

**HRM Community Planning and Economic Development Standing Committee**  
**August 9, 2012**

**TO:** Chair and Members HRM Community Planning and Economic Development  
Standing Committee



**SUBMITTED BY:** \_\_\_\_\_

Chris Bryant, Acting Managing Director of Government Relations &  
External Relations

**DATE:** July 31, 2012

**SUBJECT:** **Proposed By-law and Service Agreement Amendments**

**ORIGIN**

April 19, 2011 – MOVED by Councillor Uteck, seconded by Councillor Sloane that Halifax Regional Council authorize the Mayor and Municipal Clerk to execute the Business Improvement District Service Agreement as set out in Attachment 1 of the February 8, 2011 staff report for one year, effective April 1, 2011.

**RECOMMENDATION**

It is recommended that the HRM Community Planning and Economic Development Standing Committee recommend that Regional Council:

1. Endorse in principle By-law B-700, Respecting the Regulation of Business Improvement Districts;
2. Enact By-law B-700, Respecting the Regulation of Business Improvement Districts;
3. Endorse in principle Administrative Order 47 pursuant to By-law B-700, Respecting the Regulation of Business Improvement Districts to come into effect the effective date of the by-law.

4. Authorize the Mayor and Municipal Clerk to execute the Business Improvement District Service Agreement as set out in Attachment 4 with the following bodies corporate:

- Sackville Business Association – Registry ID 3077272
- Main Street Dartmouth & Area Business Improvement Association – Registry ID 3229939
- Spryfield & District Business Commission – Registry ID 3039103
- North End Business Association – Registry ID 3258603
- Quinpool Road Mainstreet District Association Limited – Registry ID 3059563
- Downtown Halifax Business Commission – Registry ID 2550545
- Downtown Dartmouth Business Commission – Registry ID 3068887
- Spring Garden Area Business Association – Registry ID 1542927

## **BACKGROUND**

HRM currently has eight (8) Business Improvement Districts (BIDs). The BID-HRM relationship has been governed by a contract (Service Agreement) that creates an accountability framework for the area rate levy collected by the municipality and disbursed to the BIDs. The Service Agreement requires that BIDs submit annual operating budgets, activity plans and annual audited financial statements.

HRM does not have a formal Council-endorsed policy on forming BIDs or changing BID boundaries. To date, staff has adhered to past practice. Uncertainty regarding BID processes may raise procedural fairness objections and open HRM to legal challenges on the part of BIDs, commercial property owners and commercial tenants.

In Spring 2011, staff reviewed BID governance approaches in other Canadian jurisdictions. Based on this research, staff explored a by-law model. Staff concluded that a BID by-law could provide a clear process for BID formation and BID boundary change (expansion or contraction).

In anticipation of proposing a BID by-law, staff requested that Regional Council execute a one year Service Agreement. As stated in the February 8, 2011 staff report, the one year extension allowed time for staff to consult stakeholders and draft the proposed by-law. On April 19, 2011, Regional Council authorized the Mayor and Municipal Clerk to execute one year Service Agreements, on behalf of HRM, with seven<sup>1</sup> Business Improvement Districts.

## **DISCUSSION**

Unlike a number of other Canadian municipalities HRM lacks legislative clarity regarding the formation and governance of BIDs. Other jurisdictions have detailed municipal and/or provincial legislation that guides BID-municipality interactions.<sup>2</sup> HRM currently lacks either detailed provincial legislation or its own municipal legislation.<sup>3</sup>

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<sup>1</sup> The North End Business Improvement District was not in existence at this point in time.

<sup>2</sup> Alberta, British Columbia, Manitoba, New Brunswick, Ontario, Prince Edward Island and Saskatchewan all have detailed BID legislation.

<sup>3</sup> Prior to amalgamation, provincial legislation governed BIDs in the City of Halifax, setting out parameters for BID formation, disestablishment and governance. Section 70 of the Halifax Regional Municipality Charter is the only

Staff reviewed legislation from other Canadian jurisdictions and drafted a BID by-law.<sup>4</sup> Staff is also proposing amendments to the current BID Service Agreement. Together, the amended Service Agreement and proposed BID by-law would act as a governance framework for BIDs in HRM.

For the sake of clarity, the Discussion section has been broken into two sections. Part I deals with the BID by-law. Part II deals with the amended BID Service Agreement.

