75%
5	50	\$175,000	\$7,910.00	\$3,955.00	70%*
6	50	\$175,000	\$7,910.00	\$3,955.00	67%
7	40	\$175,000	\$7,892.50	\$3,157.00	63%
8	30	\$175,000	\$7,787.50	\$2,336.25	59%
9	20	\$150,000	\$6,585.00	\$1,317.00	54%*
10	10	\$150,000	\$6,465.00	\$646.50	50%*
Totals (9) & (10):			\$79,712.50	\$41,271.50	
Re-calculate:			50%	(\$1,415.25)	
Total Allowable Rebate:			\$39,856.25	\$39,856.25	

\* Reset calculated in Year Five (5) and Year Nine (9) to identify any over/underpayment of Rebate. Total Allowable Development Rebates over the program period cannot exceed 50%.

**SCHEDULE C**

**CDI BYLAW – TOWN OF AMHERST**

**SCHEDULE D**

**DEVELOPMENT REBATE PROGRAM**

**SCHEDULE E**

**LIST OF DEVELOPMENT PLANS & DRAWINGS**

**SCHEDULE F**

**DEVELOPMENT REBATE CALCULATION**

Address:

Property Identification No:

**A. Pre-Development Base Year Taxable Assessed Value:**

	(1)
Base Year	Base Year Taxable Assessed Value
	\$

**B. Post-Development Actual Taxable Assessment Value:**

	(2)	(3)	
Years	Rebate Year	Actual Taxable Assessed Value	Current Commercial Municipal Tax
1		\$	
2		\$	
3		\$	
4		\$	
5		\$	
6		\$	
7		\$	
8		\$	
9		\$	
10		\$	

**C. Development Rebates:**

Years	(4) Rebate %	(5)=(2-1) Rebate Eligible Assessment	(6) = (5 x 3) Rebate Eligible Taxes	(7) = (6 x 4) Rebate Amount \$	(8) Cumulative % Payable
1	90	\$	\$	\$	90%
2	80	\$	\$	\$	85%
3	70	\$	\$	\$	80%
4	60	\$	\$	\$	75%
5	50	\$	\$	\$	70%*
6	50	\$	\$	\$	67%
7	40	\$	\$	\$	63%
8	30	\$	\$	\$	59%
9	20	\$	\$	\$	54%*
10	10	\$	\$	\$	50%*
Totals (9) & (10):			\$	\$	
Re-calculate:			50%	\$	
Total Allowable Rebate:			\$	\$	

\* Reset calculated in Year Five (5) and Year Nine (9) to identify any over/underpayment of Rebate. Total Allowable Development Rebates over the program period cannot exceed 50%.

**5.4 Parking Lot Snow Removal - Dayles (4433) (Byrne)**

**Moved By Councillor Byrne**

**Seconded By Councillor MacKenzie**

**That Council approve the short term parking lot snow removal agreement with Dayle’s Maritimes Limited, and authorize the Mayor and CAO to sign the agreement on behalf of the Town**

**Motion Carried**

**THIS AGREEMENT** made this                    day of                    , 2017.

**BETWEEN:**

**DAYLE’S MARITIMES LIMITED**, a body corporate of Amherst in the County of Cumberland, Province of Nova Scotia, Hereinafter called “the Owner”

- and -

**TOWN OF AMHERST**, a municipal corporation in the County of Cumberland, Hereinafter called “the Town”

WHEREAS the Owner owns certain lands upon which is located a parking lot as depicted on the sketch attached hereto as Schedule A (“the Lands”);

AND WHEREAS it is the mutual objective of the Town and the Owner to have the Lands utilized as a public parking lot until May 31, 2017;

NOW THEREFORE it is agreed that the Owner will allow the Lands to be utilized as a public parking lot and the Town agrees to undertake or have undertaken snow removal operations of the said Lands subject to the following terms and conditions:

1. The agreement will expire on May 31, 2017;
2. The Town will perform, or have performed, snow and ice clearing operations on the said Lands to the same standards as other public parking lots managed by the Town;
3. The Town will not be responsible for any maintenance to the Lands;
4. The Owner agrees that the Lands may be used as a public parking lot and will be designated “Public Parking – Free All Day”. The parking lot will be subject to such reasonable terms and restrictions as the Town deems appropriate for the effective administration of its parking lots;
5. This agreement is not assignable by the Town or the Owner;
6. The Owner shall indemnify the Town of any claims associated with the lot;
7. Both the Owner and the Town agree to re-assess the need for the Lands to be utilized as a public parking lot on a more permanent basis prior to August 30, 2017.

