

**Minutes of a Special Meeting of Amherst Town Council
held in Council Chambers
Wednesday, July 19, 2006 at 5:30 PM**

PRESENT: Mayor Jerry Hallee
Deputy Mayor David March
Councillor Robert Angel
Councillor George Baker
Councillor Ed Chitty
Councillor Dale Fawthrop
Councillor Terry Rhindress
Greg Herrett, Chief Administrative Officer
Rebecca Purdy, Executive Assistant

PUBLIC HEARINGS

- a) Institutional Zone Amendments
Jason MacDonald, Director of Planning and Development provided a brief synopsis of the proposed amendments. There were no presentations from the public, nor were there any written submissions.
- b) 76 East Pleasant Street Rezoning
Jason MacDonald, Director of Planning and Development provided a brief synopsis of the proposed amendments. There were no presentations from the public, nor were there any written submissions.
- c) 3 Robie Street Rezoning
Jason MacDonald, Director of Planning and Development provided a brief synopsis of the proposed amendments. Sharon and Roger Akerly, 8 Belmont Street, live directly behind the Knights of Columbus parking lot. They were concerned about reuse of the building if the K of C sold the property in the future. Jason MacDonald explained that the only uses permitted would be those uses listed in the Institutional Zone, such as churches and schools. They were satisfied with this.

1. CALL TO ORDER

Mayor Hallee called the meeting to order at 5:40 PM, following the public hearings.

This special meeting was duly advertised and called to enable Council to consider a number of outstanding issues, as the next regular meeting of Council will be held on Monday, September 25, 2006.

2. APPROVAL OF AGENDA

Moved by Councillor Chitty, seconded by Deputy Mayor March that the Agenda be amended as follows:

*Delete Canada Day Fireworks, item 3.7
Add Amherst Aerospace Property as item 3.17
Add Vandalism Concerns as item 3.18*

MOTION CARRIED

Moved by Councillor George Baker, seconded by Councillor Terry Rhindress to approve the agenda as amended.

MOTION CARRIED

3. REQUESTS FOR DECISIONS

3.1 Second Reading – Institutional Zone Amendments

Moved by Councillor Dale Fawthrop seconded by Councillor George Baker that Council give second reading to By-Law P-2-3, a by-law to amend the Land Use By-Law which will amend the permitted uses within the institutional zone.

MOTION CARRIED

**Town of Amherst
Bylaw to amend the Land Use By-Law P-2
P-2- 3**

1. *This is a by-law to amend the Land Use By-Law of the Town of Amherst with respect to the matter of changing the permitted uses within the Institutional zone.*
2. *Land Use By-Law is hereby amended by:*
 - A) *adding to the list of permitted uses "Recreational Uses" and "Public Buildings"*
 - B) *adding to section 1.0 Definitions;
"Public Building is a building owned or used by a Federal, Provincial or Municipal Government."*
 - C) *adding section 10.1.4 Accessory Uses In the Institutional Zone
"10.1.4 Accessory Uses In the Institutional Zone
The occasional rental of the property to a third party is permitted for the following uses for a period up to 5 consecutive days.*
 - *bingos*
 - *meetings*
 - *dances*
 - *beer gardens*
 - *dinners*
 - *festivals and fairs*
 - *concerts*
 - *trade shows*
 - *private parties*
 - *retail activities"*

3.2 Second Reading – 76 East Pleasant Street Rezoning

Moved by Deputy Mayor March seconded by Councillor Ed Chitty that Council give Second Reading to By-Law P-2-4, a by-law to amend the Land Use By-Law which will amend the permitted uses within the General Residential Zone as they pertain to property located at 76 East Pleasant Street (PID 25026626) in order to permit the existing trucking operation.

