

# Amherst Town Council

## Special Meeting

### Minutes

Date of Meeting: Tuesday, September 27, 2016  
Location: Council Chambers, Town Hall

Members Present: Mayor Robert Small  
Deputy Mayor Terry Rhindress  
Councillor George Baker  
Councillor Frank Balcom  
Councillor Robert Bird  
Councillor Lisa Emery

Staff Present: Greg Herrett, CAO  
Roger MacIsaac, Director CED  
Ian Naylor, Police Chief  
Jason MacDonald, Deputy CAO Operations  
Vince Arbing, Treasurer  
Bill Schurman, Director Recreation  
Greg Jones, Fire Chief  
Rebecca Purdy, Executive Assistant

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**1. CALL TO ORDER**

**2. REQUEST FOR DECISION**

**2.1. Tender - Police Vehicle (3634)**

**Moved By: Councillor Lisa Emery**

**Seconded By: Councillor Frank Balcom**

**That Council award of the tender for a new four-door sedan police vehicle complete with the installation of police equipment, T-16-09, to Jim Hatheway Ford Sales at their bid of \$29,233 plus the optional equipment in the amounts of \$1,504, \$51, and \$250 for a total of \$31,038 plus HST**

**Motion Carried**

**2.2. Tender - Curbing (3596)**

**Moved By: Deputy Mayor Terry Rhindress**

**Seconded By: Councillor George Baker**

**That Council award the asphalt curb replacement tender to Costin Paving and Contracting at their negotiated unit price of \$125 per meter to a maximum of \$50,000**

**Motion Carried**

2.3. RFP - Self Contained Breathing Apparatus (3597)

Moved By: Councillor Frank Balcom

Seconded By: Councillor Lisa Emery

That Council accept the proposal from Cumings' Fire & Safety for RFP-16-12 – Supply of Self-Contained Breathing Apparatus for 14 units at the cost of \$103,880.00 plus HST

Motion Carried

2.4. RFP - Fire Truck (3598)

Moved By: Deputy Mayor Terry Rhindress

Seconded By: Councillor Frank Balcom

That Council accept the proposal from Metalfab Ltd. for RFP-16-19 to supply one new pumper Truck, at the cost of \$512,990.19 plus HST

Motion Carried

2.5. Temporary Borrowing Resolution (3532)

Moved By: Councillor Lisa Emery

Seconded By: Councillor George Baker

That Council approve a Temporary Borrowing Resolution in the amount not exceeding \$1,449,283 for the following items, and submit it to the Department of Municipal Affairs for Ministerial approval:

Mill Street – water main replacement (water utility)	\$ 124,669
Production Well Blow Off for 2 Wells (water utility)	80,000
Loader Mounted Snow Blower – 30% of cost (water utility)	48,600
Community Credit Union Business Innovation Centre	493,951
Mill Street – sanitary sewer, street reconstruction, sidewalk	152,063
Fire Truck	<u>550,000</u>
TOTAL	\$ 1,449,283

Motion Carried

2.6. Cumberland Business Connector - Funding Agreement (3588)

Moved By: Councillor Lisa Emery

Seconded By: Councillor Frank Balcom

That Council approve the amendment in the funding agreement with the Cumberland Business Connector Society reflecting the change in the Town of Parrsboro's contribution

Motion Carried

**This Agreement** sets forth a framework for the funding, and funding conditions, for an economic development society, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016 among:

The **Town of Amherst**, a municipal body corporate pursuant to Section 8 of the *Municipal Government Act (the "MGA")*;

**AND**

The **Town of Oxford**, a municipal body corporate pursuant to Section 8 of the MGA;

**AND**

The **Municipality of the County of Cumberland** a municipal body corporate pursuant to Section 8 of the MGA;

(Collectively, the "Municipalities")

**AND**

**Cumberland Business Connector** a society registered under the Societies Act

(Hereinafter called the "Society")

**WHEREAS** the Municipalities are partners in regional economic development in Cumberland County;

**AND WHEREAS** the Municipalities wish to partner to ensure regional economic development strategies that consider assets, business community, sector strengths and regional opportunities and challenges, and that take into account provincial and regional priorities;

**AND WHEREAS** Section 57 of the *MGA* provides authority for municipalities pay grants to a body corporate for the purpose of promoting the municipality or any part of the municipality and the surrounding areas as a location for institutions, industries and businesses;

**AND WHEREAS** economic development is a service which municipalities in Nova Scotia are empowered to provide under the *MGA*;