### **Discussion Part I: BID By-Law**

**Scope:** The proposed BID by-law deals exclusively with BID formation and BID boundary change.<sup>5</sup> Governance related matters will continue to be dealt with by way of a Service Agreement (see Part II below).

**Steering Committee's Role – BID Formation:** To ensure business community involvement in the BID formation process, the BID by-law requires a Steering Committee of commercial property owners and business owners. The Steering Committee is responsible for business community consultation and engagement, for proposing BID boundaries and area rate levies (minimums, maximums and rates), and for drafting an Activity Plan and Budget (see Section 6 and Attachment 5: Public Engagement and Council Approvals Process Flow).

**Steering Committee's Role – BID Boundary Change:** Where a BID already exists, the existing BID's Board is deemed to be the Steering Committee. The BID's Board, in its capacity as a Steering Committee, must propose new BID boundaries and area rate levies (minimums, maximums and rates), and draft an Activity Plan and Budget for the proposed expanded or contracted BID (see Section 6 and Attachment 5: Public Engagement and Council Approvals Process Flow Chart).

**Community Council's Role:** HRM's Interim Area Rate Guidelines require Councillor approval for new area rates and confer upon Community Council a role in recommending new area rates to Regional Council. The proposed by-law requires that Community Council review, and approve in principle, a proponent's proposed area rate levy, minimums, maximums and boundaries. Under the proposed by-law, Community Council is responsible for approving or declining the proponents' request to proceed – a request that would trigger a public meeting and an area rate levy vote. Where an area rate levy vote is conducted, Community Council is

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provision that currently touches on Business Improvement Districts (BIDs). That section does not explicitly reference BIDs. It instead permits the application of an area rate levy and speaks of paying grants to a "body corporate" for the purpose of promoting or beautifying a "business district".

<sup>4</sup> Legal Services has determined that an administrative policy could not be used in place of a by-law. This is a function both of Charter provisions respecting the exercise of authority to govern businesses, business activities and persons engaged in business (section 188(1)(f)) and the inability to compel behaviour of external parties through an administrative policy.

<sup>5</sup> As a contract, a Service Agreement presupposes the existence of a party with which HRM can enter into a contractual relationship. At the initial stages of BID development, no such entity exists. Service Agreements cannot, therefore, govern BID formation.

responsible for making its recommendation to Regional Council regarding formation of a new BID or changing the boundaries of an existing BID (see Sections 7 and 8).

**Regional Council's Role:** Under the BID by-law, Regional Council considers Community Council's recommendations on the formation of any proposed BID or recommendations on BID amalgamation or boundary change. The proposed by-law recognizes Regional Council's authority to review the proposed BID's levy (minimums, maximums and rate) and geographic boundaries.

Note that under the proposed by-law, Regional Council would **not** have authority to make amendments to the proposed BID. Council's decision is binary in nature – approve or reject. This approach is being proposed by staff following extensive consultation with the BIDs. Note that were Council to reject the BID, as proposed and voted upon, then the entirety of the process would have to be repeated before further consideration would be given. In essence, the process would be considered null and void and the proponent would be required to re-engage the community (see Section 17 of the proposed by-law and Attachment 5: Public Engagement and Council Approvals Process Flow Chart).

Should Council prefer to maintain its discretion to amend after a BID plebiscite has been conducted, then the following clause may be added to the proposed by-law.

17(2)(b) approve, with amendment, the establishment of a new Business Improvement District, or the amalgamation of two or more Business Improvement Districts, or a change to the boundaries of an existing Business Improvement District; or

**Public Meeting:** The BID by-law is consistent with both past BID-formation practice and with the public engagement approach taken with other (non-BID) types of area rate levies. The BID by-law's public meeting requirements ensure that property owners and commercial tenants know the nature of the proposed BID area rate levy and have a forum to ask questions and express objections or voice support. HRM would conduct the public meeting to ensure consistency and impartiality (see Section 11).

**Voting Entitlement:** Due to the phase out of business occupancy tax, HRM no longer has accurate data on business owners operating within a given BID's existing or proposed boundaries. A by-law is needed as a means to compel commercial property owners to provide commercial tenant details to facilitate voting by commercial tenants. Under the BID by-law, commercial property owners would be required to provide HRM with commercial tenant details to facilitate voting (see Sections 12, 13 and 14).<sup>6</sup>

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<sup>6</sup> In the absence of a BID by-law, voting to form the North End BID was restricted to commercial property owners. Commercial tenants did not vote. This was problematic given that commercial tenants will experience increased rents reflective of any BID-specific area rate levy applied to their landlord's assessed commercial property.