MOTION CARRIED

**Town of Amherst
Bylaw to amend the Land Use By-Law P-2
P-2-4**

1. *This is a by-law to amend the Land Use By-Law of the Town of Amherst with respect to the matter of permitting the existing trucking operation on property located at 76 East Pleasant Street.*
2. *Land Use By-Law is hereby amended by:*

At Section 7.2.1 adding:

"(l) Existing trucking operation at 76 East Pleasant Street (PID 25026626)"

adding "Section 7.2.4 Special Requirement - Existing trucking operation at 76 East Pleasant Street (PID 25026626)

 - *Any ground surface not covered by vegetation to be treated so as to be dust free;*
 - *No storage of aggregate (sand or gravel) be permitted on the property;*
 - *The storage of petroleum products on the site be in compliance with any and all relevant provincial regulations.*

For the purposes of this section the existing trucking operation includes: the parking, storage and maintenance of up to four commercial motor vehicles; the parking, storage and maintenance of up to 4 additional passenger vehicles associated with the business; the operation of an office within the existing single detached dwelling on the property used to coordinate the day to day operation of the business as well as usual bookkeeping and business functions; the storage of various hand tools and maintenance equipment; the use of the existing garage on the property for the trucking business; up to six persons employed on the site.

3.3 Second Reading – 3 Robie Street Rezoning

Moved by Councillor Ed Chitty seconded by Councillor Terry Rhindress that Council give Second Reading to By-Law P-2-2, a by-law to amend the Land Use By-Law which will apply the Institutional zone to property located at 3 Robie Street (PID's 25029471, 25005489 and 25029505).

MOTION CARRIED

*Town of Amherst
Bylaw to amend the Land Use By-Law P-2
P-2- 2*

1. *This is a by-law to amend the Land Use By-Law of the Town of Amherst with respect to the matter of the application of the Institutional zone to the property located at 3 Robie Street and identified by PIDs 25029471, 25005489, 25029505*
2. *In the Land Use By-Law, Schedule A (the Zoning Map) is hereby amended by applying the Institutional Zone to the property located at 3 Robie street and identified by PID's 25029471, 25005489, 25029505*

3.4 Request for Funding: Money's Worth Liquidators – Slow-Pitch Nationals

Moved by Councillor George Baker, seconded by Councillor Dale Fawthrop that Council provide funding assistance to Money's Worth Liquidators Slow Pitch Team in the amount of \$500, to attend the Canadian National Slow-Pitch Tournament being held in Moncton from August 4 to 7, 2006.

MOTION CARRIED

3.5 Request for Funding: Canada Senior Games

Moved by Councillor Robert Angel seconded by Councillor Ed Chitty that Council provide funding assistance in the amount of \$220 to each of the Amherst residents participating as members of Team Nova Scotia at the Canada Senior Games being held in Portage La Prairie, Manitoba commencing August 28.

MOTION CARRIED

3.6 Request for Funding – Bike for Bone Marrow

Moved by Councillor Rhindress, seconded by Deputy Mayor David March that Council deny the request to provide financial funding to the Bike for Bone Marrow event, but that staff be directed to provide some marketing support for the event through the distribution of pins and possibly some advertising assistance.

MOTION CARRIED

3.7 Change in Replacement of 1996 Crew Cab

Moved by Dale Fawthrop, seconded by Robert Angel that the Capital Budget for 2006/07, which included a provision for the purchase of a new crew cab truck for the recreation facilities crew, be amended to permit the purchase of two smaller trucks for the same cost.

MOTION CARRIED

3.9 First Reading – Transient Automobile Vendors By-Law

Moved by Deputy Mayor David March, seconded by Councillor Dale Fawthrop to approve first reading of the proposed Transient Automobile Vendors By-Law.

Moved by Councillor Chitty, seconded by Councillor Baker to amend the Transient Automobile Vendors by-law at paragraph 5.1 by striking the words "one year from issuance of the said License" and adding the words "the days as specified on the said license" and by amending paragraph 6.1 such that it reads "The fee for the license shall be \$2000 per day." (The intent of this amendment is to change the amount of permit fees from \$20,000 per year to \$2,000 per day.)

MOTION CARRIED

ORIGINAL MOTION CARRIED AS AMENDED

3.9 Organizational Chart Change – Water/Sewer Billing Clerk

Moved by Councillor Chitty, seconded by Councillor George Baker that Council create and add to the organizational chart the position of Water/Sewer Billing Clerk.

MOTION CARRIED

3.10 CN Sewer Line Crossing Agreement

Whereas Part of the North Town Collector project involves the construction of a sewer force main under the CN main line just south of the LaPlance River; and

Whereas, to secure an easement from CN, we must acknowledge their standard terms and conditions as well as sign their standard pipe agreement;

It was moved by Councillor George Baker, seconded Councillor Dale Fawthrop that Council authorize the Mayor and CAO to sign the agreement.