**AND WHEREAS** the Municipalities have agreed to support the creation of the Society as a body corporate, that will take on responsibility for guiding some aspects of economic development in Cumberland County;

**AND WHEREAS** the Municipalities wish to set out the terms and conditions for their funding of the Society, and for certain matters related thereto;

**NOW THIS AGREEMENT WITNESETH** that in consideration of the mutual covenants herein contained for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Municipalities and the Society agree as follows:

## 1. Definitions

In this Agreement:

- (a) "Audit Committee" means the Audit Committee for the Society, as appointed by the Liaison and Oversight Committee hereunder;
- (b) "Auditor" means a certified accountant who is appointed by the Audit Committee to audit the financial affairs of the Society;
- (c) "Board of Directors" means the Board of Directors of the Society;
- (d) "Federal Government" means Her Majesty the Queen in right of Canada, as represented by various federal ministries and governmental agencies;
- (e) "Fiscal year" means the Society's fiscal year, which shall be a twelve (12) month period commencing on April 1 of every year and ending on March 31 of every subsequent year;
- (f) "GAAP" means Canadian generally accepted accounting principles, as established from time to time by the Canadian Institute of Chartered Accountants or the Public Sector Accounting Board, or any successor institutes, applicable as at the relevant date, and applied on a consistent basis;
- (g) "Liaison and Oversight Committee" means the Liaison and Oversight Committee of the Society, as established hereunder;
- (h) "Operating Costs" means the costs associated with operating and administering the Society;
- (i) "Province" means Her Majesty the Queen in right of the Province of Nova Scotia, as represented by various provincial ministries and governmental agencies, including the Ministry of Service Nova Scotia and Municipal Relations;
- (j) "Recruitment and Nominating requirements" means the Recruitment and Nominating process of the Society;
- (k) "Uniform Assessment" has the same meaning as in the *Municipal Grants Act*, R.S.N.S. 1989, c. 302, as amended from time to time.

## **2. Establishment of the Cumberland Business Connector Society**

- (a) The Municipalities hereby agree to support the formation of a body corporate, known as the Cumberland Business Connector Society (the "Society"), upon the terms and conditions set out in this Agreement.
- (b) The Society will be incorporated pursuant to the Societies Act, R.S., c. 435.

## **3. Core Activities**

The core activities of the Society are to:

- Develop, implement, and monitor a regional economic development strategy that is reflective of provincial and regional economic development priorities. The strategy should consider assets, business community, sector strengths, and regional challenges and opportunities. The strategy should also attempt to align with provincial priorities in order to maximize the Society's leverage of programs, policies and services.
- Cultivate close working relationships with the business community and work with key partners to support the development and attraction of new businesses, and retain and expand existing businesses. The Society will support local businesses in navigating, and making referrals to, programs and services.
- Inform partners and stakeholders about local business climate conditions as well as regional challenges and opportunities. The Society will work with partners and stakeholders to provide investment readiness and labour market information.

#### 4. Powers

It is recognized that as a society registered under the laws of Nova Scotia, the Society shall have all the powers set out in section 10 of the Societies Act.

#### 5. Funding

- (a) The Municipalities agree to fund the Society's operations based on an annual budget of \$180,000 for each fiscal year. This annual amount shall remain the same throughout the term of this Agreement unless the Municipalities agree otherwise in writing, or this Agreement is terminated. For the first year of the Society's operation, the annual budget and the shares of each of the Municipalities shall be prorated based on the date the Society actually commences operations. The annual budget shall divide among the Municipalities as follows:
- i. The Town of Oxford will provide funding in the amount of \$10,000.
  - ii. The Municipality of the County of Cumberland will provide funding in the amount of \$10,000 to cover the share that the Municipalities agreed would be requested of the Town of Parrsboro, such request not being made due to the impending dissolution of the Town.
  - iii. The remaining budget amount of \$160,000 will be divided between Town of Amherst and Municipality of the County of Cumberland based on a weighted average basis with 50% of the weight being assigned to commercial assessment and 50% of the weight being assigned to population. This calculation shall not include the commercial assessment or population of Parrsboro. Commercial Assessment and Population data related to Parrsboro will be access from PVSC and Statistics Canada for the Parrsboro sub-division.
  - iv. The Town of Amherst will provide office space (Community Credit Union Business Innovation Centre) and accounting support in addition to the direct financial contribution.
  - v. It is understood and agreed that the Society will not now or at any time in the future hire existing or former staff of any of the Municipalities and that the Municipalities will not now or in the future hire any staff that the Society may employ or has employed.
  - vi. The agreement shall be for 5 years, with a mid-term review to be completed by April 1, 2019.
  - vii. This Agreement will remain binding and in force until receipt of formal written notice by either of The Municipality or the Society by December 31st with an effect date of March 31st of that fiscal year.

