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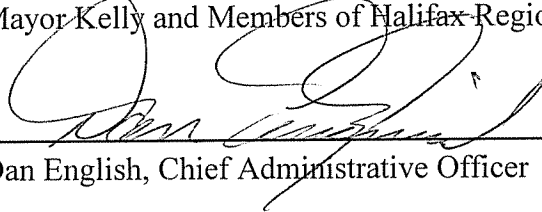


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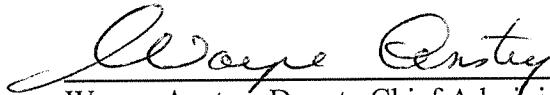
Halifax Regional Council
July 4, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



Wayne Anstey, Deputy Chief Administrative Officer

DATE: June 23, 2006

SUBJECT: Business Improvement District (BID) Service Agreement Renewal

ORIGIN

Since 1996, the Municipality has entered into service agreements with each of the four Business Improvement Districts (BID) located within the Capital District boundaries, including Downtown Dartmouth, Downtown Halifax, Spring Garden Road and Quinpool Road; to provide services related to the revitalization of the regional centre.

More recently, the Municipality has service agreements with two Business Improvement Districts outside of the Capital District within the Sackville Drive and the Spryfield business communities.

The last management agreements were approved by Council back in 2005 for a one year period.

RECOMMENDATION

It is recommended that :

Council authorize the Mayor and Municipal Clerk to execute the attached Service Agreement on behalf of HRM with the six Business Improvement Districts, which will come into effect on April 1, 2006, for a period of one (1) year in order for them to continue to provide services related to the betterment and revitalization of their respective commercial neighbourhoods.

BACKGROUND

There are currently six business improvement districts (BIDs) which operate within the boundaries of the Halifax Regional Municipality. The BIDs are supported by a tax levied on the commercial and business occupancy assessment of those businesses and commercial land owners located within Downtown Dartmouth, Downtown Halifax, Spring Garden Road, Quinpool Road, Sackville Drive and Spryfield communities. This levy is enabled by section 56 of the Municipal Government Act, which authorizes Council to contract, by way of a management agreement, for services related to beautification, marketing and promotions and economic development. Council approves the levy amounts for the individual BIDs on an annual basis through the regular budget approval process.

The purpose of the management agreements is to describe the terms and conditions of the contract between the HRM and the individual BIDs. The management agreement requires the BIDs to submit annual activity plans, budgets, levy formulas and audited statements and outlines the levy disbursement schedule for HRM to follow.

DISCUSSION

The Capital District Task Force was created by Regional Council, to coordinate service delivery and provide the opportunity for a variety of stakeholders to come together, share resources and achieve greater results. Capital District encourages and facilitates the exchange of information, experiences and ideas among BIDs and other stakeholders through such means as newsletters, seminars, workshops & public consultation.

The Capital District also coordinates the provision of support services to emerging BIDs in other urban centres of HRM in an effort to build community capacity and to pro-actively plan and deliver programs which support and strengthen growing business centres throughout the municipality.

The agreement requires the BIDs to develop operating budgets and corresponding activity plans. These activity plans require the BIDs to describe goals and objectives for each project along with performance measures for each. Their budgets reflect the activity plan goals and objectives. The performance measures act as an evaluation tool, enabling the HRM to determine whether the tax levy has been used to fulfill the stated objectives set forth in the management agreement and in the individual activity plans. The activity plans are a tool to measure the impact and effectiveness of the BIDs and encourage accountability for expenditures. One example of a successful program between HRM and the Capital District business commissions is the Graffiti Program. In 2005, HRM provided grants to the BIDs to pay for a sweep of graffiti in each area. In return, the business commissions agreed to maintaining the graffiti on private property over the next three years.

Council recently adopted a regional strategy for economic development. The strategy seeks to coordinate the individual efforts of existing economic development organizations and initiatives under common regional objectives related to growing a competitive, healthy economy along with liveable, healthy communities. The development of strong and vibrant areas of commercial focus within HRM's Capital District and main street areas supports both HRM's regional economic

development and regional planning objectives. BID's play an important role in providing an environment for sustainable community development and in attracting new business investment and creative, entrepreneurial people.

An implementation plan for the Economic Development Strategy is currently being prepared in conjunction with HRM's community and government economic development partners. The initial focus is on aligning community and regional economic development programs and activities carried out on HRM's behalf by agencies such as the Greater Halifax Partnership and Halifax Regional Development Agency and developing a community-based model for the delivery of economic development programs consistent with strategy objectives.