**BID Boundary Change:** The BID by-law stipulates that a simple majority is required to change a BID's boundary. Polling would be restricted to those directly impacted by the proposal (in the case of an expansion, commercial tenants and commercial property owners within the area to be added; in the case of a contraction of a BID's boundaries, commercial tenants and commercial property owners within the area to be removed). Council endorsement would be required to amend the boundary of an existing BID (see Section 15).

**Voting Threshold:** The by-law sets out a simple majority 'voting threshold' (in favour of BID-formation or boundary change). This threshold represents a minimum level of voter support required before the matter will be brought to Regional Council. Achieving this threshold level of support does not bind Council. Regional Council may reject the formation of a BID, or the amendment of an existing BID's boundaries, despite this threshold level of voting support having been met (see Sections 17 and 18).

**Creation by Administrative Order:** Under the proposed by-law, Regional Council formally creates a district by enacting an Administrative Order. The Administrative Order sets out the geographic boundaries for a district (see Sections 4 and 5).

## **Part II: Amended Service Agreement**

Once a Business Improvement District is established, by Administrative Order, Regional Council would direct staff to enter into a Service Agreement. The Service Agreement would appoint an independent non-profit entity as a Business Improvement Association (BIA). Under the terms of the amended Service Agreement, Regional Council remains responsible for periodically reviewing activity plans and budgets, and approving area rates.<sup>7</sup>

Staff is proposing that HRM execute amended Service Agreements with each of the eight BIDs. The current Service Agreement was initially drafted 15 years ago and has remained largely unchanged since its initial drafting. The amended Service Agreement is modeled after the Greater Halifax Partnership Service Agreement and reflects current jurisprudence and good governance practices and contemporary drafting practice. Although the GHP contract has been used as a template, aspects of the agreement have been redrafted to reflect the unique nature of BIDs.

**Good Governance:** The amended Service Agreement would require that the BIA be constituted as non-profit and remain registered with the Registry of Joint Stocks for the life of the Service Agreement (see SA Section 2.02 (a)). To protect the representational interests of all parties subject to a business district area rate levy, the current Service Agreement would be amended to include provisions which ensure that those paying (directly or indirectly) levies:

- are considered members of any non-profit entity created to manage the district;
- may vote at general meetings and annual general meetings;

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<sup>7</sup> Historically, Council has reviewed BID area rate levies in June during its annual global review of all area rate levies applied in HRM.

- can stand to be elected as board members;
- can vote to elect a board of management.

The current Service Agreement does not include such governance provisions. These representational changes will ensure that commercial property owners and their business tenants can influence how levies are spent and what priorities are adopted by the BIA (see SA Section 2.02 (c)).

**Risk Management:** The current Service Agreement requires that the BIAs obtain insurance coverage, but does not specify coverage limits or types of coverage. Failure to specify coverage and limits exposes HRM to risk. The amended Service Agreement requires that BIAs carry \$2,000,000 in Commercial General Liability coverage. The BIA would be required to carry \$5,000,000 in Commercial General Liability coverage for any event involving alcohol unless the event is hosted at a licenced establishment. HRM must be an additional named insured on any Commercial General Liability policy. Under the revised agreement, BIAs are also required to carry \$2,000,000 in Officers and Directors' Liability Insurance. Insurance must be carried at the BIA's expense through an independent insurance provider.<sup>8</sup> (see SA Sections 6.01, 6.02 and 6.03)

**Disbursement Schedule:** The amended Service Agreement would introduce a two disbursement (50%/50%) schedule. The current Service Agreement specifies three disbursements (40%/40%/20%) with a 3% holdback. The revised disbursement formula is as follows:

**First levy disbursement:** The first disbursement (April) is equal to 50 per cent of the previous year's levy rates (including minimum and maximum thresholds) applied to the current year's assessment values.

The first disbursement formula is as follows:

Total Current Commercial Assessment Base x Previous Year Levy Rate<sup>9</sup> x 0.5 =  
First Instalment

**Second levy disbursement:** The second disbursement (October) is equal to the current year levy rate (including any change to minimum and maximum thresholds) applied to the current year's assessment values less the first payment. This installment will also be adjusted by the value of any deficit or surplus accumulated in the prior fiscal year.