#### 6. Budget and Revenue

##### **For all fiscal years after the initial year:**

- (a) The Liaison and Oversight Committee created pursuant to part 7 this Agreement shall confirm to the Society the amount of revenue that will be received by the Society for the coming fiscal year by January 31<sup>st</sup>.
- (b) On or before March 1<sup>st</sup>, the Board of Directors of the Society (the "Board") shall approve a budget and business plan for the Society for the coming fiscal year. The budget and business plan shall be submitted to the Liaison and Oversight Committee for their information.

- (c) The budget shall include the anticipated Operating Costs, revenues, funding contributions from each of the Municipalities and all other sources, any deficit or surplus from the preceding fiscal year, and such other information as may be required from time to time.
- (d) The budget shall be prepared in accordance with GAAP and FRAM, funding contracts and the Society's own financial policies.

## **7. Liaison and Oversight Committee**

The Municipalities shall create and appoint members to a Liaison and Oversight Committee, which shall consist of the Chief Administrative Officer each of the Municipalities, or their designate.

- (a) The main functions of the Liaison and Oversight Committee shall be:
  - i. Strategic input to the Board – Providing advice and input to the Board to assist with its regional economic development strategy;
  - ii. Accountability for outcomes – Ensuring that the Board achieves the goals it establishes in its regional economic development strategy;
  - iii. Financial Accountability – Ensuring that the Society has excellent financial management;
  - iv. Self-Governance – Ensuring that the Society follows and publishes its own rules of governance;
  - v. Communication – Ensuring excellent communication, feedback and strong linkages between the Board, the Municipalities and the general public;
  - vi. Reviewing and recommending to the Municipalities the regional economic development strategy of the Society;
  - vii. Monitoring and evaluating the implementation of the regional economic development strategy; and
  - viii. Informing the Municipalities as to the outcomes of the recruitment and nominating process and the names of new board members when changes occur.
- (b) Members of the Liaison and Oversight Committee are responsible for:
  - i. reporting on the Society's progress to their respective Councils;
  - ii. communicating their respective Councils' thoughts on the Society's progress to the Board;
  - iii. communicating their respective Councils' annual priorities to the Society annually for their planning process;
  - iv. Soliciting the approval of their respective Councils for continuation of funding to the Society.
- (c) The Liaison and Oversight Committee shall meet at-least twice a year with the Society Board on matters of governance.
- (d) The Liaison and Oversight Committee shall meet with the CAO of the Society at-least 4 times per year on matters related to operations.
- (e) Decisions of the Liaison and Oversight Committee shall be made by consensus.
- (f) All meetings of the Liaison and Oversight Committee require a quorum consisting of three-quarters (75%) of its total membership. If a quorum is not present, no business may be transacted at a meeting of the Liaison and Oversight Committee.

- (g) Expenses of the Liaison and Oversight Committee shall be provided by the Society as approved within the budget.

## 8. Audit Committee

- (a) An Audit Committee shall be appointed annually by the Liaison and Oversight Committee and shall consist of the following members:
  - i. two Society Board members;
  - ii. the members of Liaison and Oversight Committee; and
  - iii. the CEO (*ex officio*) of the Society.
- (b) The Audit Committee shall be responsible for:
  - i. appointing the Auditor;
  - ii. conducting a detailed review of the financial statements of the Society with the Auditor on an annual basis;
  - iii. evaluating the adequacy of the internal control systems of the Society;
  - iv. reviewing the conduct and adequacy of the audit;
  - v. investigating such matters arising out of the audit as may appear on the Audit Committee to require investigation;
  - vi. any other matters determined by the Liaison and Oversight Committee and the Board.
- (c) In carrying out their duties, the Auditor and the Audit Committee shall have unrestricted access to all activities, records, property, and personnel of the Society.
- (d) The Audit Committee shall, on an annual basis, appoint a Chair and a Vice-Chair.
- (e) The Audit Committee Chair and Vice-Chair shall have written position descriptions.
- (f) The Audit Committee shall have written terms of reference that set out its roles and responsibilities.
- (g) The Audit Committee shall meet at least twice per year or as deemed necessary.
- (h) All meetings of the Audit Committee shall require a quorum of 50%. If a quorum is not present, no business may be conducted at the meeting.
- (i) Audit Committee members must be financially literate and at least one member must have accounting or related financial management expertise.
- (j) Members of the Audit Committee are independent from the external auditors.
- (k) The Audit Committee annually reviews its terms of reference and assesses its effectiveness in meeting the needs of the Board of Directors.
- (l) The external auditor reports directly to the Committee, not to Society management.
- (m) The Audit Committee must have an auditor independence policy and must pre-approve all non-audit services to be provided by the external auditor.
- (n) The Audit Committee shall meet from time to time with the external auditors without management present.
- (o) Decisions and recommendations of the Audit Committee will be made by consensus.
- (p) The Audit Committee shall review any proposed changes to the roles and duties of the organization's CEO or financial support person.
- (q) The Audit Committee has the authority to engage independent counsel and other advisors, with prior approval from the Board.

