
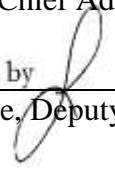


**Item No. 11.1.3**  
**Halifax Regional Council**  
**February 11, 2014**

**TO:** Mayor Savage and Members of Halifax Regional Council  
Original signed by 

**SUBMITTED BY:** \_\_\_\_\_  
Richard Butts, Chief Administrative Officer

Original Signed by   
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** January 20, 2014

**SUBJECT:** Private Road Maintenance Fee Agreement

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**ORIGIN**

On January 16, 2007, Regional Council approved the Private Road Maintenance Costs Recovery Policy which provides owners of property accessed by private roads with the use of area rates or uniform charges to collect the funds required to maintain private roads.

**LEGISLATIVE AUTHORITY**

Charter section 104(1)(g) which states “The Council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for laying out, opening, constructing, repairing, improving and maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads, where the cost is incurred (i) by the Municipality, or (ii) under an agreement between the Municipality and a person.” Also, By-Law P-1100 “Respecting Charges for Private Road Maintenance”, and Administrative Order 45, “Respecting Private Road Maintenance”.

**RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Approve the service agreement template attached as Appendix A to this report;
2. Authorize staff to negotiate and execute a one year term renewable contracts as long as they are substantially similar to the template agreement; and
3. Authorize the Director of Finance and ICT/CFO to release up to 50% of the previous year's budget prior to annual approval of the area rate or uniform charge by Council conditional on submission of a budget by the Private Road Maintenance Association which balances to the area rate revenue expected for that fiscal year.

## **BACKGROUND**

On January 16, 2007, Regional Council approved the Private Road Maintenance Costs Recovery Policy. The purpose of this Policy is to provide owners of property accessed by private roads with the use of area rates or uniform charges to collect the funds required to maintain private roads. A copy of the Policy is available on-line at:  
<http://www.halifax.ca/revenue/tax/PrivateRoadMaintenance.html> .

Since the Policy was implemented, service agreements have been signed with several Private Road Maintenance Associations. Regional Council approved each agreement separately even though they were all almost identical.

## **DISCUSSION**

Legal, Insurance and Risk Management Services initiated a review of the service agreement template recently and has recommended changes which better reflect the nature of the relationship between the two parties. HRM's obligation to the Private Road Maintenance Associations is restricted only to collecting the road maintenance fees on the property tax bills of property owners, and then turning those funds over to the Associations. HRM does not have any responsibility to monitor or oversee how the Associations spend the funds. HRM also does not provide any other services such as maintenance, engineering, technical or legal services or advice, and takes no responsibility for private roads or their condition. Essentially, HRM simply provides a fee collection service for the Private Road Maintenance Associations and nothing more.

Since HRM is not responsible for monitoring or overseeing how the Association spends the funds collected and is not responsible for the condition of the road, sections of the current agreement dealing with property and liability insurance, indemnification, and suits and claims are removed under the proposed agreement.

Other sections of the current agreement are also removed under the proposed agreement because they are not necessary if HRM is only providing a collection service. For example, a section dealing with Operating Deficit or Surplus is not necessary because HRM turns over all funds collected to the Associations. Therefore, there is no surplus or deficit to HRM (although the Associations may have surplus or deficits on their books). Other sections imply HRM has oversight responsibility and were therefore removed such as sections dealing with Licenses and Permits, Bookkeeping, Right to Review and Audit, and Authority of the Association. Some redundant wording has also been removed from the agreement.

The agreement also clarifies the responsibilities of the Associations, particularly with regard to submitting annual operating budgets and year-end financial statements, and segregating the funds received from HRM from other funds the Association may obtain for other purposes.

The proposed agreement includes a new section pertaining to the release of funds by HRM to the Associations prior to annual approval of the Operating Budget and area rates by Council. Most area rates and budgets for area-rated services are not approved by Council until June. However,

some of the Associations request funds earlier than June for snow clearing costs. For this reason, staff are proposing that Council authorize the Director of Finance and ICT/CFO to release up to 50% of the previous year's budget prior to annual approval of the area rate or uniform charge by Council. However, release of those funds would still be conditional on submission of a budget by the Association which balances to the area rate revenue expected for that fiscal year.