**IN WITNESS WHEREOF** the parties hereto have executed these presents the day and year first hereinbefore written.

**5.5 Police Commission Appointments (4562) (Jones)****Moved By Councillor Jones****Seconded By Councillor Byrne****That the appointments of Councillors Jason Blanch and Darrell Jones to the Amherst Board of Police Commissioners be clarified as three-year terms ending October 31, 2019, and that Deputy Mayor Sheila Christie be appointed to the Amherst Board of Police Commissioners for a two year term ending October 31, 2018****Motion Carried****5.6 Audit Committee TOR Policy - Proposed Amendment (4404) (Christie)****Moved By Deputy Mayor Christie****Seconded By Councillor MacKenzie****That Council approve an amended Audit Committee Terms of Reference Policy 3000-05 by adding the words "Compliance with" at the beginning of paragraph 2b.****Motion Carried****TOWN OF AMHERST POLICY  
Audit Committee Terms of Reference****NUMBER 03000-05****Purpose**

1. The Audit Committee (the "Committee") assists Town Council ("Council") in fulfilling its oversight responsibilities relating to finance and audit matters delegated to management by Council.
2. In particular, the Committee assists Council by reviewing:
  - a. Key financial information that will be provided to the province or made public;
  - b. **Compliance with** strategic financial plans, operating and capital budgets;
  - c. External and/or internal audit activities;
  - d. The system of internal controls, risk management and financial information technology;
  - e. Cash and investment management activities;
  - f. Insurance coverage of significant risks and uncertainties;
  - g. Financial Condition Indicators.

**Composition, Operations and Accountability**

3. The Committee shall be comprised of all members of Council plus two citizen appointments. The Committee shall be appointed by Council.
4. The initial citizen appointments (effective November 1, 2016) will be for one-year terms, as a transitional measure, and subsequent citizen appointments will be for two-year terms. Citizen appointees shall possess knowledge and understanding of financial and investment matters.
5. The Chief Administrative Officer (CAO) of the Town or his or her appointee shall be the secretary of the Committee
6. The Chief Administrative Officer, Treasurer and Accountant shall be non-voting members of the Committee.
7. The Chair shall be a member of Council and shall be elected annually by the Committee.
8. The Committee shall meet at least four times each year. The Committee Chair will make periodic reports to Council on matters relating to the Committee's duties and responsibilities.
9. The Committee shall meet with the external auditors as it deems appropriate to consider any matter that the Committee or auditors determine should be brought to the attention of Council.
10. Through the CAO the Committee may request members of the Town's senior management to attend meetings of the Committee as deemed necessary.
11. The Committee provides open avenues of communication among management, employees, external auditors and Council.

**Duties and Responsibilities**

12. The Committee has the following responsibilities and will perform the following duties.

**Financial Information**

- a. The Committee will review the following financial information that will be provided to the Province or made public:
  - i. Annual audited financial statements;
  - ii. Management discussion and analysis that accompanies the audited financial statements
- b. Ensure that meaningful financial information regarding current financial results and up to date forecasts is received on a timely basis, and that it provides information required for decision making.
- c. Review quarterly internal financial reports.
- d. Review:
  - i. the appropriateness of accounting policies and financial reporting practices and any proposed changes thereto;
  - ii. any new or pending developments in accounting and reporting standards; and
  - iii. significant estimates contained in the financial statements and other financial information.
- e. The Committee will:
  - i. assess the performance of the external auditor;

**5.7 Truck Tender (Recreation) (4508) (Blanch)**

*Deputy Mayor Christie declared a conflict as an employee of one of the vehicle dealerships, and excused herself from the Council table for the discussion and decision on this agenda item.*

**Moved By Councillor Blanch**

**Seconded By Councillor Rhindress**

**That Council award tender T-17-04 to supply a 4x4 half ton service truck to Tantramar Chev in the amount of \$29,142 plus HST to be funded from the approved 2016/17 capital budget**

**Motion Carried**

**5.8 Zero Turn Mower RFQ (4510) - (Rhindress)**

**Moved By Councillor Rhindress**

**Seconded By Councillor Byrne**

**That Council accept the proposal from Fort Equipment for RFP-16-12 Zero Turn Mower in the amount of \$16,621 plus HST to be funded by: \$14,000 in the 2016-17 approved capital budget for this item, and the remainder (\$3,333) from the Dickey Park Capital project**

**Motion Carried**

**5.9 Hiring Policy - Proposed Amendment (4512) (Christie)**

**Moved By Deputy Mayor Christie**

**Seconded By Councillor Blanch**

**That Council approve the amended Hiring Policy, 4000-07, which removes the words "and whose parents are residents of the Town of Amherst" from paragraph 10, and removes paragraph 12 (b)**

**Amended Motion Carried**

**Amendment:**

**Moved By Deputy Mayor Christie**

**Seconded By Councillor Rhindress**

**To amend the motion to replace the words 'and removes paragraph 12(b)' with the words "and adds the words 'or Cumberland County' to paragraph 12 (b)"**

**Motion Carried 6-1**

Against (1): Councillor Blanch

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**POLICY STATEMENT**

All vacant positions in the Town of Amherst that are required to be filled shall be staffed by qualified candidates selected and appointed on the basis of education, experience, knowledge, abilities, personal suitability, and, when appropriate, seniority and residency, to be considered within the framework of legislation, applicable agreements, equal opportunity, fairness of employment, budgetary limitation and corporate needs.