## 9. Board Recruitment

- (a) Society commits to implementing a rigorous board recruitment process to include the following components:
- a. A Nominating Committee will be established consisting of no more than 5 members consisting of both Society Board Members and persons with expertise from the Cumberland Region who are committed to a structured approach to board recruitment. Board recruitment and development are to be considered a year round process.
  - b. Position Descriptions for board members shall be established and should must include:
    - i. Member's duties and responsibilities
    - ii. Qualifications Skill set requirements for a Member
    - iii. Authority of the Members
    - iv. General responsibilities of Members
    - v. Expected term of Members
    - vi. Time Commitment for a Member
    - vii. Legal responsibilities of a Member
  - c. Recruitment of Candidates for Board Membership
    - i. Maintaining an ongoing data base of potential candidates through referrals or suggestions by colleagues or other Board Members
    - ii. Development of a Board Member application available on-line to interested parties.
    - iii. Publicize for expressions of interest annually to encourage me member participation.
    - iv. Every effort must be made to ensure geographic representation from all of Cumberland County.
  - d. Selection Process
    - i. Develop an application form for recruitment of Board Members to ensure consistent information
    - ii. Screen the applications based on the Society's requirements and level of commitment expressed.
    - iii. The screening process may include an interview component to ensure the applicant and organization fully understands each other and will be a good fit.
    - iv. Reference checks may be required to confirm information provided by the applicant.
    - v. Once successful candidates are selected, confirmation of the candidates and the rationale for appointment should be provided to the Liaison and Oversight committee.
    - vi. Successful candidates shall be formally notified and invited to join the board with specifics on expectations and term.
    - vii. An orientation process shall be established for new board members to ensure they become aware of how the Society works. Topics for orientation shall include: Overview of organization, structure, position descriptions, strategic plan, board minutes, relationship to staff and relationship to funders.



Signed Sealed and Delivered )  
in the presence of:

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TOWN OF AMHERST:  
Per:

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TOWN OF OXFORD  
Per:

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MUNICIPALITY OF THE COUNTY OF  
CUMBERLAND:  
Per:

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CUMBERLAND BUSINESS CONNECTOR  
Per:

2.7. VIA Station

2.7.1. Agreement of Purchase and Sale between the Town and VIA (3375)

Moved By: Councillor George Baker

Seconded By: Deputy Mayor Terry Rhindress

That Council approve an amendment to the Agreement of Purchase  
and Sale with Via Rail Canada Ltd.

Motion Carried

C20160097

AMENDMENT N° 1

BETWEEN:

**TOWN OF AMHERST**

a municipal corporation in the Province of Nova Scotia

(hereinafter called the "Town")

AND:

**VIA RAIL CANADA INC.**

a corporation incorporated under the laws of Canada with Head  
Office in the City of Montreal in the Province of Quebec

(hereinafter called "VIA")

**WHEREAS** on February 15, 2016, the parties entered into an Agreement of Purchase and Sale with respect to certain real property within the boundaries of the Town of Amherst (the "Agreement");

**WHEREAS** the parties wish to amend the Agreement entitled "VIA's Terms and Conditions;

THE PARTIES AGREE AS FOLLOWS:

**1. PREAMBLE**

The preamble hereof shall form an integral part of this Amendment N° 1.

**2. TERM OF AMENDMENT N° 1**

This Amendment N° 1 shall start upon the last signature of the parties.

**3. SCHEDULE C – VIA’S TERMS AND CONDITIONS**

3.1 Section 1 of Schedule C is amended by the addition of the following paragraph:

“For greater certainty, the Town acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Station Property. The Town acknowledges that such Emissions, at any time of day or night, are necessarily incidental to VIA’s railway operations. The Town has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. VIA shall not be responsible to the Town for any damage to property or persons located on the Station Property as a result of its railway operations. In addition to its other obligations under this Agreement, the Town agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by VIA or any governmental authority.”