### **FINANCIAL IMPLICATIONS**

There are no financial implications resulting from the recommendations in this report.

### **COMMUNITY ENGAGEMENT**

Some of the changes made to the agreement are the result of feedback received from the various Private Road Maintenance Associations.

### **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications resulting from the recommendations in this report.

### **ALTERNATIVES**

Council may request changes to the agreement template or continue with the current agreements.

### **ATTACHMENTS**

Appendix A: Proposed Agreement Template between HRM and Private Road Maintenance Associations

Appendix B: Sample of Current Agreement

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Gordon Roussel, Sr. Financial Consultant, 490-2500

Report Approved by: \_\_\_\_\_  
Bruce Fisher, Manager, Fiscal Policy & Financial Planning, 490-4493

Financial Approval by: \_\_\_\_\_  
Greg Keefer, Director of Finance & ICT/CFO, 490-6308

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## Appendix A: Proposed Agreement

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

**BETWEEN:**

**Halifax Regional Municipality**, a body corporate pursuant to the *Halifax Regional Municipality Charter* (the “Municipality”)

OF THE FIRST PART

- and-

, a society incorporated under the *Societies Act* of Nova Scotia (the “Association”)

OF THE SECOND PART

**WHEREAS** the Municipality has the authority to expend funds on private roads pursuant to section 79(1)(ab) of the *Halifax Regional Municipality Charter* (“HRM Charter”);

**AND WHEREAS** the Municipality may make by-laws imposing, fixing and providing methods of enforcing payment of charges for laying out, constructing, repairing, improving and maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads, where the cost is incurred under an agreement between the Municipality and a person pursuant to section 104(1)(g) of the *HRM Charter*;

**AND WHEREAS** the Municipality may agree with any person for the provision of a service or a capital facility that the Municipality is authorized to provide, pursuant to section 75(1) of the *HRM Charter*;

**AND WHEREAS** the Municipality has implemented a “Private Road Maintenance Costs Recovery Policy”;

**AND WHEREAS** the Municipality has passed By-Law P-1100, known as the “Private Road Maintenance By-Law”, which permits the funding of the costs of private road maintenance and associated administrative costs from an area rate or charge but does not allow funding of the construction of or capital improvements to private roads.

**AND WHEREAS** in Schedule \_\_\_\_ of Administrative Order Number 45, Respecting Private Road Maintenance, the Municipality has imposed an area rate or charge (the “Area Rate”) at the request of the Association, pursuant to By-Law P-1100, for the purposes of managing the maintenance of the Private Road as set out in Schedule “A”;

**THEREFORE**, in consideration of the mutual promises exchanged between the parties herewithin, the Municipality and the Association covenant and agree as follows:

- 1) For the purposes of this Agreement:

- a) "Private Road" includes a private road, in addition to ditches, culverts, bridges, retaining walls, sidewalks, curbs, gutters, and street and traffic signage that are associated with the private road; and
  - b) "Road Maintenance" means repairing and maintaining a Private Road. Road Maintenance includes work required to maintain the Private Road in a serviceable condition year round, and may include snow removal, grading, road repair, ditch repair, culvert repair, bridge repair, brush clearing and the creation of or repairs to street and traffic signage.
- 2) This Agreement shall be for an initial one year term (the "Term"), as set out in Schedule "B" attached hereto, and will continue in force unless earlier terminated in accordance with sections 17 or 18. This Agreement will automatically renew for periods of one (1) year each unless either party shall notify the other that it elects not to renew this Agreement at least three (3) months prior to the end of the Term or any subsequent renewal term.

### **The Responsibilities of the Municipality**

- 3) The Municipality shall administer the Area Rate in accordance with By-Law P-1100, Administrative Order Number 45 and the HRM Private Road Maintenance Costs Recovery Policy.
- 4) Subject to the Association undertaking its responsibilities in compliance with this Agreement, where the Halifax Regional Council has approved the Area Rate in a given fiscal year the Municipality shall pay to the Association the funds collected from the Area Rate in that year. Where the Association submits a budget that shows expenses balanced against expected Area Rate revenue, the Municipality may, at its sole discretion, advance to the Association prior to the annual approval of the Area Rate an amount representing up to 50% of the sum paid over to the Association in the previous year. The Municipality's fiscal year runs from April 1 to March 31 of the following year.
- 5) The Municipality shall review the budget provided to it by the Association annually, which shall have been approved at the Annual General Meeting of the Association, to ensure that: a) it complies with the purpose of the Area Rate; and b) sufficient funding can be raised through the Area Rate to fund it.
- 6) The Municipality shall not be involved in the provision of any maintenance or services of any kind in respect of the Private Road, including any engineering, technical or legal services or advice, and takes no responsibility for the Private Road or condition thereof.