**Where a conflict exists between this policy and a Collective Agreement, the Collective Agreement shall prevail.**

**1. PURPOSE**

The provisions of this policy are intended to:

- a) promote equal employment opportunities for all prospective applicants irrespective of race, colour, religion, national origin, ancestry, place of origin, age, physical and mental disability, marital status, sexual orientation and sex, including pregnancy;
- b) promote fairness and impartiality;
- c) establish a procedure whereby the Town shall recruit, screen, hire and retain employees who are the most capable and qualified to do the job.

**2. DEFINITIONS**

“Permanent Employee” means an employee who is employed on a regular and full time basis.

“Temporary Employee” means an employee performing duties for an undetermined period of time.

“Part-time Employee” means an employee performing duties on a part-time basis.

“Seasonal Employee” means an employee performing duties of a seasonal nature.

“Open Competition” means a competition that is open to persons who are currently employed with the Town of Amherst as well as members of the general public.

“Physical Disability” means any degree of disability, infirmity, malformation or disfigurement of a physical nature caused by bodily injury, illness or birth defect and, without limiting the generality of the foregoing, includes any disability resulting from any degree of paralysis, or from diabetes, mellitus, epilepsy, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair, cane, crutch or other remedial device or appliance.

“Union” means Local 1233, Canadian Union of Public Employees, or Atlantic Police Association (APA) Local 104.

“Work Creation Project” means a project which is funded in whole or in part by a federal, provincial or municipal authority.

**3. APPLICATION**

This policy shall apply to all persons recruited by the Town of Amherst for all permanent, temporary, part-time, seasonal or student positions, as well as to positions related to publicly funded work creation programs. Additional screening, information, testing and security checks may be required by the Amherst Police Department as outlined in their policy manual “Personnel II, Chapter 7, on Recruiting”.

**4. DISCRIMINATION**

No employee of the Town of Amherst or other person acting on behalf of the Town of Amherst shall refuse to employ or continue to employ any person, or discriminate against any person in respect of employment or any term or condition of employment based on race, colour, religion, national origin, ancestry, place of origin, age, physical and mental disability, marital status, sexual orientation, and sex, including pregnancy.

The foregoing provision as to age does not apply to termination of employment or refusal to employ because of the terms or conditions of a bona fide retirement or pension plan or employee insurance plan.

The same prohibitions with respect to physical handicaps do not apply if the termination of employment or refusal to employ is because of a bona fide qualification or job description based on the nature of the work or the work environment in relation to the physical disability or the operation of a bona fide group or employee insurance plan.

**5. GENERAL REQUIREMENTS**

In order to be considered for permanent employment, an applicant must:

- a) be a Canadian citizen or landed immigrant;

- b) possess an employment visa or other authorization to work in Canada, in the case where an applicant is not a Canadian citizen or a landed immigrant;
- c) have a Social Insurance Number card issued by the Canadian Employment and Immigration Commission;
- d) must meet education requirements of the position;
- e) be sixteen (16) years of age or older; and
- f) must meet minimum standards set for the position by the Town.
- g) All sworn police officer applicants or employees must meet the minimum standards outlined by the Nova Scotia Police Act and Policy and Standards as defined from time to time by the Department of Justice.

## 6. PROCEDURES: COMPETITIONS

- a) Where applicable, COMPETITIONS shall be held in accordance with the terms and conditions of the respective collective agreement in effect between the Town of Amherst and the union which is the bargaining agent for the position in question.
- b) The Town of Amherst will post, at its discretion, position vacancies within the organization.
- c) Employees who have completed their probationary period are eligible to apply for posted positions.
- d) Employees who change positions through the Job Posting procedure will normally be prohibited from applying again until they have completed a minimum of six (6) months in the new position. The waiting period can be waived due to extenuating circumstances that are acceptable to the responsible managers/supervisors.
- e) Position vacancies will be posted in each Department on bulletin boards for a period of ten (10) days.
- f) Each posting will state the title, department, description of duties, and will list the qualifications and experience necessary to be considered for the position.
- g) Employees who are interested in a posted position must follow the Job Posting procedure.
- h) All applications will be reviewed by the Director and/or the interviewing committee for the posted position. Consideration will be given to the applicant's previous job performance, work history and qualifications.
- i) All full time, part time, casual and seasonal employees who apply and meet the minimum qualifications will be considered for the job.
- j) The most qualified candidates will be selected for interviews.
- k) If a current employee is selected, the employee's start date in the new position will be agreed upon by the Directors concerned. In most instances, the transfer should take place within two weeks. If a current employee is not selected, the position will then be filled by a qualified individual seeking employment with the Town of Amherst.

## 7. SELECTION COMMITTEE

The Selection Committee shall be as follows:

- a) For the position of Chief Administrative Officer, a Committee of Council and external resource person as determined. Hiring authority – Town Council.
- b) For the position of Director, the Chief Administrative Officer (CAO), one member of Council, Human Resources, and external resource persons as determined. Hiring authority – Town Council on CAO's recommendation.
- c) For other permanent, temporary, seasonal, part-time and student positions, the Director or designate, Human Resources and/or a Committee appointed by the Director with the approval of the CAO. Hiring authority – CAO on recommendation of Director. **Exception** – Part-time, casual and student employees to be hired by the Director.