3.2 Section 2 of Schedule C is amended by the addition of the following paragraph:

“Any work in the vicinity of the platform, tracks or capable of falling the railway corridor shall be approved by VIA and CN in writing and be protected by a flagman at the Town’s costs.” With the exception of costs related to flagging for snow clearing activities taking place on the platform or vicinity of for the purpose of VIA Rail’s passenger service.

3.3 Section 6 of Schedule C is amended by the addition of the following paragraph:

“In addition to the above mentioned indemnity, VIA shall also have the right to repossess the Station Property at no cost in the event of a material breach by the Town of its obligations towards VIA, such as a serious safety or operating issue, subject to a reasonable prior written notice from VIA to the Town to remedy such material default. If VIA exercises such right to repossess the Station Property, VIA shall pay to the Town the unamortized portion of its investment in the Station Property, the value of which shall be agreed upon in writing by the parties”

3.4 The second to last paragraph of Schedule C is amended and replaced in its entirety as follows:

“The above terms and conditions shall be confirmed in a formal lease from the Town to VIA containing VIA’s standard terms and conditions, for a term of 20 years commencing on the date of this agreement with a renewal option for an additional term of 20 years to be entered into within a period of 3 months following Parks Canada’s approval. This formal lease shall be mutually agreed upon by the parties by no later than October 31, 2016.”

**4. TERMINATION**

Section 11 of the Agreement is amended and replaced in its entirety by the following: “It is understood that possession of the Station Property by the Town will be on March 31, 2017 contingent on all required approvals and conditions being obtained and met by this time”.

Except for the amendments contained herein, each and every other modality, term and condition of the Agreement shall remain in full force and unchanged.

It is upon the express wish and agreement of the parties that this Amendment N° 1 is written in the English Language. *Cet Amendement N° 1 est rédigé dans la langue anglaise selon la volonté et l'entente expresses des parties.*

We have understood, consented to and signed this Amendment N° 1 in two original copies.

VIA RAIL CANADA INC.		TOWN OF AMHERST	
Signature:		Signature:	
Name:		Name:	<b>Rob Small</b> <b>Gregory D. Herrett</b>
Title:		Title:	<b>Mayor</b> <b>CAO</b>
Location:		Location:	Amherst, Nova Scotia
Date:		Date:	

### **2.7.2. Agreement of Purchase and Sale agreement with Bembridge Enterprises (3600)**

**Moved By: Councillor Lisa Emery**

**Seconded By: Councillor Frank Balcom**

**That Council approve an amendment to Agreement of Purchase and Sale for the VIA Rail property with J.E. Bembridge Enterprises Ltd.**

**Motion Carried**

### **AMENDMENT N° 1**

BETWEEN:

**TOWN OF AMHERST**

a municipal corporation in the Province of Nova Scotia  
(hereinafter called the "**Town**")

AND:

**J.E Bembridge Enterprises Limited.**

a corporation incorporated with Head Office in the Town of Amherst in the Province of Nova Scotia  
(hereinafter called the "**Purchaser**")

**WHEREAS** on December 18th, 2015, the parties entered into along term Agreement of Purchase and Sale with respect to certain real property being the VIA Rail Canada Station and surrounding lands located in the of Town of Amherst (the "**Agreement**");

**WHEREAS** the parties wish to amend section 2 of the Agreement and Schedule C of VIA's Terms and Conditions.

THE PARTIES AGREE AS FOLLOWS:

2. In consideration of the terms, conditions, covenants and provisions herein contained and of the terms, conditions and provisions herein contained and the payments to be made as herein specified, the Town agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Town the Station Lands for the sum of sixty-four thousand nine-hundred and eighty dollars (\$64,980.00) (the "Purchase Price"), which Purchase Price shall be paid by equal monthly installments of one thousand and eighty three dollars (\$1,083.00) the first installment being on the date of execution of this agreement and on the 1st day of April , 2017 and on the 1<sup>st</sup> day of each and every month until the 1<sup>st</sup> day of March , 2022 at which time the purchase price shall be paid in full.

Section 13 – the following will be added to this section. The Town of Amherst will provide snow clearing for the platform area of the Station Street property for the duration of the Lease with VIA Rail.