### **The Responsibilities of the Association**

- 7) The Association shall provide to the Municipality by April 30 of each year, or such other date as may be communicated by the Municipality, a budget for the Area Rate that has been approved at the Association's Annual General Meeting.
  - a) The budget shall include the amounts to be spent on each type of work associated with Road Maintenance.
  - b) The budget shall include the costs for administration.

- 8) The Association shall use the funds received from the Municipality through the Area Rate for Road Maintenance and for no other purpose. The Association will deposit all funds received from the Municipality into an account used only for the purpose of holding such funds, and will not co-mingle these funds with any other funds.
- 9) Road Maintenance shall be wholly under the control and direction of the Association and the Association shall be solely accountable for the proper expenditure of the funds collected by the Municipality through the Area Rate and provided to the Association.
- 10) The Association shall provide to the Municipality a copy of its annual financial statements within 30 days of their being presented to the Association's Annual General meeting, The annual financial statements will detail, to the Municipality's sole satisfaction, all expenditures made from the Area Rate funds provided to the Association by the Municipality for the purpose of Road Maintenance. The Municipality may request additional documentation from the Association if required to verify the information contained in the financial statements.
- 11) The Association shall maintain an active status with the Registry of Joint Stock Companies at all times.
- 12) Membership in the Association shall include any property owner who is required to pay the Area Rate, and all members shall be entitled to all rights and privileges as outlined by the By-Laws of the Association including the right to attend and vote at all general and special meetings of the Association.

#### **Changes to the Area Rate**

- 13) All proposed Area Rate increases are subject to approval by the Municipality.
- 14) Any special meeting at which a change to the Area Rate is proposed shall be conducted under the supervision of a staff coordinator designated by the Municipality and in accordance with the HRM Private Road Maintenance Costs Recovery Policy.
- 15) An application to increase the Area Rate shall include a budget in support of the proposed increase.
- 16) The Association may by special meeting elect to terminate the Agreement.

#### **Termination**

- 17) This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever on three (3) months' notice in writing. Upon termination of the Agreement, the Area Rate will be discontinued upon payment of all outstanding amounts.
- 18) This Agreement shall automatically terminate in the event that Halifax Regional Council does not approve or renew the Area Rate and may be terminated for cause and without notice by the Municipality if the Association is in breach of any of its obligations under this Agreement.

## General Provisions

- 19) Nothing in this Agreement shall be construed so as to create an employment relationship, an agency relationship, partnership or any other kind of joint undertaking or venture between the Municipality and the Association.
- 20) All notices, demands, requests, 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 such 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:

to the Municipality:

Attention: Director of Finance  
Halifax Regional Municipality  
P. O. Box 1749  
Halifax, NS B3J 3A5

to the Association:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 any 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.

- 21) 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 this Agreement shall be enforceable to the fullest extent permitted by law.
- 22) No consent or waiver, express or implied, by a party 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 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.

- 23) The provisions of this Agreement shall, subject to the terms and conditions hereof, be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto; provided, however, that this Agreement shall at all times remain personal to the Association and may not be assigned by the Association without the prior written consent of the Municipality.
- 24) The Municipality shall, in addition to all rights provided herein or as may be provided by law, be entitled to injunction and other remedies in equity to enforce its rights hereunder.
- 25) The headings used in this Agreement are inserted solely for convenience or reference and are not a part of the Agreement and are not intended to govern, limit or aid in the construction of any term or provision hereof.
- 26) Where the context so requires, words used in the singular shall include the plural and vice versa.
- 27) This Agreement shall be governed by and construed in accordance with the laws of Nova Scotia.
- 28) 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.