## 8. CALL-BACK LIST

For temporary, part-time, and seasonal positions, the departments shall maintain a call-back list for employees who have performed their duties satisfactorily.

## 9. EMERGENCY APPOINTMENTS

In cases of emergency which requires additional human resources, a Director may employ a person(s) for the duration of the emergency.

## 0703

The Chief Administrative Officer shall be advised of all emergency appointments as soon as is practicable thereafter.

### 10. STUDENT APPOINTMENTS

Candidates must have been full-time students within the last school year and must be returning to school on a full-time basis in the fall of the year. Proof of this may be requested from potential employees prior to, during, or after the hiring process.

Preference shall be given to students beginning post-secondary studies or returning to post-secondary studies in the upcoming fall. ~~, and whose parents are residents of the Town of Amherst.~~

#### Definition of a Student

Must be registered for at least 60% of a full course load. A full course load is normally five courses per term. Trade school students must receive at least 20 hours of instruction per week to be classified as a student.

### 11. FUNDED WORK CREATION PROJECTS

Preference shall be given to persons who are able to satisfy the terms and conditions of the appropriate work creation agreement with respect to the conditions of selections and hiring, and on the basis of merits and needs of each individual. Where a department has obtained approval and funding for a work creation project, the Director will follow the terms of funding for recruitment and selection as outlined by the funding agency.

### 12. APPOINTMENT AND SELECTION STANDARDS

- a) Candidates shall be assessed in accordance with the following criteria: education, experience, knowledge, abilities and personal suitability.
- b) If candidates are equal based on the selection standards, preference will be given to candidates who are residents of the Town of Amherst or Cumberland County.

### 13. PUBLIC RELATIONS AND NOTIFICATION

All departments who may have contacts with job applicants shall make every effort to generate good will through these contacts, ensure that courteous treatment is provided to all applicants, and advise those who are being considered for a position promptly and tactfully when the position has been filled.

### 14. PROBATIONARY PERIODS

Probationary periods will be for a period of six (6) months or longer as determined by the position or as outlined in the appropriate Collective Agreements or statutes.

### 15. REFERENCES

- a) Employment references must be completed and documented prior to issuing any offers of employment (verbal or written). Final employment is subject to receipt of satisfactory screening, police record check and employment reference check. Employment reference checks are to be conducted and will involve contact with at least two previous employers if an external applicant.
- b) The reference check should confirm enough information, taken from the application or the interview, to judge if the applicant has given honest responses. Also obtain information on training received, work performance, and whether the person would be considered for rehire.
- c) Place the completed reference checks in the applicant's file.

### 16. HIRING OF RELATIVES

- a) This policy provides guidelines for the hiring of relatives.
- b) "Relative" is defined as an employee's spouse, child, brother, sister, or parent. "Senior staff" is defined as a Director or Supervisor/Manager.
- c) No relative of a senior staff member will be hired to work in the same department as the senior staff member or in an area where they would be supervised by a senior staff member related to them. Generally, no relatives will be employed in an area where they would be supervised by an employee related to them.

#### 5.10 Seniors Safety Program - Grant Application 2015 (4244) (Jones)

**Moved By Councillor Jones**

**Seconded By Deputy Mayor Christie**

**That Council approve a support grant of \$5,000 to the Seniors Safety Program that was allocated but not disbursed in the 2015-16 fiscal year**

**Motion Carried**

5.11 Insurance Services Provider (4527) (Byrne)

Moved By Councillor Byrne  
Seconded By Councillor Jones

That Council approve renewal of the Town's insurance policy with our present carrier, Aon Reed Stenhouse Inc., for a one year term ending March 31, 2018 as recommended by the Audit Committee

Motion Carried

5.12 CJSMA Budget (4535) (Byrne)

Moved By Councillor Byrne  
Seconded By Councillor MacKenzie

That Council decline to approve the budget as recommended by Committee of the Whole, and submit the following concerns to the CJSMA: "We note that the costs of addressing the fact that the existing cell will be full in the fall of 2018 are not addressed in this budget. The Town of Amherst proposes that \$20,000 be added to the budget to fund the cost of a cursory study of this issue and related greenhouse gas emissions and are prepared to approve the budget with that inclusion. Alternatively, should the Board agree to conduct and fund this study in the current 2016/17 fiscal year, Council is prepared to approve the budget as submitted."