MOTION CARRIED

The Standard Pipe Agreement is attached to these minutes as Appendix A.

3.11 Water: Operating & Capital Budgets

a) Capital Budget 2006/2007

Moved by Councillor Robert Angel, seconded by Councillor Ed Chitty to approve the following Water Capital Budget in the amount of \$367,000

REPLACE 1999 CHEV 1 TON TRUCK	\$31,000.00
METER REPLACEMENT	\$20,000.00
McCULLY BOOSTER STATION ROOF AND INSULATION	\$12,000.00
CHLORINE ANALYSERS for 2 RESERVOIRS AND WELL #1	\$33,000.00
SCADA SYSTEM UPGRADE	\$30,000.00
WELLFIELD LAND ACQUISITION	\$20,000.00

REPLACE 4"CAST WATERMAINS ON :

CROFT>>ALBION TO SPRING	\$101,000.00
RAMBLER	\$70,000.00
ERNCLIFFE	\$50,000.00
	<hr/>
	\$367,000.00

MOTION CARRIED

b) Operating Budget 2006/2007

Whereas the operating budget for the water utility was deferred in anticipation of the approved rate schedule from the UARB; and

Whereas the UARB has approved the following rates effective July 1, 2006:

Unmetered per quarter	\$49.78
Base charge per quarter 3/4" meter	\$40.25
Consumption rate per cubic meter	.24

And whereas revenues are projected to rise 12.8% as a result of these new rates;

It was moved by Councillor Angel, seconded by Deputy Mayor March that Council approve the 2006/2007 Operating Budget of the Amherst Water Utility as submitted, with total revenues projected to be \$1,476,540 and total expenditures projected to be \$1,416,200.

MOTION CARRIED

3.12 Tender Recommendationsa) Boom Flail Mower for Trackless

Moved by Councillor Terry Rhindress, seconded by Councillor George Baker that Council accept the low tender from Joe Johnson Equipment in the amount of \$21,300 plus taxes for the purchase of a boom flail mower.

MOTION CARRIED

b) Two Used Trucks

Moved by Councillor Dale Fawthrop, seconded by Councillor Ed Chitty that Council accept the bid from Bordertown Pontiac Buik GMC Ltd for a new 2006 GMC Sierra 1500 for the price of \$19,800 plus taxes and a 2003 Ford F150 from D. R. Polley Used Cars Limited in the amount of \$11,450 plus taxes with funding to come from the approved capital budget for 2006/2007.

MOTION CARRIED

c) Capital Paving

Moved by Deputy Mayor David March, seconded by Councillor Terry Rhindress that Council award the tender for 2006/2007 Capital Paving to Cumberland Paving and Contracting for their bid of \$381,466.50 HST Included.

MOTION CARRIED

d) Street Reconstruction

Moved by Councillor Ed Chitty, seconded by Councillor George Baker that Council award the tender for 2006/2007 Street Reconstruction Costin Paving and Contracting for their bid of \$414,561.57

MOTION CARRIED

e) Robert Angus Drive Sidewalk

Moved by Councillor Robert Angel, seconded by Councillor Ed Chitty that Council accept the low bid from Costin Paving and Contracting in the amount of \$141,100.08 HST included for the Robert Angus Drive Sidewalk.

MOTION CARRIED

3.13 Stadium Renovation Projecta) Ratification of Change Orders

Moved by Councillor Terry Rhindress, seconded by Deputy Mayor David March that Council ratify and approve the Change Orders #2, 3 and 4 with a total cost of \$27,520.

MOTION CARRIED

b) Cabinets

Councillor Baker excused himself from Chambers, as he may be in a conflict as President of the Amherst Jr. Ramblers Hockey Club.

Moved by Councillor Dale Fawthrop, seconded by Councillor Chitty that Council authorize the construction of new cabinets at the cost of \$10,000 and that the cost of this work be addressed in the contract with the Ramblers.

MOTION CARRIED

c) Painting Bleachers

Moved by Deputy Mayor David March, seconded by Councillor Robert Angel that Council authorize the repainting of the Stadium seating area by Student Works Painting in the amount of \$17,300 plus taxes.