**Halifax Regional Municipality**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Municipal Clerk

**Private Road Association**

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

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



## **Appendix B: Current Agreement**

### **MANAGEMENT AND OPERATING AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**BETWEEN:**

**Halifax Regional Municipality**, a body corporate pursuant to the *Halifax Regional Municipality Charter* (“the Municipality” or “HRM”)

**OF THE FIRST PART**

- and-

\_\_\_\_\_, a society incorporated under the *Societies Act* of Nova Scotia (“the Association”)

**OF THE SECOND PART**

**WHEREAS** the Municipality is committed to facilitating public road access for municipal residents whose principal residences are accessed from private roads which do not form part of the HRM municipal street system.;

**AND WHEREAS** the Municipality recognizes that facilitating the maintenance of private roads is a necessary municipal service that will ensure the safety and long term usability of roads situated on privately owned land.;

**AND WHEREAS** authority to fund work on private roads is pursuant to section 79(1)(aaa) of the *Halifax Regional Municipality Charter* (“Charter”)

**THEREFORE** the parties hereto covenant and agree as follows:

## **ARTICLE ONE DEFINITIONS**

### Section 1.01      **Definitions**

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

- a)      **"Area Rate"** means the annual charge to property owners for the maintenance of the Private Road referred to in this agreement, and which is included as part of their property tax invoices.
- b)      **"Association"** means a private road resident's association which is party to this agreement. The Association must during the effective period of this agreement or renewal period maintain its status as a not for profit society incorporated under the Societies Act of Nova Scotia.
- c)      **"Council"** means Halifax Regional Council.
- d)      **"Fiscal Year"** means the annual period ending on March 31 of each year or such other period as the Municipality may establish upon notice to the Association.
- e)      **"Municipality"** means Halifax Regional Municipality.
- f)      **"Revenues"** means all monies collected by the Municipality from the Area Rate.
- g)      **"Private Road"** means that portion of road described in Schedule "A" attached hereto, provided that the road (a) is not public and remains so do during the effective period of this agreement or renewal terms, and (b) provides year round direct or indirect access to a public road or highway for at least two properties each of which contains a principal residence. The private road includes the portion of the road and right of way which is not used for vehicle traffic and is available for installation of services or is shoulder, ditch or buffer.
- h)      **"Term"** has the meaning set forth in Section 7.01.

## **ARTICLE TWO**

### **APPOINTMENT OF ASSOCIATION AND ANNUAL BUDGETS**

#### **Section 2.01           Appointment of Association**

The Municipality hereby appoints the Association for the Term of this Agreement to administer the funds collected by the Municipality, by way of an area rate, for the maintenance of the Private Road as an independent non-profit association, on the terms and conditions set out in this Agreement. The Association hereby accepts such appointment.

#### **Section 2.02           General**

The Association shall have full responsibility for maintaining the Private Road, including culverts, retaining walls, sidewalks, curbs and gutters that are associated with the Private Road. Road maintenance includes all work required to maintain the road in a serviceable condition year round and may include snow removal, grading, ditch and culvert and bridge repair and brush clearing in accordance with and subject to the terms and conditions of this Agreement during the Term of this Agreement unless and except to the extent otherwise determined by the Municipality in writing to the Association. The Association shall perform its duties and exercise the powers and authority set out in the Agreement in a competent, efficient and economical manner and in accordance with the terms of this Agreement, subject to the directions from time to time of the Municipality, which directions shall not be in contradiction with the terms of this Agreement or with the terms of the Memorandum of Association of the Association.

This agreement does not provide for the construction or capital improvement of private roads.

#### **Section 2.03           Annual Plans and Budgets**

The Association shall maintain the Private Road strictly in conformance with the annual operating budget approved from time to time by the Municipality pursuant to this Agreement.

#### **Section 2.04           Preparation of Annual Operating and Capital Budgets**

- a) The Association shall prepare and present for consideration by Council an annual proposed operating budget (the "Operating Budget") for the maintenance of the Private Road. The Operating Budget shall be prepared and presented within the time frames established from time to time by the Municipality for the submission of operating budgets by its various departments.
- b) The Operating Budget shall be prepared in accordance with the methodologies, frameworks, policies, guidelines, directives, and instructions of the Municipality from time to time relating to annual budgets.