Staff intend to work with the BID's over the next year to identify ways to align their objectives with those of the Economic Strategy, particularly in areas of common interest related to property maintenance initiatives and standards, business and tourism promotion and growth, transit service and streetscape/infrastructure investment. Given the current status of the implementation plan for the plan and the need to more clearly identify roles, relationships and desired outcomes of various organizations engaged in economic development-related activities, it would seem appropriate for any service agreements to be renewed for one as opposed to multi-year time frames.

BUDGET IMPLICATIONS

The Municipality collects the levies on behalf of each of the Business Improvement Districts and disperses them accordingly. A three percent hold back is administered in order to provide for bad debt write offs as well as for appeals which reduce the amount of taxes HRM actually collects. As per the agreement every four years the balance of the 3% holdback is reviewed and that portion not required to cover bad debt or appeals is refunded to the BID. The Service Agreement provides that 20% of that refund be contributed to a maintenance account to deal with future streetscape amenity maintenance issues.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

Council can make changes to the Service Agreement

ATTACHMENTS

Service Agreement between HRM and Business Improvement Districts

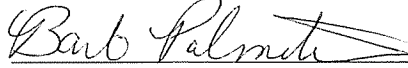
**Business Improvement District Service Agreement Renewal
Council Report**

July 4, 2005

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Marion Currie, Project Coordinator

Financial Review by:



Barb Palmeter, Financial Consultant



Catherine Sanderson, Senior Manager - Financial Services

Report Reviewed by: Jacqueline Hamilton, Manager Capital District 490-5685

Report Approved by:



Carol Macomber, Acting Director of Community, Culture & Economic Development

Service Agreement

Between:
Halifax Regional Municipality
and
XXXXXXX

Halifax Regional Municipality
Marion Currie, Project Coordinator
Community Culture & Economic Development
PO Box 1749
Halifax, Nova Scotia B3J 3A5
tel: 902.490.6735
fax: 902.490.5730
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This **Service Agreement** made this 1st day of April, 2006.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY
(hereinafter called the "Municipality")

OF THE FIRST PART

- and -

XXXXXXXX
(hereinafter called the "Society")

OF THE SECOND PART

WHEREAS the Halifax Regional Municipality wishes to appoint the Society, to promote a business improvement district as a place for retail and commercial activity in the area, subject to and in accordance with the terms of this agreement;

WHEREAS the Society wishes to be contracted to provide the services related to promote their business improvement district as a place for retail and commercial activity;

IT IS THEREFORE mutually agreed to as follows:

ARTICLE ONE DEFINITIONS

Section 1.01 Definitions

When used in this Agreement, the following terms shall have the following meanings:

- (a) "Area" means the business improvement district area as described by their approved boundaries.
- (b) "Society" means the business improvement district/association.
- (c) "Commencement Date" means April 1, 2006.
- (d) "Deputy Chief Administrative Officer" means the Deputy Chief Administrative Officer for the Halifax Regional Municipality.
- (e) "Municipality" means Halifax Regional Municipality.
- (f) "Project Manager" means the Project Manager for the Halifax Regional Municipality.

ARTICLE TWO APPOINTMENT OF THE SOCIETY

Section 2.01 Appointment of Society

The Municipality hereby appoints the XXXXXXXX (and the Society hereby accepts such appointment) to undertake on behalf of the Municipality, services which are more particularly set out in section 2.02, as an independent contractor, on the terms and conditions set out in this agreement.

Section 2.02 General

The business improvement districts are supported by a tax levied on those businesses and commercial land owners located within their communities. This levy is enabled by section 56 of the Municipal Government Act, which authorizes Council to contract; by way of this management agreement, for services related to beautification, maintenance, marketing and promotions and economic development.

The XXXXXXXX shall deliver Services related to the promotion of the area as a business improvement district for retail and commercial activity. The Society may also establish or maintain parking facilities for the Municipality and may beautify, maintain or improve property of the Municipality during the terms of this agreement unless and except to the extent otherwise determined by the Municipality by notice in writing to the Society. The XXXXXXXX shall perform its duties and exercise the power and authority set out in this agreement in an efficient and economical manner and in accordance with the terms of this Agreement, for the account and at the expense of the Municipality (except where expressly provided to the contrary) and subject to responsibilities hereunder in a competent and professional manner.