MOTION CARRIED

3.14 Pre-Approval – Fall Debenture Issue for Capital

The following Resolution was moved by Councillor Ed Chitty and seconded by Deputy Mayor David March:

Resolution for Pre-Approval of Debenture Issuance Subject to Interest Rate**\$1,710,463****July 19, 2006**

WHEREAS Section 91 of the *Municipal Government Act* provides that a municipality is authorized to borrow money, subject to the approval of the Minister of Service Nova Scotia & Municipal Relations; and

WHEREAS the resolution of Council to borrow to expend funds for the capital purposes of:

GENERAL	Capital Paving including Robert Angus Drive Sidewalk Transportation Equipment Recreation Vehicle Fire Truck
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SEWER	Sewer Main Replacements North Town Collector -Sewer Treatment Plant
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WATER	Water Main Replacements
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WHEREAS Clause 91 (1)(B) OF THE *Municipal Government Act* authorizes the Council to determine the amount and term of, and the rate of interest, on each debenture, when the interest on a debenture is to be paid, and where the principal and interest on a debenture are to be paid; and

WHEREAS Clause 91 (2) of the *Municipal Government Act* states, that in accordance with the *Municipal Finance Corporation Act*, the mayor and clerk or the person designated by the Council, by policy, shall sell and deliver the debentures on behalf of the municipality at the price, in the sums and in the manner deemed proper;

BE IT THEREFORE RESOLVED THAT under the authority of Section 91 of the *Municipal Government Act*, the **TOWN OF AMHERST** borrow by the issue and sale of debentures a sum or sums not exceeding **ONE MILLION SEVEN HUNDRED AND TEN THOUSAND FOUR HUNDRED AND SIXTY-THREE DOLLARS (\$1,710,463)**, for a period not to exceed ten (10) years for equipment and vehicles and (15) years for paving, sewer/water main replacements and (20) years for sewer treatment plant, subject to the approval of the Minister of Service Nova Scotia & Municipal Relations;

THAT the sum be borrowed by the issue and sale of debentures of the Town of Amherst in the amount that the mayor and clerk or the person designated by the Council deems proper, provided the average interest rate of the debenture does not exceed the rate of **6.50%**;

THAT the debenture be arranged with the Nova Scotia Municipal Finance Corporation with interest to be paid semi-annually and principal payments made annually;

THAT this resolution remains in force for a period not exceeding twelve months from the passing of this resolution.

MOTION CARRIED3.15 Golf Tournament – Doolys Giving Hope to Breast Cancer

Moved by Councillor George Baker, seconded by Councillor Rhindress that the Town of Amherst provide a \$100 sponsorship to the Dooly's *Giving Hope to Breast Cancer Golf Tournament*, and provide a prize package to include four golf shirts and hats.

MOTION CARRIED3.16 C-Vision Letter to Peter MacKay

Moved by Councillor Robert Angel, seconded by Councillor Fawthrop that Council authorize a letter to be written to Minister Peter MacKay on behalf of C-Vision, requesting that Mr. MacKay provide whatever assistance he can to Mr. Cartmill and his company in competing for contracts in the space agency hardware business.

MOTION CARRIED

3.17 Former Amherst Aerospace Property

Over the past number of months we have been meeting and corresponding with representatives of Public Works Government Services Canada to explore the possibility of the Town of Amherst purchasing the former Amherst Aerospace Property.

While this activity has been considered on a very professional basis, and we appreciate the information provided by and the efforts of the folks at Public Works Government Services Canada, we have not been able to obtain all of the information that we feel is necessary to appropriately assess the risks in purchasing the property.

As a result, staff have advised that they are in a position of being unable to provide solid information on potential risks to Council to facilitate an informed decision regarding the potential purchase.

Moved by Councillor Ed Chitty, seconded by Deputy Mayor David March that Council direct staff to advise Public Works Government Services Canada that the Town of Amherst is unable to continue negotiations for the purchase of the Amherst Aerospace property, as recommended by Administration.