**SCHEDULE C – VIA’S TERMS AND CONDITIONS**

- Section 1 of Schedule C is amended by the addition of the following paragraph:

“For greater certainty, the Town acknowledges that the Station Property is located within an active railway station and that railway operations will result in the emission of noise, dust, vibrations, odours and other emissions (collectively, “**Emissions**”) which may affect the use and enjoyment of the Station Property. The Town acknowledges that such Emissions, at any time of day or night, are necessarily incidental to VIA’s railway operations. The Town has no objection to such Emissions and shall make no complaint to any governmental or judicial authority with respect to such Emissions. VIA shall not be responsible to the Town for any damage to property or persons located on the Station Property as a result of its railway operations. In addition to its other obligations under this Agreement, the Town agrees not to interfere with railway operations and to abide by all safety regulations from time to time promulgated by VIA or any governmental authority.”

- Section 2 of Schedule C is amended by the addition of the following paragraph:

“Any work in the vicinity of the platform, tracks or capable of falling the railway corridor shall be approved by VIA and CN in writing and be protected by a flagman at the Town’s costs.” The cost related to flagging for snow clear activities taking place in the vicinity of the platform or tracks shall be borne by VIA.

- Section 6 of Schedule C is amended by the addition of the following paragraph:

“In addition to the above mentioned indemnity, VIA shall also have the right to repossess the Station Property at no cost in the event of a material breach by the Town of its obligations towards VIA, such as a serious safety or operating issue, subject to a reasonable prior written notice from VIA to the Town to remedy such material default. If VIA exercises such right to repossess the Station Property, VIA shall pay to the Town the unamortized portion of its investment in the Station Property, the value of which shall be agreed upon in writing by the parties”

SIGNED SEALED AND DELIVERED )  
IN THE PRESENCE OF: )

TOWN OF AMHERST

)  
)

J.E. BEMBRIDGE ENTERPRISES LIMITED

**2.7.3. Lease Agreement with VIA (3601)****Moved By: Deputy Mayor Terry Rhindress****Seconded By: Councillor Lisa Emery****That Council approve the Lease Agreement with Via Rail Canada Ltd.****Motion Carried****LEASE AGREEMENT**

THIS LEASE AGREEMENT is

**BETWEEN:****TOWN OF AMHERST**

98 East Victoria Street

Amherst, NS

B4H 1X6

(hereinafter referred to as the "**Landlord**")**AND:****VIA RAIL CANADA INC.**

3 Place Ville Marie

Montreal, Quebec

H3B 2C9

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

OF THE FIRST PART

OF THE SECOND PART

**WHEREAS** in consideration of the rents, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:**LEASE**Subject to the terms and conditions herein the Landlord agrees to lease to the Tenant and the Tenant agrees to lease from the Landlord (which unless specifically referred to shall hereinafter be collectively referred to as the "**Premises**"): 

1. for exclusive use, sufficient, adequate and suitable space at the Amherst Station (the "**Station**") for the Tenant's technology and operational requirements **as described in Schedule A**. In any event, the location and square footage of the space provided by the Landlord shall be sufficient for the tenants requirements as identified in Schedule A attached, provided that the Landlord may relocate such premises in the future upon sixty (60) days' prior written notice and upon paying the costs of relocating all of the Tenant's equipment into the relocated premises with similar leasehold improvements as existed before the relocation, subject to the Tenant's prior written approval which approval may not be unreasonably withheld,
2. for use in common with others, of the common areas of the Station, waiting room, public washrooms (including handicap accessible washrooms), vehicle pick up and drop off

area, platforms, vehicular crossings, walkways, other structures or improvements, access roadways, parking areas (including handicap parking) and related lands,

3. the following rights with respect to xxxxxxxxxxxxxxxx on the reference plan bearing number xxxxxx identified in Schedule A (hereinafter sometimes collectively referred to as the "**Common Area Lands**"):
  - (a) access to the Station from Station Street;
  - (b) access to the train platform on said xxxx from Station Street and from the Station; and
  - (c) use of the said train platform;

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

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

The Landlord recognises that the Tenant is a major tenant and shall provide facilities and services accordingly and shall seek the approval in writing of the Tenant for any substantive changes to the operation of the Premises, such approval not to be unreasonably withheld. The Landlord may use the Station for any purposes but will ensure that the Station remains a railway station and will designate a portion of the Station to be used by the Tenant in the manner specified herein and that the Landlord's use of the Station shall not cause an adverse effect upon the Tenant's operations

## **TERM**

This Lease shall be for a term of Twenty (20) years, commencing on the day that the transfer of the station building occurs pursuant to the Agreement of Purchase and Sale between the Landlord and the Tenant dated February 15, 2016 (the "**Commencement Date**") and expiring TWENTY (20) years hence (the "**Initial Term**").