ARTICLE THREE DUTIES AND RESPONSIBILITIES OF THE SOCIETY

Section 3.01 Indemnification by the Society

The XXXXXXXX agrees to indemnify and hold harmless the Municipality and each officer and employee of the Municipality, against any loss, expense, damage, claim, liability, obligation, judgment or injury suffered or sustained by the Municipality as a result of any act or omission or alleged act or omission of the Society on or any employee acting under the supervision of the XXXXXXXX except where such activities are carried out pursuant to and in accordance with this agreement and in furtherance of the interests of the Municipality, and the Society or employee, as the case may be, has acted in good faith.

Section 3.02 Preparation of Activity Plan and Budget

- (a) The XXXXXXXX shall prepare and submit to the Municipality for approval, through the Project Manager, a plan of activities and budget for each municipal fiscal year ending (April 1 - March 31) along with a recommended area rate, to be levied against all commercial realty and business occupancy assessments in the area, for financing the proposed plan of activities and budget, including a recommended minimum and maximum amount to be levied upon each commercial realty and business occupancy assessment. The budget shall include a three percent reserve from the total levy collected for uncollected area rates, to be held by HRM.
- (b) Those Business Improvement Associations located within the Capital District, shall also:
- (i) participate in and cooperatively submit to the Municipality for approval; through the Project Manager, a joint initiative plan of activities and budget for each municipal fiscal year (April 1 - March 31).
 - (ii) contribute 5% of the previous years streetscape improvement amount for their district. Contributions to be put aside to pay for future streetscape amenity maintenance. Minimum contribution \$1,000 and maximum contribution of \$2,000 each year (April 1 - March 31).

Section 3.03 Operating Account

The XXXXX shall open a commercial chequing account ("Operating Account"), at a bank to be approved by the Municipality, for the purpose of depositing funds provided by the Municipality for carrying out the purposes approved pursuant to this agreement.

Section 3.04 Accounting Offices

The XXXXX shall maintain or cause to be maintained at such location as shall be approved in writing by the Municipality, adequate books, vouchers and records in connection with the management and operations of the Services. The Municipality shall have the right, at its own expense, and at all reasonable times during normal business hours, to audit, examine, make copies of, or take extracts from the books of account and records maintained by the XXXXXXXX pursuant to this agreement. Such right may be exercised through any agent or employee designated by the Municipality and the Municipality shall bear all expenses in connection

therewith.

Section 3.05 **Receipts and Records**

The XXXXXX shall at all times during the continuance of this agreement secure and maintain all applicable invoices and/or bills for all expenses related to the Services, copies of all correspondence, contracts, inventories, warranties and records of income, deposits and charges with respect to the Services. The XXXXXX shall at all times keep and maintain in accordance with generally accepted accounting principles, approved by the Municipality and consistently applied, full, true and accurate books of account fully reflecting all matters relating to the Services, including all income, expenditures, assets and liabilities thereof. The books of accounts shall be kept in such a manner as to clearly separate all income and expenses and to indicate to which source they are attributed, with any distributions to the Municipality be accompanied by a statement identifying the source of such funds.

Section 3.06 **Financial Reports**

Within ninety (90) days after the close of the Fiscal Year, the XXXXXX shall cause to be prepared by an independent accountant or accounting firm and furnished to the Municipality through the Project Manager, an audited financial report ("Financial Report") for the Services. The Financial Report shall include a balance sheet as of the end of the prior Fiscal Year, a statement of income or loss, and a statement of changes in financial position for the prior Fiscal Year. The statement of income or loss shall disclose the amount of income earned or loss sustained, the amount of cash; if any, available for distribution to the Municipality, and shall include the amount of depreciation, depletion, amortization, interest, extraordinary interest and extraordinary charges. The XXXXXX shall furnish the Financial Report to the Project Manager as soon as practicable after the Financial Report has been prepared.

Section 3.07 **Other Reports**

The XXXXXX shall, if and when requested from time to time by the Municipality, prepare and furnish to the Municipality, such other reports or statements as the Municipality may reasonably require.

Section 3.08 **Property of the Society**

The records, reports, books of account and other documents and materials relating to the provision of the Services shall be the property of the XXXXXX and; upon the termination of this agreement by expiration or otherwise, the XXXXXX shall provide copies of such portions thereof as the Municipality shall deem necessary.

Section 3.09 **Settlement**

Within 30 days after the effective date of termination of this agreement by expiration or otherwise, XXXXXX shall pay to the Municipality an amount equal to the sum of all deposits made to the Operating Account by the Municipality, less the sum of all amounts previously paid out of such account in accordance with this agreement and such additional amounts as the XXXXXX may be obliged to pay or deposit to the Operating Account pursuant to the terms of this agreement.