The second disbursement formula is as follows:

(Current Assessment Base<sup>10</sup> x Current Year Levy Rate) – Prior Year Deficit<sup>11</sup> or +  
Prior Year Surplus - First disbursement = Balance Payable

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<sup>8</sup> These insurance stipulations are consistent with HRM's current practice in drafting contracts with third parties whose activities may expose HRM to liability and litigation.

<sup>9</sup> Apply previous year's minimum and maximum thresholds.

<sup>10</sup> The total current commercial assessment base is the sum of the current assessment values of all the taxable

The current year levy rate for a BID is set so that when applied to the current commercial assessment base, results in a total levy equal to the approved BIA operating budget (including any prior year surplus or deficit) minus any non-levy revenue sources.

The timing for the BIA disbursements has been adjusted to coincide with HRM's interim and final tax bills. This will minimize cash flow pressures on HRM. Prior year levy rates are used to calculate the first instalment because annual adjustments to area rate levies are not considered by Council until June – after the first disbursement date (see SA Sections 4.03 and 4.04).

**Levy Holdback:** Historically, HRM held back 3% of the value of all levies collected on behalf of the BIDs. This holdback was used by HRM as an allowance to offset shortfalls in levy revenue resulting from business occupancy closings. Any holdback amounts not required by HRM for this purpose were returned to the BIAs every four years under the current Service Agreement.

Under the proposed Service Agreement amendment, any year-end deficits resulting from the actual total levy being less than the total levy budgeted will be carried forward to the following fiscal year and included in the new levy rate. HRM will then retain the levy required to eliminate the deficit and disburse the remainder to the BIA in accordance with the approved BIA operating budget and levy disbursement formula. This approach is used with other area rate levies managed by HRM and eliminates any need for a holdback. There is, therefore, no holdback provision in the amended Service Agreement.

**Financial Transparency:** HRM will retain a right to inspect financial records and audit (at its own expense) BIA accounts. As with previous Service Agreements, the amended Service Agreement requires that BIAs provide HRM with annual audited financial statements. A new audit requirement would be introduced in the amended Service Agreement. BIAs would be required to produce an audited Statement of Sources and Uses. This requirement is being introduced to allow HRM to ascertain how municipal monies have been applied without recourse to conducting an audit at the municipality's expense (see SA Section 3.06.) This change is being made in light of increased scrutiny of municipal expenditures and recent municipal auditor general recommendations concerning stewardship of municipal funds.<sup>12</sup>

**Termination:** Under the terms of the current Service Agreement termination of the contact may occur where:

- A breach of the agreement occurs and is not remedied within fifteen (15) days.

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commercial properties within the BID adjusted so that no commercial property is charged less the minimum or more than the maximum.

<sup>11</sup> Accumulated deficit (overpayment) may occur in cases where commercial property assessments are successfully appealed.

<sup>12</sup> This requirement is consistent with the financial reporting obligations imposed by Council on the Greater Halifax Partnership (GHP) in its most recently executed Service Agreement.



- A breach of the agreement occurs and there is a failure to proceed with all due diligence to commence to cure the breach within ninety (90) days after notice of the breach being given.
- The Municipality is presented with a petition to disestablish the BID signed by at least fifty-one percent of the BIA's members.
- The BIA files for bankruptcy, is adjudicated as insolvent, or makes an assignment for the benefit of creditors.

The revised Service Agreement preserves these grounds for termination and introduces new grounds for termination without notice. The following grounds would be added (see SA Sections 5.02 and 5.04):

- The enabling statutory authority or the required approvals under which the Municipality has entered into the agreement are repealed, rescinded, or amended by the Province of Nova Scotia.
- The Municipality and the BIA agree in writing to terminate this Agreement.
- An order is made or resolution passed, by the BIA, for winding up or for the dissolution of the BIA or it is dissolved.
- The BIA ceases actual bona fide operation for a period of ninety (90) consecutive calendar days.
- The BIA has knowingly submitted false or misleading information to the Municipality.

The amended agreement also provides for termination with notice. Either party may terminate the agreement by giving six (6) months notice (see SA Sections 5.01(c) and 5.03). Under the current Service Agreement, six months notice is required for non-renewal of the agreement.