Motion Carried

5.13 Heritage Gas Limited - Municipal Operating Agreement (4092)(Rhindress)

Moved By Councillor Rhindress  
Seconded By Councillor Byrne

That Council approve the Municipal Access Operating Agreement with Heritage Gas Limited, and authorize the Mayor and CAO to sign the Agreement on behalf of the Town

Motion Carried

**THIS MUNICIPAL OPERATING ACCESS AGREEMENT** - made this \_\_\_\_day of \_\_\_\_\_,2017

**BETWEEN:**

**TOWN OF AMHERST** (hereinafter called the "Town")

-and-

**HERITAGE GAS LIMITED** (hereinafter called "Heritage")

**WHEREAS** the award of the natural gas distribution franchise to Heritage by the Nova Scotia Utility and Review Board was approved by the Province of Nova Scotia by Order in Council dated February 21, 2003 granting Heritage a full regulation class franchise for the construction and operation of a natural gas distribution system in certain areas of Nova Scotia;

**AND WHEREAS** the Town holds title to the Streets within the Town which it maintains;

**AND WHEREAS** Heritage wishes to use municipal streets for the installation and operation of a Gas Distribution System;

**AND WHEREAS** the Town approved in May, 2005 the terms and conditions of the first Municipal Operating Access Agreement ("MOAA") for the period June 1, 2005 to December 31, 2010; and subsequent agreement for the January 1, 2011 to December 31, 2016 time period;

**AND WHEREAS** the Town and Heritage wish to enter into a new MOAA for a further period of time;

**THEREFORE**, in consideration of the mutual terms, conditions and covenants contained herein, the parties agree as follows:

**Definitions**

- 1. In this Agreement,
  - a. "Engineer" means the Engineer as defined by the Municipal Government Act (Nova Scotia).

- b. "Gas Distribution System" includes any pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, and any other property located or to be located in, upon, along, across, under or over the Streets of the Town and used or useful in transportation, transmission or distribution of natural gas.
- c. "Locate" means the process conducted by Heritage to determine the underground location of a natural gas pipeline prior to excavation or disturbance of earth and soil.
- d. "NSUARB" means the Nova Scotia Utility and Review Board.
- e. "Permit and Locate Form" means that form used by Heritage to identify specifics and location of infrastructure for customer service connections.
- f. "Gross negligence" means a conscious and voluntary disregard of the need to use reasonable care, and shall include situations where the Town neglects to request locate information as required by the Regulations made pursuant to the Pipeline Act.
- g. "Project" refers to planned annual construction programs of natural gas pipelines by Heritage.
- h. "Street" means Street as defined by the Municipal Government Act and for the purposes of this Agreement includes the public streets, street right of ways, highways, roads, lanes, sidewalks, and thoroughfares as the same now or may hereafter exist within the Town.
- i. "Town" means the Town of Amherst.

### License and Consent

- 2. (1) The Town hereby grants Heritage an exclusive encroachment license for use of its Streets for the purpose of constructing, operating and maintaining the Gas Distribution System.
- (2) This Agreement does not grant a right to attach gas lines to municipally owned bridges; such attachments are subject to the approval of the Engineer on a case by case basis.
- (3) The grant of the license is subject to the terms and conditions of this Agreement, and compliance with all federal, provincial and municipal laws including CSA Code Z662, Pipeline Regulations (Nova Scotia), and applicable By-laws of the Town as amended from time to time.
- (4) To the best of its ability, the Town shall endeavour to notify Heritage well in advance of any proposed municipal law changes that affect this Agreement, and to facilitate consultations between Heritage and the Town regarding the contents of such municipal law changes.
- (5) Without limiting the generality of the foregoing, Heritage confirms that it will comply with all requirements of the Nova Scotia Occupational Health and Safety Act with regard to its Gas Distribution System.

### Term of Agreement

- 3. (1) This Municipal Operating Access Agreement shall be for a period of five (5) years (the "Term") commencing on the January 1, 2017 until December 31, 2021, subject to the earlier abandonment of said franchise, in which case this Agreement shall automatically terminate on the date of the abandonment except as otherwise provided by this Agreement.
- (2) Six months prior to the expiry of the Term, the parties shall enter into negotiations to renew this Agreement upon such terms and conditions as may be agreed. In the event parties do not agree on the terms and conditions of a renewal agreement prior to one month before the end of the Term, the matter shall be determined by the NSUARB pursuant to Section 78 of the Public Utilities Act (Nova Scotia) and Section 9 of the Gas Distribution Act (Nova Scotia). The parties agree that in the interim, in such case, the terms and conditions of this Agreement shall govern until such time that an order is issued on the matter by the NSUARB.

### Training

- 4. Heritage commits to providing training at no cost to the Town with respect to natural gas awareness and emergency response issues for appropriate Town engineering and operations staff, building/street inspectors and emergency services including fire and police personnel relating to the Gas Distribution System.

### Construction Schedule

- 5. (1) The Town and Heritage each recognize the benefits of joint infrastructure planning between the Town and Heritage. Heritage shall continue the open dialogue process with the Engineer to ensure natural gas project planning is current and the Town shall continue the open dialogue with Heritage to ensure project planning is current. At a minimum, Heritage shall meet with the Engineer, before December 31<sup>st</sup> of each year, for the purpose of exchanging known or proposed plans of both the Gas Distribution System and the Town's service systems for the following year.
- (2) The Town and Heritage shall jointly promote the "Call Before You Dig" safety program within each organization and the public during the annual construction season and on any other pertinent occasion. The Town shall, at no cost to Heritage, take an active role in promoting Call Before You Dig and excavation safety both within municipal departments and to third parties working in the Street.