**ARTICLE FOUR
DUTIES AND RESPONSIBILITIES OF THE MUNICIPALITY**

Section 4.01 **Indemnification of the Organization**

The Municipality shall indemnify, defend, and hold harmless the XXXXXXXX and each member of the XXXXXXXX and each officer and director thereof, against any uninsured loss, expense, damage, claim, liability, obligation, judgement or injury suffered or sustained by reason of any act, omission or alleged act or omission arising out of the activities of the Organization pursuant to this Agreement provided, however, that the Organization, member, officer or director, as the case may be, has acted in good faith and the act or omission giving rise to the claim is not fraudulent, deceitful, intended to cause harm or injury or illegal.

Section 4.02 **Assessment Information**

The Municipality shall provide annually to the XXXXXXXX, assessment roll data for the next fiscal year within seven (7) days of receiving it from the Province of Nova Scotia.

Section 4.03 **Approval of Business Plan & Budget**

The Municipality shall approve such business plan and final budget, as the Municipality considers appropriate.

Section 4.04 **Interim Financing**

The Municipality shall, by April 15 of each fiscal year, deposit in the Operating Account of the XXXXXXXX, interim financing for the operation of the Society, which shall be equal to forty percent of the Society's approved budget for the Area in the previous year.

Section 4.05 **Disbursements**

The Municipality shall deposit funds in the Operating Account according to the following schedule:

- (a) interim financing as described in Section 4.04 forty percent of the Final Budget on August 1st of each year; and
- (b) the remaining funds of the Final Budget on November 1 of each year, less the three percent budgeted for uncollectible on the local area rate levied in the Area for each fiscal year.
- (c) any funds collected by way of the 3% reserve, not used toward unpaid accounts, will be reimbursed to the XXXXXXXX every four years. Those Business Improvement Associations located in the Capital District agree to commit 20% of the reimbursement to their maintenance reserve account administered by the Municipality.

Section 4.06 **Limitation of Liability**

The individual committee members of the Organization shall not be liable to the Municipality for any obligation, expense, liability or claim of any nature or kind whatsoever, howsoever incurred, with respect to the operation of the Organization, for which there is no insurance on behalf of the Organization or its committee members, as the case may be, unless such obligation,

expense, liability or claim was incurred or arises as a result of lack of good faith or any fraudulent, deceitful or illegal act on the part of such individual.

ARTICLE FIVE TERM/TERMINATION

Section 5.01 Commencement and Initial Term

This Agreement shall be for a term of **one (1)** year, commencing on April 1st, 2006, and shall continue in force, unless earlier terminated as set out in Section 5.02 or Section 5.03 unless either party shall notify the other by written notice that it elects not to renew this Agreement at least six (6) months prior to the end of the initial term or any renewal term.

Section 5.02 Termination by the Municipality

This agreement may be terminated by the Municipality, upon giving the XXXXXXXX written notice of its election to terminate this agreement upon the happening of any of the following:

- (a) In the event that the XXXXXXXX breaches any of the terms and provisions of this agreement and such breach continues for a period of 15 days after written notice thereof from the Municipality to the Society or in the case of a breach which cannot with due diligence be cured within such period of 15 days, if the Society fails to proceed with all due diligence within such period of 15 days to commence to cure such breach and thereafter to prosecute the curing of such breach with all due diligence and continuity within ninety (90) days after receipt by the XXXXXXXX of such notice;
- (b) In the event that the Municipality is presented with a petition requesting that the XXXXXXXX's activities pursuant to this agreement cease, signed by at least fifty-one percent of the persons within the Area who are members in good standing.
- (c) In the event that any of the following occur with respect to the Society:
 - (i) if the XXXXXXXX shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent; the Society shall admit in writing its inability to pay its debts as they mature; or
 - (ii) the XXXXXXXX gives notice to any governmental body of insolvency or pending insolvency or suspension or pending suspension of operations; or
 - (iii) the XXXXXXXX shall make an assignment for the benefits of creditors or take any other similar action for the protection of benefit creditors.

Section 5.03 Termination by the Society

This agreement may be terminated by the XXXXXXXX, upon giving the Municipality written notice of its election to terminate this agreement in the event that the Municipality breaches any of the terms and provisions of this agreement and such breach continues for a period of 15 days after written notice thereof from the XXXXXXXX to the Municipality, or in the case of a breach which cannot with due diligence be cured within such period of 15 days, if the Municipality fails to

proceed with due diligence within such period of 15 days to commence to cure such breach and thereafter to prosecute the curing of such breach with all due diligence and continuity within ninety (90) days after receipt by the Municipality of such notice.