### **BUDGET IMPLICATIONS**

There is no impact on the 2012-2013 Operating Budget.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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

## **COMMUNITY ENGAGEMENT**

In January of 2011 Staff advised the BIDs of its intent to draft a comprehensive BID by-law to deal with BID formation, boundary change, dissolution and governance. Throughout the Fall and Winter of 2011-2012 staff worked with the BIDs to address BID concerns with the proposed by-law. Responding to BID concerns, staff redrafted the BID by-law to deal exclusively with BID formation and boundary change. Staff amended the current Service Agreement to address fiscal transparency, representation and good governance issues that would have otherwise have been resolved through a comprehensive BID by-law. At the July 19, 2012 BID Quarterly Meeting, BID representatives made a motion to endorse the draft BID by-law and a motion to endorse the draft revised BID Service Agreement. Both motions received unanimous support from the eight BIDs.

## **ALTERNATIVES**

The HRM Community Planning and Economic Development Standing Committee could:

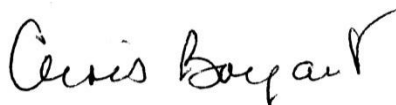
1. Amend any aspect of the proposed by-law.
2. Amend any aspect of the revised Service Agreement.
3. Choose not to initiate the by-law process.
4. Direct staff to execute the current Service Agreement.

## **ATTACHMENTS**

1. Current Service Agreement
2. Draft HRM Business Improvement District By-law
3. Draft HRM Business Improvement District Admin Order
4. Amended Service Agreement
5. Public Engagement and Council Approvals Process Flow Chart

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

Report Prepared by: Scott Sheffield, Community Developer, 490-3941



Report Approved by: \_\_\_\_\_  
Chris Bryant, Acting Managing Director, Government Relations & External Affairs, 490-3677



Financial Approval by: \_\_\_\_\_  
Greg Keefe, Director of Finance & Information, Communications & Technology/CFO,  
490-6308

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**Attachment 1**

# Service Agreement

Between:

Halifax Regional Municipality  
and  
*"The Society"*  
PO Box 20059  
Halifax, Nova Scotia  
B3R 2L1

Halifax Regional Municipality  
Community Development  
Capital District  
PO Box 1749  
Halifax, Nova Scotia B3J 3A5  
tel: 902.490.3941  
fax: 902.490.5730  
[www.halifax.ca](http://www.halifax.ca)

This **Service Agreement** made this 1<sup>st</sup> day of April, xxxx.

BETWEEN:

**HALIFAX REGIONAL MUNICIPALITY**  
(hereinafter called the “Municipality”)

OF THE FIRST PART

- and -

**Society**  
(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 provide the services related to promote their business improvement district as a place for retail and commercial activity;

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**IT IS THEREFORE** mutually agreed as follows:

## **ARTICLE ONE DEFINITIONS**

### Section 1.01      **Definitions**

“Area” means the business improvement district area as described by their approved boundaries.

“Society” means the business improvement district/association.

“Commencement Date” means April 1, xxxx.

“Deputy Chief Administrative Officer” means the Deputy Chief Administrative Officer for the Halifax Regional Municipality.

“Municipality” means Halifax Regional Municipality.

Chief Administrative Officer means the Chief Administrative Officer or designate.

## **ARTICLE TWO APPOINTMENT OF THE SOCIETY**

### Section 2.01      **Appointment of Society**

The Municipality hereby appoints the Society, 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 (Society) are supported by a tax levied on those businesses and commercial land owners located within their districts. 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 Society shall deliver services related to the promotion of their district 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 Society will support the delivery of HRM's Economic Strategy through monitoring of local economic and business activity and trends in respective districts in support of HRM's marketing efforts, and collaborate with other HRM economic development service providers in supporting HRM's Economic Strategy.

The Society 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 Society 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 Society 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     General Services**

The Society agrees to provide HRM with local business improvement services that support the delivery of HRM's Corporate directions as set out in strategies relating but not limited to Regional Planning, Urban Design, Economic Development, Culture, Youth, Safety, Graffiti, Fiscal and Tax Policy, and other priorities as determined by Council or the Chief Administrative Officer (CAO) as follows:

- (a) Enhanced maintenance services to augment municipal litter and graffiti abatement programs through means such as community cleanups, graffiti removal and/or sidewalk sweeping programs;
- (b) Beautification programs to improve the image of business districts through local improvements such as plantings, banners, lighting, window displays and/or seasonal decorations as appropriate;
- (c) Communications, advocacy and outreach programs which provide a

conduit to HRM's business community through dissemination of information, advocacy, and facilitating change in support of local business district and related municipal matters;