- c) The Association shall prepare and present to the Municipality annually a plan for the maintenance of the road for the subsequent twelve month period. The maintenance plan shall be prepared and presented within the time frames established from time to time by the Municipality for the submission of business plans by its various departments.

Section 2.05                    **Operating Deficit or Surplus**

In the event the Association sustains, in any fiscal year, an Operating Deficit or Surplus, the Association shall prepare a written report setting out the magnitude of the operating deficit or surplus, the reason or reasons for the operating deficit or surplus in the opinion of the Association and the recommendation or recommendations of the Association for dealing with the operating deficit or surplus, as the case may be, in the ensuing fiscal year. The report is to be submitted to Council at the time the Association submits its Operating Budget for the ensuing fiscal year.

**ARTICLE THREE  
DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION**

Section 3.01                    **Licences and Permits**

The Association shall obtain and renew as necessary all licences, permits and approvals which may be required in connection with the maintenance of the Private Road. This includes obtaining written permission from the legal owner(s) of the Private Road to provide maintenance if the documentation creating the Private Road access does not permit the property owners to implement the maintenance work. The Association shall at all times comply with the conditions of such licences, permits and approvals and shall comply with and observe all applicable laws, and by-laws.

Section 3.02                    **Annual Meeting**

The Association shall have an annual general meeting prior to the end of September in each year, at which meeting the simple majority of a quorum present shall review and approve the road maintenance plan and budget for the following year.

Section 3.03                    **Special Meeting**

Any changes to the amount of the area rate shall require majority approval at a special meeting of the Association called for the purpose of considering the rate increase issue. For the purposes of this Section, majority approval means at least two-thirds (66.7%) of both the principal residences and the road frontage on the Private Road. Notice of the special meeting shall conform to the standards outlined in Section 6 of the Private Roads Maintenance Costs Recovery Policy. An application to increase the area rate shall include a budget and maintenance plan in support of the proposed increase, and a declaration setting out the fulfilment of the public notice and public meeting process required under the policy. The Association may also by special

meeting elect to terminate the financial assistance agreement with HRM and upon the termination of the agreement the area rate will discontinue after the payment of all outstanding amounts.

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

### **Section 4.01            Scope of Responsibility**

- a) Pursuant to the provisions of the HRM Charter, the Municipality has the authority to impose, fix and providing methods of enforcement of charges or area rates for maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads where the cost is incurred under this agreement between the Municipality and the Association.
- b) The Municipality's responsibilities will be limited to the application of the charge or area rate, and the collection of said rate.
- c) The Municipality will review the plan and budget approved at each Annual General Meeting of the Association to ensure it complies with the purpose of the area rate and that sufficient funding can be raised through the area rate to fund it.
- d) Any special meeting at which an increase to the area rate is proposed shall be under the supervision of a staff coordinator designated by the Municipality.
- e) All proposed area rate increases are subject to approval by the Municipality.
- f) The Municipality will not be involved in the provision of engineering, technical or legal services or advice in respect of the private road maintenance.

## **ARTICLE FIVE FINANCES, RECORDS AND INFORMATION SERVICES**

### **Section 5.01            Revenues**

HRM Council will establish an area rate for private road maintenance services to be applied on a per dwelling unit basis or adjoining property basis. Payment of the area rate revenue collected will be made only to the Association. All work performed under private road policy financing arrangements will be under the control and direction of Association and the Association shall be wholly responsible for the application of the funds provided.

Section 5.02            **Full Banking and Bookkeeping Package**

a)        Operating Account

Except as otherwise provided herein, all revenues received by the Association from time to time shall be deposited into an Operating Account.

b)        Bookkeeping

The Association is required to maintain a complete and proper set of books following general accounting and bookkeeping practices, as set out in the Generally Accepted Accounting Principles as established from time to time by the Canadian Institute of Chartered Accountants.

Section 5.03            **Financial Reports**

The Association shall provide to the Municipality a copy of the annual financial statements prepared by or on behalf of the Association for the Association's Annual General Meeting within 30 days of presenting such statements to the Annual General Meeting.