- (3) Unless with express approval from the Engineer, no construction shall take place in the travelled portion of the Town's right-of-way after October 31 of each calendar year.

### Design

6. (1) The Engineer shall be the final approval authority for the location of all portions of the Gas Distribution System located within municipal Streets, which approval shall not be unreasonably withheld. The location and installation of the Gas Distribution System shall be consistent with applicable Canadian gas codes including CSA Z662 as amended from time to time.
- (2) Heritage is responsible to restore Streets in accordance with the Town's policies, applicable to Heritage operations, as amended from time to time. Notwithstanding the generality of the foregoing, where a pavement cut is made on a Street that has been paved within the previous five (5) years, the Town may, at the sole discretion of the Engineer, apply more stringent specifications to the surface restoration requirements for that Street.

### Permits

7. (1) In accordance with the Town's permitting requirements, Heritage shall annually obtain a Street Breaking Permit for every project where the Gas Distribution System is proposed to be installed within the Town. A Street Breaking Permit will remain in force until the project is completed.
- (2) Notwithstanding any other provision herein, Heritage or its contractor shall also provide refundable performance security to the Town in the estimated amount of Street restoration costs to guarantee the restoration of Streets to the satisfaction of the Engineer.
- (3) With respect to construction scheduling, the Town will require Heritage or its contractor to follow the Town's policy that will minimize potential traffic and related disruptions to businesses. Construction should be coordinated with the Town's capital budget projects.
- (4) If service connections are not installed during initial construction of the Gas Distribution System on a Street, then Heritage will submit to the Town a copy of Heritage's Permit and Locate Form prior to the construction and installation of the customer service connection. This Form shall be submitted to the Town, on a best effort basis, at least 10 days prior to the construction of the customer service connection.

### Fees

8. (1) In accordance with section 7 above, the following fee structure will apply and supersede the Town's Street Breaking Policy as it relates to fee for the issuance of Street Breaking Permits to Heritage. The following fees reflect the Town's costs related to the Engineering, administration and inspection of natural gas project conducted by Heritage within the Town:
- (a) The Street Breaking Policy fee structure of \$500.00 for each Street cut will apply to the installation of natural gas pipelines;
- (b) No Street Breaking fee shall be applied to the construction of a service line that is installed at the same time as the natural gas pipeline to which it is connected; and
- (c) Total Street Breaking fees applied to service line installations shall not exceed \$5,000.00 for a given year.

### Damage to Municipal Property

9. (1) If any portion of any Street or municipal infrastructure is damaged by reason of defects in any portion of the Gas Distribution System, or by reason of any other cause arising directly from the installation or presence of the Gas Distribution System, Heritage shall, at its own cost and expense, immediately repair any such damage and restore such portion of such damaged Street to as good or better condition than existed before such defect or other cause of damage occurred, such work to be done under the direction and to the satisfaction of the Engineer.
- (2) Heritage agrees that trees on municipal property are to be protected at all times. The Gas Distribution System is to be designed on the premise that, unless approved by the Engineer, municipal trees are not to be adversely affected by the installation or operation of the Gas Distribution System.
- (3) If any tree is damaged or destroyed by reason of a defect in any portion of the Gas Distribution System, or by reason of any other cause arising directly from the construction or the operation of the Gas Distribution System, Heritage shall, at its own cost and expense, repair such damage or replace such trees under the direction and to the satisfaction of the Engineer.

### Emergency Response

10. (1) Heritage shall provide:
- (a) to the Engineer a list of emergency contact personnel from Heritage available at all times and shall ensure that the aforementioned list is always current;

- (b) an electronic copy of Heritage's Emergency Response Manual; and
  - (c) a person to liaise in developing the joint Emergency Measures gas response program.
- (2) It is agreed that the Emergency Measures gas response program shall be reviewed periodically by appropriate representatives of the Town and Heritage.

#### **Record Information and GIS**

11. (1) Heritage shall provide, at its expense, to the Town record drawings in an electronic format compatible with the Town's corporate geographic information system (GIS) within three (3) months of the end of construction season each year, or as requested by the Town.
- (2) Both parties are aware that the steel pipelines constructed by Heritage are located in xyz Geographic coordinate system using total station surveying equipment and/or Global Positioning System, whereas PE mains are located only in xy coordinates by measuring offsets from above-ground landmarks.
- (3) The Town shall provide, at its expense, to Heritage existing GIS information that may assist in the development of the natural Gas Distribution System. The GIS information will be used solely by Heritage for the planning and construction of natural gas pipelines and shall not be distributed to any party not associated with Heritage projects within the Town.