- (d) Provide assistance to HRM in facilitating solutions to service delivery issues in partnership with the business community, and assists HRM in responding to municipal service requests through reporting and/or provide assistance with local inventories of municipal service issues;
- (e) Provide local area business area marketing and promotion services through such means as business directories, websites, tourism and retail promotions, marketing collateral and/or hosting community festivals and events as appropriate.
- (f) Participates in collectively identifying priorities for HRM's annual business planning and budget process, and prepares annual activity plans in accordance with section 3.03 of this agreement which identify measurable outcomes in support of this agreement;
- (g) Provides regular communications to the Chief Administrative Officer on status of activity plans and provides annual report to Council on year end achievements.

### Section 3.03

### **Preparation of Activity Plan and Budget**

- (a) The Society shall prepare and submit to the Municipality for approval, through the Chief Administrative Officer a plan of activities and budget for each municipal fiscal year ending March 31 along with a recommended area rate, to be levied against all commercial realty assessments in the district, for financing the proposed plan of activities and budget which align with the general services referenced in section 3.02 of this Agreement, including a recommended minimum and maximum amount to be levied upon each commercial realty assessment, which budget shall include a three percent reserve from the total levy collected for uncollected area rates, 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 Chief Administrative Officer, a joint initiative plan of activities and budget for each municipal fiscal year (April 1 - March 31) to promote collaboration among the Capital District area business commissions, which shall include new partnership initiatives which address graffiti abatement, enhanced maintenance, safety, beautification, and joint marketing and promotions which are addressed under separate contract.
  - ~~(ii) contribute 5% of the previous years' streetscape improvement amount for their district, to be put aside to pay for future streetscape amenity maintenance, with a minimum contribution of \$1,000 and a maximum contribution of \$2,000 each~~

~~year (April 1 – March 31).~~

Section 3.04 **Operating Account**

The Society 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 3.05 **Accounting Offices**

The Society 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 Society 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 3.06 **Receipts and Records**

The Society 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 Society 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 3.07 **Financial Reports**

Within ninety (90) days after the close of the Fiscal Year, the Society shall cause to be prepared by an independent accountant or accounting firm and filed with the Municipality through the Chief Administrative Officer, 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 Society shall furnish the Financial Report to the Chief Administrative Officer as soon as practicable after the Financial Report has been

prepared.

Section 3.08 **Other Reports**

The Society shall, when requested, prepare and furnish to the Municipality, such other reports or statements as the Municipality may reasonably require.

Section 3.09 **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 Society and; upon the termination of this agreement by expiration or otherwise, the Society shall provide copies of such portions thereof as the Municipality shall deem necessary.

Section 3.10 **Settlement**

Within 30 days after the effective date of termination of this agreement by expiration or otherwise, Society 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 Society may be obliged to pay or deposit to the Operating Account pursuant to the terms of this agreement.

**ARTICLE FOUR  
INDEMNIFICATION**

Section 4.01 **Indemnification of the Organization**

The Municipality shall indemnify, defend, and hold harmless the Society and each member of the Society 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.

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

Section 5.01 **Assessment Information**

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

Section 5.02 **Approval of Business Plan & Budget**

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

Section 5.03 **Interim Financing**

The Municipality shall, by April 15 of each fiscal year deposit in the Operating Account of the Society, 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 5.04 **Disbursements**

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

interim financing as described in Section 4.04 forty percent of the Final Budget on August 1<sup>st</sup> of each year;

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 District for each fiscal year; AND

any funds collected by way of the 3% reserve, not used toward unpaid accounts, will be reimbursed to the Society every four years, and for those ~~Business Improvement Associations located within the Capital District the Society agrees to commit 20% of the reimbursement to their maintenance reserve account administered by the Municipality.~~

Section 5.05 **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 Society, for which there is no insurance on behalf of the Society 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 SIX  
TERM/TERMINATION**

Section 6.01 **Commencement and Initial Term**

(a) This Agreement shall be for a term of **two (2)** years, commencing on April 1<sup>st</sup>, xxxx, and shall continue in force, unless earlier terminated as set out in Section 6.02 or Section 6.03 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.

(b) Annual Review The Municipality shall undertake an annual review of this Agreement in order to ensure that the terms, conditions and deliverables are achieved and remain consistent with the Municipality's corporate direction.