## **RENT**

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

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

#### **RENEWAL**

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

#### **OPERATING COSTS**

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

#### **REPAIRS, MAINTENANCE AND OPERATION**

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

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

- Heat the station to such degree of temperature as may be required by the Tenant and as may be required by any governmental regulation, and in any event to a sufficient degree of temperature comfortable for human occupation;
- Provide all utility services to the station including water, sewer, electrical, natural gas/oil and garbage removal;
- Keep each and every sidewalk, motor vehicle parking area, train platform and passageway adjoining, contiguous or appurtenant to the station, in a good, clean and safe condition, and in good repair;
- Remove snow and ice from the premises, including the platform and common walkways as indicated on Schedule C;
- Provide janitorial services and shall maintain the Premises including the station platform in a good and reasonable state of cleanliness as outlined in Schedule B; and
- To provide all other services set out in Schedule B.

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

If the Premises are damaged by fire or any other hazard such that the Premises are rendered unusable or such that convenient access is prevented, then the Landlord shall, within thirty (30) days of the occurrence of the damage, initiate that repair or replacement of the Premises and forthwith allow an abatement of the Rent which recognizes the nature and extent of the damage, or inconvenience, until such time as the Premises have been rebuilt or access restored. If the

Landlord does not initiate the restoration of the Premises or access within the said thirty (30) days, or having commenced the restoration, does not proceed to complete it with reasonable dispatch, then the Tenant may give the Landlord fourteen (14) days notice and thereafter may undertake the restoration itself and the Landlord shall be responsible for all costs associated with such restoration. For greater clarity, initiate the repair or replacement shall mean any of inspection, design, applying for permits, repair, or replacement or other acts to prepare for or complete the work undertaken. Notwithstanding the foregoing in Section 7.1, the Tenant shall be responsible and pay for any damage or destruction caused by it or those for whom it is in law responsible.

The Landlord may undertake work provided:

1. The Tenant has been provided with, and has approved in writing acting reasonably, the scope of work, the schedule for work, plans showing alternate access and/or facilities required to maintain the Tenant's operation and Services.
2. Access for emergency vehicles and maintenance vehicles to the Station and railway platform is maintained at all times, in accordance with all applicable laws and regulations.
3. It does not render the Station inaccessible from Station Street or the railway platform inaccessible from the Station without alternate provisions acceptable to the Tenant, acting reasonably, being made.
4. During any period when the Station or the railway platform is inaccessible or when accessibility is substantially reduced, the Landlord shall provide reasonable adequate and suitable alternative lands and facilities to allow the continued operation of the Tenant's Services including necessary access to rail passenger platforms, Station, security, access to the temporary accommodation from the street and parking, parking for passengers within reasonable distance of the Lands, handicap parking within reasonable distance of the Station in accordance with applicable laws and regulations, notably the Canadian Transportation Agency Code of Practice - Passenger Terminal Accessibility, vehicle pick up and drop off area in the immediate vicinity of the Lands, rail passenger platforms, walkways, access roadways, and bilingual signage identifying the various areas noted above and providing clear direction to all rail passengers, under similar terms and conditions as this Lease.
5. Such alternate lands and facilities shall be provided prior to the Common Area Lands becoming unusable and shall be in the vicinity of the Lands and have a reasonable access to the rail passenger platform.
6. Any such alternative arrangements shall be at the Landlord's sole expense and shall be subject to the approval of both parties, acting reasonably.
7. If the Landlord does not provide acceptable alternate accommodations prior to the Premises or Lands becoming unusable then the Tenant may immediately undertake the provision of the reasonable alternate accommodations itself and the Landlord shall be responsible for all reasonable costs associated with such work or the Tenant may take whatever action under law is required to maintain its operation and Services.
8. It is understood that the tenant will not have access for its customers on the interior of the building until the initial renovations are completed on the building by the landlord. Such renovations shall commence 30 days after taking position of the building and be completed within 120 days of that time.

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

## **ENVIRONMENTAL MATTERS**

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



## 9.0 NOTIFICATION OF DEFECT

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

## 10.0 ACCESS AND USE

The Landlord shall permit the public access to and use of the Premises for the purpose of embarking and disembarking from passenger trains and use of all passenger related facilities including in particular without limiting the generality hereof, access to and use of the rail passenger platform, parking, vehicle pick up and drop off area, waiting areas, washrooms, etc.

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

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

The Landlord shall permit the Tenant, its employees, agents or servants to enter the premises at any reasonable time as may be required by the Tenant.