MOTION CARRIED

3.18 Vandalism Concerns

Councillor Chitty stated that he has been hearing numerous reports from citizens about the increasing incidents of vandalism, loitering and graffiti around town, and that he had spoken to Chief of Police about them. He assured everyone that the Police Department shares these concerns and its members are working to reduce these incidents. A crime prevention committee that has been dormant for the past number of years is being reactivated, and the Department would like to have interested people - concerned citizens, youth, business owners, etc - contact the police chief advising that they would like to be a part of that committee. Councillor Terry Rhindress reminded the public of the importance of reporting incidents of vandalism and bullying immediately to the police. Concerning loitering, police have started to move people along and issue warnings, and keep records of repeat offenders in attempts to reduce loitering in the downtown area. Councillor Robert Angel advised that this would be placed on the agenda for the next ABPC agenda. Council shares concerns of the citizens in these issues.

ADJOURNMENT:

On motion by Councillor Angel the meeting adjourned at 6:50 PM.

APPROVED:

.....
 Gregory D. Herrett,
 Chief Administrative Officer

.....
 Jerry Hallee
 Mayor

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STANDARD PIPE AGREEMENT – PROVINCES OTHER THAN QUEBEC

Y/F:

O/F: 4715-SHL-77.58

AGREEMENT NO. _____

This Agreement entered into at _____, Province of _____, this
 _____ day of _____, 200__

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY, a corporation
 having its head office at 935 de la Gauchetière Street West,
 Montreal, Quebec H3B 2M9

(hereinafter called the "Railway")

AND:

TOWN OF AMHERST
 P.O. Box 516
 Amherst, Nova Scotia
 B4H 4A1

(hereinafter called the "Applicant")

WHEREAS the Railway hereby grants the Applicant the right and privilege to install, use and maintain a **sewer pipe crossing**, under CN tracks, at mile 77.58 Springhill S/D (hereinafter the "works"), in the Town of Amherst, Province of Nova Scotia, as shown on Plan(s) No. 06-6076 (hereinafter the "Plan(s)"), attached hereto and forming part hereof.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Agreement, the parties agree as follows:

1. The Applicant will carry out the work as shown on the attached Plan(s) (Appendix A), and in accordance with Railway requirements respecting safe railway operations, and no works shall proceed until the Agreement has been signed and the plan(s) has/have been approved by the Railway.
2. The works shall be constructed and at all times maintained in accordance with the *Railway Safety Act* and regulations, plans or specifications in force, adopted or approved by Transport Canada respecting pipe crossings under Railways, including *Standards Respecting Pipeline Crossings Under Railways*, TC E-10, effective May 10, 2001 (Appendix B), as amended from time to time, and any subsequent replacement document, according to the plans and specifications approved by the Railway.
3. No maintenance work shall be done without first obtaining the Railway's consent.
4. Under certain circumstances, before giving its permission to proceed to any work, the Railway may, at its discretion, assign an inspector to supervise the work to take place on its property. While so engaged, the inspector's wages and expenses will be chargeable to the Applicant and shall be paid by the Applicant immediately upon request by the Railway.
5. All costs associated with the construction, the replacement, the use and the maintenance of the works, including flagging, location of underground cables and engineering fees, shall be paid by the Applicant.
6. Should it become necessary or expedient for the purposes of repair or improvement on the said Railway that the works be removed, relocated or modified, the Applicant shall, at its risk and expense, comply with the request of the Railway, failing which the Railway shall have the right to execute or have executed, at the risk and expense of the Applicant, any work required to remove, relocate or modify the said works.
7. In addition to any other amounts payable by the Applicant pursuant to this Agreement, as compensation for the rights and privileges herein granted and until Clause 13 is invoked, the Applicant shall immediately pay a non-refundable one-time lump sum of \$1,850, plus the applicable H.S.T. All sums payable pursuant to this clause shall be payable to the order of the Railway, care of its authorized representative, at such address as the authorized representative shall provide.

The Applicant shall also pay all taxes, rates and assessments of any other nature that may be levied from

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time to time during the course of this Agreement against the Railway's property as a result of the works constructed by the Applicant. The Railway's G.S.T. Registration Number is R100768779.