Section 5.04            **Other Reports**

The Association 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 5.05            **Right to Review and Audit**

The Municipality reserves to right to review and audit the books and financial statements and all corporate records (including by-laws) of the Association from time to time, and the Association shall furnish these documents to the Municipality if and when requested.

**ARTICLE SIX  
ASSOCIATION MEMBERSHIP**

Section 6.01            **Board of Directors**

It is a term and condition of this agreement that throughout the Term of this Agreement, that the Board of Directors of the Association shall be made up of representatives as outlined by the by-laws of the Association.

Section 6.02            **Members**

It is a term and condition of this agreement that throughout the Term of this Agreement that any property owner who is required to pay the area rate is as a right a Member of the Association and will be entitled to all rights and privileges as outlined by the by-laws of the Association including the right to attend and vote at all General and Special Meetings of the Association.

**ARTICLE SEVEN  
TERM/TERMINATION**

Section 7.01            **Commencement and Initial Term**

This Agreement shall be for an initial one year term (the "Term") as set out in Schedule "B" attached hereto, and continue in force, unless earlier terminated as set out in Section 7.02 or Section 7.03. The agreement will automatically renew for periods of one (1) year each unless either party shall notify the other that it elects not to renew this Agreement at least three (3) months prior to the end of the initial term or any subsequent renewal term.

Section 7.02            **Termination by Either Party for Breach**

- a) This Agreement may be terminated by the Municipality upon giving the Association three (3) months written notice of its election to terminate this Agreement if the Association breaches or fails to comply with or observe any of the terms, conditions, provisions or requirements of this Agreement.
- b) This Agreement may be terminated by the Association upon giving the Municipality three (3) months written notice of its election to terminate this Agreement if the Municipality breaches or fails to comply with or observe any of the terms, conditions or requirements of this Agreement.
- c) Upon termination of the Agreement, the area rate will be discontinued upon payment of all outstanding amounts.

Section 7.03            **Termination by Either Party for Any Reason**

This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever on three (3) months notice in writing. Upon termination of the Agreement, the area rate will be discontinued upon payment of all outstanding amounts.

## **ARTICLE EIGHT INSURANCE AND INDEMNIFICATION**

### **Section 8.01            Property and Liability Insurance**

The Association is solely responsible for obtaining and maintaining at its own expense any and all insurance protection required to administer this Agreement.

The Association will not carry on any activity or permit anything to be done to the Private Road that is at law a nuisance or disturbance, or that is noisy or contrary to any law or statute or any by-law, rule or ordinance of any governmental authority having jurisdiction, or by reason of which the insurance on the Premises shall be made void or voidable or increased in cost. This clause also extends to any environmental damage or hazardous practices created by the Association, its Contractors or Sub Contractors.

The Association will purchase and keep force throughout the Term as required Commercial General Liability insurance, in a form at least as broad as the current Insurance Bureau of Canada Commercial General Liability insurance or its equivalent with a cross-liability clause and otherwise in amounts not less than Five Million Dollars (\$5,000,000) inclusive, against all losses, claims, incidents, expenses or costs for personal injury, death or property damage occurring in, on, or about the Private Road and will insure that such insurance coverages remain in effect and that nothing is done by the Association to affect the validity of that insurance. The Municipality is to be named on the policy.

The Commercial General Liability policy will also contain a Limited Pollution Liability endorsement with a minimum One Million Dollars (\$1,000,000) in cover.

All insurance policies required under this Agreement shall be and with Insurers licensed to do business in the Province of Nova Scotia and on terms acceptable to the Municipality. Certificates of Insurance shall be submitted to the Municipality upon the signing of this Agreement. It shall be the Associations obligation to provide the Municipality, at the time of signing this lease or at its option, with new or renewal Certificates of Insurance at least ten (10) days prior to expiry of each term of the insurances.

All insurance policies required under the terms of this lease shall contain a clause or endorsement stating that the insurer(s) shall provide the Municipality with at least 30 days' notice of cancellation or termination with no renewal.

The Municipality shall retain at all times the right but not the obligation, to review the originals of insurance policies in its office at any reasonable time. Any such review completed by the Municipality or on its behalf shall not imply that the terms of this Agreement have been fulfilled.