ARTICLE SIX INSURANCE

Section 6.01 Indemnification Before and After Term of Agreement

No party shall be liable for any obligations incurred by the other party whether incurred before or after the execution of this agreement and each party hereby agrees to indemnify and hold harmless the other party with respect to all such obligations except obligations incurred by or in connection with or on behalf of the parties pursuant to and as permitted by the terms of this agreement.

Section 6.02 Insurance

During the term of this agreement, the XXXXXXXX shall provide, pay for and maintain with companies satisfactory to the Municipality, the types of insurance as jointly required by the Municipality and the Society. All liability policies shall provide that the Municipality is an additional named insured as to the operations of the XXXXXXXX under this agreement. The insurance coverage's and limits required must be evidenced by properly executed Certificates of Insurance and shall be provided to the Municipality ten (10) working days prior to the expiration of the current coverage's. Thirty (30) days notice must be given to the Municipality of any cancellation, intent not to renew, or reduction in policy coverage.

Section 6.03 Suits and Claims

The XXXXXXXX shall notify the Municipality in writing as soon as possible after the Association becomes aware of any claim or possible claim against the Municipality and/or the Society which involves the Association. The XXXXXXXX shall take no steps (such as the admission of liability) which would operate to bar the Municipality from obtaining any protection afforded by any policies of insurance it may hold or which will operate to prejudice the defence in any legal proceedings involving the Municipality or the Society, or otherwise prevent the Municipality from protecting itself against any such claim, demand or legal proceeding. The Organization shall fully cooperate with the Municipality in the defence of any claim, demand or legal proceeding.

ARTICLE SEVEN GENERAL PROVISIONS

Section 7.01 Notices

All notices, demands, request, approvals or other communication of any kind, which a party hereto may be required or may desire to serve on the other party in connection with this agreement, shall be served personally or sent by registered mail. Any notice or demand so served by registered mail shall be deposited in the Canadian mail with postage thereon fully prepaid, registered and addressed to the party so to be served as follows:

- (a) if to the Municipality:

Halifax Regional Municipality
PO Box 1749
Halifax, NS
B3J 3A5

(b) if to the XXXXXXXX

Insert address here

Except in the event of a postal service strike or lockout (in which event the parties hereto agree to temporarily utilize other reasonable methods of communicating notices), service of any notice or demand so made by mail shall be deemed complete on the date of actual delivery as shown by the registry receipt or at the expiration of the seventh business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing served upon the other party as aforesaid, designate a different mailing address or different or additional persons to which all such notices or demands are thereafter to be addressed.

Section 7.02 **Validity of Provisions**

In the event any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

Section 7.03 **Waiver of Modification**

No consent or waiver, express or implied, by a party to or of any breach or default by the other party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default hereunder. Failure on the part of a party to complain of any act, or failure to act on the part of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Neither this agreement nor any provision hereof may be amended, waived, modified or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver, modification or discharge is sought.

Section 7.04 **Successors**

The provisions of this agreement shall, subject to the terms and conditions hereof, be binding upon and endure to the benefit of the successors and assigns of each of the parties hereto, provided, however, this agreement shall at all times remain personal to the XXXXXXXX and may not be assigned by the Society »without the prior written consent of the Municipality.

Section 7.05 **Remedies**

Both parties shall, in addition to all rights provided herein or as may be provided by law, be entitled to the remedies of specific performance and injunction to enforce their rights hereunder.

Section 7.06 **Headings**

The headings used in this agreement are inserted solely for the convenience of reference and are not part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

Section 7.07 **Interpretation**

Where the context so requires, words used in the singular shall include the plural and vice versa.

Section 7.08 **Entire Agreement**

This agreement, together with any written agreements executed in connection herewith or modifications or amendments to this Agreement entered into by the parties hereto shall constitute the entire agreement between the parties hereto relative to the subject matter hereof and shall supersede any prior agreements or understanding, if any, whether written or oral, which either party may have had relating to the subject matter hereof.

Section 7.09 **Governing Law**

This agreement shall be governed by and construed in accordance with the laws of Nova Scotia.

Section 7.10 **Time of Essence**

Time is of the essence in the performance of the obligations of this agreement and of each provision hereof.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, as of the day and year first above written.

SIGNED, SEALED and DELIVERED

XXXXXXXXXX

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Witness

Business Commission

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Witness

Business Commission

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HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

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Witness

City Clerk