8. The Applicant shall indemnify and save harmless the Railway from and against all actions, causes of action, proceedings, claims and demands (hereinafter referred to as "Liability") for any direct losses, costs, damages or expenses suffered or incurred by the Railway, by reason of any damage of whatsoever nature including damages to property or to any persons caused by, resulting from or attributable to any action or omission by the Applicant, its employees, servants, agents, licensees, invitees or generally by those for whom it is by law responsible or to the existence, construction, operation, maintenance, relocation, modification or removal of any crossing, or injury, including injury resulting in death, to the employees, servants, agents, licensees or invitees of the Company while on Railway property, except to the extent that such liability, damage or injury is contributed to, caused by, results from or is attributable to the negligence or misconduct of the Railway or of those for whom it is by law responsible.

9. The Applicant shall immediately carry out all measures which the Railway, in its sole discretion, considers necessary to keep the works free and clear of all environmental contaminants or residue (hereinafter referred to as "Environmental Contamination") resulting from the Applicant's occupation or use of the Railway's premises (hereinafter the "Premises"), such condition to be confirmed (at the option of the Railway and at the sole expense of the Applicant) by a post-termination environmental inspection/audit of the Premises to be carried out by the Railway. The Applicant shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs on the Premises, or which occurs on other lands as a result of the Applicant's occupation or use of the Premises.

9.1 a) Notwithstanding the foregoing, in the event that the Railway, at any time, suspects that a potential source of Environmental Contamination may be either present on the Premises or at risk of escaping from or onto the Premises to or from the adjoining lands, the Railway shall have the right to enter upon the Premises, at all reasonable times and from time to time, in order to inspect the Premises and conduct or require the Applicant to conduct, at the Applicant's expense, such tests as may be required to verify the condition of the Premises. The Applicant shall, at its expense, take any and all action as shall be required to prevent such Environmental Contamination from occurring or escaping from or onto the Premises.

b) The Applicant shall be responsible to notify the Railway of all Environmental Contamination that the Applicant suspects is occurring on or escaping onto the Premises from adjacent lands or resulting from third party occupation.

9.2 If the Applicant fails to correct any Environmental Contamination to the satisfaction of the Railway and any public authority having jurisdiction, the Railway may perform such work by its employees or agents. The Railway may charge the Applicant from time to time for all the costs incurred by the Railway in correcting such Environmental Contamination, plus fifteen per cent (15%) for overhead, and the Applicant shall pay the Railway's invoice or invoices for such costs within ten (10) days of receipt of each invoice. In the event such remedial work is carried out by any public authority, the cost of such work shall be borne by the Applicant.

9.3 The Applicant shall comply with the provisions of any federal, provincial or municipal laws applicable to the Premises with respect to maintaining a clean environment. If any public authority having jurisdiction with respect to environmental protection or fire protection requires the installation of equipment or apparatus on the Premises to improve the environment or to improve fire protection facilities, then the Applicant shall promptly install such equipment or apparatus or take such measures as may be required by such public authority. The Applicant shall be solely responsible for the cost of all work carried out to comply with the requirements of a public authority.

9.4 Upon the termination of this Agreement, the Applicant shall leave the Premises in a clean and tidy condition, free of any Environmental Contamination resulting from or occurring during the Applicant's occupation or use of the Premises. If the Applicant has installed any facility on or under the Premises, the Applicant shall remove such facility, subject to the provisions of Clause 15. The Applicant shall have the burden of proving that any Environmental Contamination has not resulted from or occurred during its occupation or use of the Premises.

9.5 The responsibility of the Applicant to the Railway with respect to the environmental obligations contained herein shall continue to be enforceable by the Railway notwithstanding the termination of this Agreement.

10. The Applicant shall, at its sole expense, provide and maintain in full force and effect during the term of this Agreement, and for any subsequent renewal term, insurance coverage as follows:

10.1 Commercial General Liability, in the amount of no less than ten million dollars (\$10,000,000) per occurrence, combined single limit for bodily/personal injury (including death), or for damage to or

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destruction of property (including loss of use) caused by accident or occurrence. This policy shall name the Railway as an additional insured and shall contain a cross-liability clause.

10.2 The Applicant shall provide the Railway with proof of insurance in the form of an insurance certificate, which certificate shall detail the coverage requirements and shall obligate the insurers to give the Railway a thirty (30) day prior written notice of cancellation or non-renewal, or of any material change affecting the coverage provided therein.

11. The Applicant's property, and any other person's property, shall, while located on the Railway's premises to fulfill any obligation covered by the present Agreement, be deemed to be there at the risk of the Applicant as to damages, loss or theft attributable to any cause whatsoever.