#### **Locate Requirement**

12. (1) The Town shall request line locates for all municipal activities associated with ground disturbance, soil excavation or sign installations that could result in damage to buried natural gas pipelines, including but not limited to light standard and sign installation, traffic loop modifications, tree planting, and any other municipal project undertaken by the Town.
- (2) Upon receiving a request from the Town, Heritage shall, at no cost to the Town and using reasonable best efforts, provide locations of its Gas Distribution System:
- (a) Within one (1) hours in the event of an emergency;
  - (b) Within twelve (12) hours in the event of a priority request;
  - (c) Within forty-eight (48) hours in all other cases.

#### **Relocations**

13. (1) Subject to 13(2) upon receipt of one hundred and twenty (120) days notice from the Town, Heritage, at its own expense, shall relocate its Gas Distribution System within a Street, or perform any other work in connection with the Street as may be required by the Town for municipal purposes or by law. In case of an emergency, Heritage shall respond promptly in accordance to the provisions of its Emergency Response Manual referred to in section 10 above.
- (2) Where any part of the Gas Distribution System relocated in accordance with this section is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Town and Heritage on the basis of the total relocation costs, excluding the value of any upgrading of the Gas Distribution System, and deducting any contribution paid to Heritage by others in respect to such relocation as follows:
- (a) where the relocation is a result of Streets work or conflicts in elevation with any sewer or water main crossing(s) and occurs within two years of the installation of the portion of the Gas Distribution System to be relocated, the costs shall be paid 100% by the Town;
  - (b) where the relocation is a result of Streets work or conflicts in elevation with any sewer or water main crossing(s) and occurs after the end of the second year following the installation of the portion of the Gas Distribution System to be relocated, but not more than five years, the costs shall be shared 65% by Heritage and 35% by the Town;
  - (c) where the relocation is a result of Streets work or conflicts in elevation with any sewer or water main crossing(s) and occurs after the end of the fifth year following the installation of the portion of the Gas Distribution System to be relocated, the costs shall be paid 100% by Heritage; and
  - (d) where the relocation is a result of any municipal infrastructure other than Streets work, water mains or conflicts in elevation with any sewer crossing(s), the costs shall be paid 100% by the Town.
- (3) Heritage shall not be required to bear the expense of any removal or relocation made at the request of the Town on behalf or for the benefit of any private developer or other third party.
- (4) At the request of the Engineer, Heritage shall structurally support any portion of its Gas Distribution System at its own cost, where necessary, as part of the process of implementing any municipal improvements.

### **Warranty Concerning Condition of Streets**

14. The Town has made no representations or warranties as to the state of repair of the Streets or the suitability of the Streets for any business, activity or purpose whatsoever and Heritage hereby agrees to install pipelines within Streets on an "as is" basis.

### **Liability**

15. (1) Except for the gross negligence of the Town, Heritage agrees that the Town is not responsible, either directly or indirectly, for any damage to the Gas Distribution System that may result from the activities of the Town, its officers, employees, contractors or agents. The Town assumes responsibility and will reimburse Heritage for any and all loss or damage caused to the Gas Distribution System due to the Town's own gross negligence.
- (2) Except for the negligence of Heritage, the Town agrees that Heritage is not responsible, either directly or indirectly, for any damage to the Municipality's facilities located on, in or under the Street that may result from the activities of Heritage, its officers, employees, contractors or agents. Heritage assumes responsibility and will reimburse the Municipality for any and all loss or damage caused to the Street due to Heritage's own negligence.
- (3) Notwithstanding subsections (1) and (2), Heritage and the Town are not liable one to the other either on the basis of gross negligence or on any other basis for any consequential or economic losses due to the actions of the other party, its agents or employees working in, under, over, along, upon or across the Streets and roads or other owned or occupied property of the Town, or to the Gas Distribution System.

### **Indemnification**

16. (1) Save and except for loss or damage caused by the gross negligence of the Town, Heritage covenants and agrees to indemnify and save harmless the Town's agents, officers, elected officials, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which the Town may at anytime bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of Heritage facilities in, on, under, over, along or across a Street or road, and Heritage will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the Town on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against the Town for any and all legal expenses incurred in connection therewith. Heritage's obligation to indemnify and save harmless the Town shall survive the termination of this Agreement.
- (2) Subject to the provisions of this Agreement, the Town covenants and agrees to indemnify and save harmless Heritage's agents, officers, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which Heritage may at any time bear, sustain or suffer, by reason, or on account of the gross negligence of the Town and the Town will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against Heritage on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against Heritage for any and all legal expenses incurred in connection therewith. The Town's obligation to indemnify and save harmless Heritage shall survive the termination of this Agreement.

### **Insurance**

17. Heritage confirms that it has and shall maintain insurance in sufficient amount and description as will protect Heritage from claims for damages, personal injury including death, and for claims for property damage which may arise from Heritage's operations in the Town under this Agreement, including the use or maintenance of its Gas Distribution System in its Streets or any act or omission of Heritage's agents or employees while engaged in the work of placing, maintaining, renewing or removing any portion of its Gas Distribution System and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage. Heritage confirms that the insurance that it presently has meets the requirements of the terms and conditions of its franchise grant pursuant to the Gas Distribution Regulations. A copy of the Heritage's insurance policy will be made available upon written request of the Town.