The Association will pay the premium for each policy. Alternatively, the Municipality shall be permitted to, but not obligated to, at its option, obtain and maintain Commercial General Liability insurance with limits and coverages as required in the event of which, the Association shall promptly upon demand, reimburse the Municipality for all costs and expenses incurred and amounts expended for premiums or otherwise in connection with obtaining same.

The Association's policy will contain a waiver of any subrogation rights, which the Association's Insurer may have against the Municipality and those for whom the Municipality is at law responsible. It shall be non-contributing with and apply only as primary and not as excess to any other insurance available to the Municipality.

The Association is responsible to ensure their Contractors and Sub Contractors obtain and keep in force insurance coverages in a form identical to the Association. The Association and the Municipality is to be named on their policy with a Certificate of Insurance provided to the Association.

#### Section 8.02                    **Indemnification**

The Association will indemnify the Municipality and save it harmless from and against all loss, claims, actions, damages, costs, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Agreement or any occurrence on the Private Road occasioned wholly or in part by any act, omission, breach, violation of or by the Association, or any of its contractors, and such indemnity shall survive the expiration or sooner termination of the agreement.

If the Municipality, its Mayor, Councillors, Officers, Directors, Employees, Agents or Volunteers are, without fault on their part, made a party to any litigation commenced against the Association, then the Association will protect, indemnify and hold them harmless and pay all expenses and legal fees (on a Solicitor and his own Client basis) incurred or paid by the Municipality or such other parties in connection with the litigation.

That neither the Municipality nor its Mayor, Council, Employees, Volunteers or Agents shall be liable for any injury or damage to person or property resulting from the use, maintenance or condition of this private road whatsoever.

#### Section 8.03                    **Suits and Claims**

The Association shall notify the Municipality in writing as soon as possible after it becomes aware of any injury or property damage occurring in, on or about the Private Road, which could reasonably be expected to result in a claim being made against the Municipality or the Association and of all claims against the Municipality and/or the Association which involve the Private Road. The Association 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 Association, or otherwise prevent the Municipality from protecting itself against any such claim, demand or legal proceeding. The Association and the Municipality shall cooperate fully with each other in the defence of any claim, demand or legal proceeding.

## **ARTICLE NINE AUTHORITY OF THE ASSOCIATION**

### **Section 9.01            Authority of the Association**

The Association is hereby authorized to act solely for the purpose of carrying out the authority and responsibilities set forth in this Agreement, subject, however, to any limitations set forth in this Agreement or in any notice in writing at anytime delivered to the Association by the Municipality pursuant to this Agreement. The Municipality shall execute and provide to the Association any documents or other evidence which may be reasonably required by the Association to demonstrate to third parties the authority of the Association set out in this Agreement.

### **Section 9.02            Limitation of Authority**

The Association is not an agent of the Municipality and shall not pass off or represent that it is an agent of the Municipality. Unless expressly authorized in this Agreement, or by prior written direction or approval of the Municipality, the Association shall not have the authority to do any of the following:

- a)      cause the Municipality to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or Association;
- b)      cause the Municipality to enter into any contracts;
- c)      release, compromise, assign or transfer any claim, right or benefit of the Municipality;
- d)      allow a default judgement to be entered against the Municipality;

**ARTICLE TEN  
GENERAL PROVISIONS**

Section 10.01      **Notices**

All notices, demands, requests, 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 such 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:

Attention: Director  
Finance  
Halifax Regional Municipality  
P. O. Box 1749  
Halifax, NS  
B3J 3A5

- b)      if to the Private Road Association:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 any 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 10.02      **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 this Agreement shall be enforceable to the fullest extent permitted by law.

Section 10.03      **Waiver and Modification**

No consent or waiver, express or implied, by a party 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 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 10.04      **Successors**

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

Section 10.05      **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 10.06      **Headings**

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

Section 10.07      **Interpretation**

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

Section 10.08      **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 agreement or understanding, if any, whether written or oral, which either party may have had relating to the subject matter hereof.

Section 10.09      **Governing Law**

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

Section 10.10      **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.

**Halifax Regional Municipality**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**Association**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

SCHEDULE "A"

Description of Road:

SCHEDULE "B"

Term of the Agreement: to March 31, 20\_\_