## Section 6.02

### **Termination by the Municipality**

This Agreement may be terminated by the Municipality, upon giving the Society written notice of its election to terminate as follows:

In the event that the Society 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 Society of such notice;

In the event that the Municipality is presented with a petition requesting that the Society's activities pursuant to this Agreement cease, signed by at least fifty-one percent of the persons within the District who are members in good standing; or

In the event that:

- (i) if the Society shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent; the Society admits in writing its inability to pay its debts as they mature;
- (ii) the Society gives notice to any governmental body of insolvency or pending insolvency or suspension or pending suspension of operations; or
- (iii) the Society makes an assignment for the benefits of creditors or takes any other similar action for the protection of benefit creditors.

## Section 6.03

### **Termination by the Society**

This Agreement may be terminated by the Society, upon giving the Municipality written notice of its election to terminate, 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 Society 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 SEVEN INSURANCE**

### **Section 7.01                      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 7.02                      Insurance**

During the term of this Agreement, the Society 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 Society under this Agreement. The insurance coverage 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. Thirty (30) days notice must be given to the Municipality of any cancellation, intent not to renew, or reduction in policy coverage.

### **Section 7.03                      Suits and Claims**

The Society 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 Society 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 Society shall fully cooperate with the Municipality in the defence of any claim, demand or legal proceeding.

## **ARTICLE EIGHT GENERAL PROVISIONS**

### **Section 8.01                      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 mail with postage thereon fully prepaid, registered and addressed to the party so to be served as follows:



if to the Municipality:

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

if to the Society

**Business Commission Name Here**

I. 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 8.02 **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.

Section 8.03 **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 8.04 **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 Society and may not be assigned by the Society without the prior written consent of the Municipality.

Section 8.05 **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 8.06 **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**

**BUSINESS COMMISSION**

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**HALIFAX REGIONAL MUNICIPALITY**

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Witness

\_\_\_\_\_  
Mayor

)  
)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk

### HALIFAX REGIONAL MUNICIPALITY BY-LAW NUMBER B-700 RESPECTING THE REGULATION OF BUSINESS IMPROVEMENT DISTRICTS

**WHEREAS** Halifax Regional Municipality wishes to support the attraction, retention and promotion of institutions, industries and businesses, to encourage tourism and to facilitate the stabilization and expansion of employment opportunities;

**AND WHEREAS** Business Improvement Districts' outreach, advocacy, promotion and beautification activities help Halifax Regional Municipality to identify business development priorities, resolve service delivery issues, make business districts more attractive to investors, developers and clientele and otherwise assist the Municipality in achieving its economic development mandate;

**BE IT ENACTED** by the Council of the Halifax Regional Municipality, under the authority of the *Halifax Regional Municipality Charter*, S.N.S. 2008. c. 39, including section 70, as follows:

#### Short Title

1. This By-Law shall be known as By-Law No. B-700, Respecting the Regulation of Business Improvement Districts, and may be cited as the "Business Improvement District By-Law".

#### Part I: Definitions

2. In this By-Law:
  - a) "Administrative Order" means a policy passed by Council pursuant to this by-law;
  - b) "Area Rate Levy" means a levy that Council sets to be an area rate levy for the purposes of this by-law;
  - c) "Assessment Roll" means the assessment roll required to be prepared pursuant to the *Assessment Act*, R.S., c. 23, s. 1;
  - d) "Board" means a Board of Directors for a Business Improvement Association;
  - e) "Business Improvement District" means an area designated as a business improvement district by an Administrative Order;

- f) "Business Improvement Association" means a registered non-profit entity contracted by the Municipality to carry out business improvement activities within a Business Improvement District;
- g) "Chief Administrative Officer" means the Chief Administrative Officer of the Halifax Regional Municipality;
- h) "Commercial property" means property that is assessed as commercial property under the *Assessment Act*, R.S., c. 23, s. 1;
- i) "Commercial Property Owner" means the person in whose name commercial property is assessed under the *Assessment Act*, R.S., c. 23, s. 1 where that property is located within a Business Improvement District or proposed Business Improvement District; and
- j) "Community Council" means the council of a community established pursuant to the *Halifax Regional Municipality Charter*; 2008, c.39, s.1, as amended;
- k) "Council" means the Regional Council of the Halifax Regional Municipality;
- l) "Municipality" means Halifax Regional Municipality;
- m) "Polling District" means municipal electoral boundaries, as set the Nova Scotia Utility and Review Board, or its successor;
- n) "Tenant" means an individual, body corporate, partnership, firm, society, association, syndicate or other body which is the lessee or occupier of commercial property in a Business Improvement District or proposed Business Improvement District.