### **Abandonment or Discontinued Use of Pipeline Infrastructure**

18. In the event of the abandonment or the discontinued use of all or any part of the Gas Distribution System, any removal is subject to the consent of the Town but subject always to any overriding direction or order of the NSUARB.

### **Assignment**

19. This Agreement may be transferred or assigned by Heritage with the approval of the NSUARB and with the consent of the Town, which consent shall not be unreasonably withheld.

**Breach**

- 20. The Town and Heritage agree that should Heritage or the Town materially fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof and fail within thirty (30) days after receiving written notice from the other party to correct any such failure which is capable of correction, then this Agreement may, at the option of the non-defaulting party, and subject to the approval of the NSUARB, thereupon be terminated by giving written notice to be effective upon receipt, provided that Heritage shall continue to be liable to the Town for all payments due and obligations incurred under this Agreement prior to such termination.

**Agreement Interpretation**

- 21. Subject to the right of either party to apply to the NSUARB for the resolution of disputes arising under this Agreement, the Town and Heritage agree that any disputes concerning the interpretation or application of this Agreement shall be resolved through arbitration pursuant to the terms of the Commercial Arbitration Act, Stats. N.S. 1999, c.5.

**Termination**

- 22. Subject to the approval of the NSUARB, if this Agreement is terminated by the Town pursuant to section 20, all the unfulfilled covenants, indemnities and obligations of Heritage hereunder shall survive such termination.

**Confidentiality**

- 23. Heritage agrees that this Agreement is a public document and to the extent that the Freedom of Information and Protection of Privacy provisions of the Municipality Government Act S.N.S 1998, c.18 apply, such provisions are hereby waived.

**Notices**

- 24. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to:

the Town:	Town of Amherst PO Box 516 Amherst, NS B4H 4A1 Fax: (902) 667-3356
Heritage:	Heritage Gas Limited Suite 200 – 238 Brownlow Avenue Dartmouth, Nova Scotia B3B 1Y2 Fax: (902) 466-2140 Attn: VP Engineering, Construction and Operations

**Entire Agreement**

- 25. This Agreement is the entire agreement between the Town and Heritage regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both the Town and Heritage.

**Binding**

- 26. This Agreement benefits and binds the Town and Heritage, their assigns and the successors of each of them.

**Waiver**

- 27. (1) No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
- (2) The parties to this Agreement shall be entitled to resort to any remedies available to them in law or in equity in some or all combination in their discretion. No delay or failure of either party to exercise any right or remedy will operate as a waiver thereof, except where specifically provided herein to the contrary.

**Unenforceability**

- 28. In the event that any covenant or provision herein shall be determined to be void or unenforceable in whole or in part for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining covenants or provisions or parts thereof contained in this Agreement and such void or unenforceable covenants or provisions shall be deemed to be severable from the others herein provided.

**Time**

- 29. Time shall be of the essence of this Agreement and of each and every part hereto.

### Interpretation

30. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

### Conflict of Laws

31. This Agreement shall be construed and enforced in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable hereto and the parties irrevocably attorn to the jurisdiction of the Courts of Nova Scotia.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement by their duly authorized representatives on the day first above written.

### SIGNED, SEALED AND DELIVERED

## 7. INTERNAL COMMITTEE REPORTS

### 7.1 Planning Advisory Committee (MacKenzie)

Councillor MacKenzie presented the Planning Advisory Committee report included in the agenda.

### 7.2 Amherst Board of Police Commissioners (Blanch)

Councillor Blanch presented the Amherst Board of Police Commissioners report included in the agenda.

### 7.3 Amherst Youth Town Council (Austin Coates)

Youth Councillor Austin Coates presented the Amherst Youth Town Council report included in the agenda and addressed comments and enquiries from members of Council.

## 8. EXTERNAL COMMITTEE REPORTS

### 8.1 Cumberland Public Libraries (MacKenzie)

Councillor MacKenzie presented the Cumberland Public Libraries Board report included in the agenda, and addressed comments and enquiries.

### 8.2 Cumberland YMCA (Christie)

Deputy Mayor Christie presented the Cumberland YMCA report included in the agenda.

### 8.3 Cumberland Joint Services Management Authority (Byrne)

Councillor Byrne presented the CJSMA report included in the agenda..

### 8.4 Northern Region Solid Waste Committee - verbal (Rhindress)

Councillor Rhindress gave a brief verbal report on a meeting of the Northern Region Committee that was held Friday, February 24.

### 8.5 L. A. Animal Shelter (Kogon)

Mayor Kogon presented the Animal Shelter Board report included in the agenda..

### 8.6 VON (Christie)

Deputy Mayor Christie presented the VON Board report included in the agenda.

9. **ADJOURNMENT**

**Moved By Councillor Jones  
Seconded By Deputy Mayor Christie  
To adjourn at 8:00 PM**

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Gregory D. Herrett, CPA, CA  
Town Clerk and CAO

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David Kogon, MD  
Mayor