12. This Agreement is binding upon the respective employees, agents, successors and representatives of the Railway and the Applicant; however, the Applicant may not assign or transfer this Agreement, in whole or in part, or any of the rights and privileges resulting there from, without the prior written consent of the Railway. Said consent may not be unreasonably withheld. Notwithstanding the foregoing, assignment or transfer by the Applicant of its interests in the present Agreement to a parent, subsidiary or affiliate of the Applicant shall not be considered an assignment or transfer for the purposes of this Agreement.

13. This Agreement will continue in force from the date hereof to its termination, at any time, by giving a written notice to the other party at least thirty (30) days from the date of expiration. In the event of any failure by the Applicant to comply with any provisions of this Agreement, and upon the Applicant being notified in writing by the Railway alleging such failure and failing to remedy the failure within (thirty) 30 days of receiving such notice, the Agreement will be forthwith terminated upon receipt of written notice of termination. In either case, it is understood that the Railway will not reimburse the Applicant for any monies paid in advance under the provisions of this Agreement.

14. Unless otherwise specified, all notices, accounts, statements, reports, documents or instructions to be given by any party under the terms of this Agreement must be given in writing at the following address:

FOR THE RAILWAY:

277 Front Street West, Floor 8
Toronto, Ontario M5V 2X7

Attention: Contracts Department
Facsimile: (416) 217-6764

FOR THE APPLICANT:

Town of Amherst
P.O. Box 516
Amherst, Nova Scotia
B4H 4A1

Attention: Ron Patterson
Phone: (902) 667-6516

Notice shall be sufficiently given if delivered by courier or facsimile, or if mailed by prepaid registered mail to the above address or to such other place as may be specified in writing. Any notice or other document, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender, and if mailed, on the third business day following the date on which it was mailed. In the event of an actual or imminent disruption of postal service in Canada, the notice shall be delivered by courier.

15. Prior to the expiry of the present Agreement or, in the cancellation of the Agreement within a period determined in writing by the Railway, the Applicant will, at its risk and expense, remove from the Railway's property all works constructed under this Agreement, as well as all material not belonging to the Railway, except for the metal casing which will remain in place in perpetuity. As for the pipe installed inside the metal casing, the Applicant will at its discretion have the option of either leaving the pipe or removing it. The Applicant will be required to fill the casing and any pipes left within with cement and restore the Railway's property to the satisfaction of the Railway. Should the Applicant fail to comply with the requirements of this Clause, the Railway reserves the right, at its discretion, to do the work that the Applicant should have done in accordance with this Clause, or to have the work done, at the risk and expense of the Applicant. Under such circumstances, all the material located on the Railway's property shall become the property of the Railway, without compensation to the Applicant and without prejudice to the Railway's right to recourse against the Applicant for compensation for any costs or damages incurred

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by the Railway as a result of the Applicant's default.

16. The Applicant shall not, at any time and in any way, impede the operation, the maintenance or the enjoyment of the Railway's property by the Railway and its representatives. If the Railway deems, at its discretion, that the work being undertaken or the method used to undertake the work will impede the Railway in any way, the Railway may order the work stopped, recommend a different methodology, require that adequate protective measures be taken and generally impose any measures or any combination of measures that the Railway may deem necessary under the circumstances. The Applicant will comply with the requirement of this clause, at its risk and expense and without recourse against the Railway except for damages, if justified.

17. The Applicant agrees not to register this Agreement or to file or register any caveat or other encumbrance based on this Agreement against the title for the said Works without first obtaining the written consent of the Railway.

18. This Agreement shall be governed by and construed in accordance with the laws of the Province in which the works are located, and all applicable federal laws and regulations.

19. Any dispute relating to the wording and interpretation of the clauses in this Agreement will be resolved in accordance with the Arbitration Act of the Province in which the works are located.

20. The preamble to this Agreement and all its Appendices form an integral part hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

CANADIAN NATIONAL RAILWAY COMPANY

Witness for the Railway

Name:
Title:
I am authorized to bind the Company

APPLICANT

Witness for the Applicant

Name:
Title:

I am authorized to bind the Company

Witness for the Applicant

Name:
Title:

I am authorized to bind the Company