## QUIET ENJOYMENT

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

## COMPLIANCE WITH LAWS

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

## ASSIGNMENT

This Lease shall not be assigned or transferred by the Landlord except for the agreements the landlord currently have with J.E. Bembridge Enterprises Ltd which undertakes to be bound by all the terms and conditions of the Lease and agreement between the Landlord and the Tenant, including this right of first refusal.

This Lease shall not be assigned or transferred by the Tenant without the prior written consent of the Landlord which consent may not be unreasonably withheld, except to a successor corporation.

The Tenant shall retain a right of first refusal, should the Landlord decide to divest of the Station or any parts thereof, provided however that the Tenant shall waive such right of first refusal if the Landlord decide to divest the Station to an entity, including J. E. Bembridge Enterprises Ltd., which undertakes to be bound by all the terms and conditions of the Lease between the Tenant and the Landlord, including this right of first refusal.

#### **DIRECTION AS TO EMERGENCY AND PAYMENTS**

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

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

#### **INSURANCE**

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

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

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

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

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

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

### **NO WASTE OR NUISANCE**

The Tenant shall not:

commit or permit any willful or voluntary waste, spoil or destruction on the Premises; or

do or permit to be done anything that may be a nuisance or annoyance to owners or occupiers of adjoining lands or to the public generally.

### **INDEMNITY AND REPOSSESSION**

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

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

In addition to the above mentioned indemnity, the Tenant shall also have the right to repossess the Station at no cost in the event of a material breach by the Landlord of its obligations towards the Tenant, such as a serious safety or operating issue, subject to a reasonable prior written notice from the Tenant to the Landlord to remedy such material default. If the Tenant exercises such right to repossess the Station, the Tenant shall pay to the Landlord the unamortized portion of its investment in the Station, the value of which shall be agreed upon in writing by the parties.

### **YIELDING UP**

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

### **TERMINATION**

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

### **NOTICE**

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

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

if to the Landlord:

**TOWN OF AMHERST**

98 East Victoria Street

Amherst, NS

B4H 1X6

Attention:

if to the Tenant:

**VIA RAIL CANADA INC.**

3 Place Ville-Marie

Suite 500

Montréal, QC

H3B 2C9

Attention: Senior Manager, Real Estate

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

**LAW TO THE CONTRARY**

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

**SEVERANCE**

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

**GOVERNING LAW**

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

**WAIVER**

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

**REFERENCES**

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

**AMENDMENT**

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

**REMEDIES NOT EXCLUSIVE**

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

**CHARGES ON TITLE**

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

**CAPTIONS**

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

**INTERPRETATION**

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

**ENTIRE LEASE**

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof.

**TIME OF ESSENCE**

Time is of the essence of this Lease.

**FURTHER ASSURANCES**

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

**COVENANTS AND CONDITIONS**

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

## CONFIDENTIALITY

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

## ACKNOWLEDGMENT

The parties acknowledge that:

this Lease is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Lease. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Lease from a legal advisor of their choice; and

the parties negotiated this Lease jointly and this Lease shall be construed neither against nor in favour of either party, but rather so that each section is given the meaning derived from this Lease as a whole.

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

VIA RAIL CANADA INC.

TOWN OF AMHERST

## SCHEDULE "A"

### DESCRIPTION OF PREMISES & PLANS

## SCHEDULE "B"

### LANDLORD'S SERVICES

The Landlord covenants to supply the following specified services:

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

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

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

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

3. **HOT AND COLD WATER**

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

**4. REDECORATION & REFURBISHMENT**

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

**6. REFUSE DISPOSAL**

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

**7. EMERGENCY FACILITIES AND SECURITY**

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

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

The provision of a pay phone and seating for Tenant passengers within the main waiting area of the Premises.

**9. PEST CONTROL**

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

**10. GROUNDS MAINTENANCE AND SNOW REMOVAL**

Provide regular and proper maintenance of landscaping, outside furniture and paved surfaces (platforms, walkways, driveways, parking) of the Premises including the removal of snow from walks, parking areas, platforms and driveways

Snow removal will be carried out according to the conditions included as Schedule C.

**11. JANITORIAL**

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

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

**SCHEDULE "C"****SNOW REMOVAL**

Provide regular and proper removal of snow from walks, parking areas, platforms and driveways as more fully described in the attached document.

**SCHEDULE "D"**

**TRAIN SCHEDULE**

**3. ADJOURNMENT**

**Moved By: Deputy Mayor Terry Rhindress  
Seconded By: Councillor George Baker  
To adjourn at 4:55 PM**

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

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Robert Small  
Mayor