### **Delegation**

- 3. The Chief Administrative Officer may delegate any or all of his or her powers, duties, functions or authority under this by-law to any employee of the Municipality.

## **Part II: Administrative Order**

4. In accordance with Part III of this By-law, Council may, by Administrative Order, designate an area of the Municipality to be a Business Improvement District.
5. The Administrative Order designating a Business Improvement District shall set out the boundaries of the Business Improvement District.

## **Part III: Designation of a Business Improvement District**

### **Steering Committee**

6.
  - (1) A request to designate a Business Improvement District, or to amalgamate two or more Business Improvement Districts, or to expand or contract the boundaries of Business Improvement Districts, shall originate with a steering committee
  - (2) The steering committee shall be established:
    - a) on Council's motion; or
    - b) on the initiative of members of the community.
  - (3) The steering committee shall consist of at least 5 members.
  - (4) The steering committee shall be comprised of Tenants and Commercial Property Owners.
  - (5) In the case of a proposed expansion or contraction of the boundaries of an existing Business Improvement District, the steering committee shall be the Board of the existing Business Improvement District.
  - (6) In the case of a proposed amalgamation of two or more existing Business Improvement Districts, the steering committee shall be the Boards of the existing Business Improvement Districts.

(7) (1) The steering committee shall:

- a) define the proposed boundaries of the proposed Business Improvement District; or
- b) define the proposed boundaries of a proposed Business Improvement District that is the result of a proposed expansion or contraction of the boundaries of an existing Business Improvement District; or
- c) define the proposed boundaries of a proposed Business Improvement District that is the result of a proposed amalgamation of two or more existing Business Improvement Districts; and

(7)(2) After the boundaries are defined under subsection (1), the steering committee shall:

- a) notify the Clerk of the Municipality, who shall notify the Councillor(s) responsible for the Polling District(s) containing the whole or part of the proposed Business Improvement District that it intends to establish a new Business Improvement District, or to change the boundaries of an existing Business Improvement District, or to amalgamate two or more Business Improvement Districts; and
- b) develop and implement a strategy to consult with and to communicate, to Commercial Property Owners and Tenants, its intentions to establish a new Business Improvement District, or to change the boundaries of an existing Business Improvement District, or to amalgamate two or more Business Improvement Districts.

(8) After having implemented its consultation strategy and communicated its intention to establish a new Business Improvement District, or to change the boundaries of an existing Business Improvement District, or to amalgamate two or more Business Improvement Districts, the steering committee shall determine the interest in:

- a) establishing a new Business Improvement District; or
- b) expanding or contracting an existing Business Improvement District; or
- c) amalgamating two or more existing Business Improvement Districts.

(9) The steering committee shall notify the Chief Administrative Officer, in writing, of its determination under subsection 6(8) and the notification shall be signed by a majority of the steering committee members.

- (10) If the steering committee determines there is a demonstrated interest in establishing the proposed Business Improvement District, or in changing the boundaries of an existing Business Improvement District, or to amalgamate two or more Business Improvement Districts, the notification shall:
- a) identify the boundaries of the proposed Business Improvement District, or the boundaries of the proposed expanded or contracted Business Improvement District, or the boundaries of the proposed amalgamated Business Improvement Districts;
  - b) provide an annual budget;
  - c) confirm that the communication and consultation required under section 6(7)(2)(b) has been carried out, and provide the particulars thereof;
  - d) recommend an area rate, and a minimum levy and a maximum levy to be applied to the commercial property located in the proposed Business Improvement District or the proposed expanded or contracted Business Improvement District or the proposed amalgamated Business Improvement Districts;
  - e) request that Community Council(s) responsible for the district(s) containing the whole or part of the proposed Business Improvement District approve a Business Improvement District area rate vote; and
  - f) request that Council establish a new Business Improvement District, or expand or contract an existing Business Improvement District, or amalgamate two or more existing Business Improvement Districts.

### **Community Council**

- 7. Upon receipt of notice, pursuant to sections 6(7), 6(8) and 6(9), the Chief Administrative Officer shall advise the Community Council(s) responsible for the District(s) containing the whole or part of the proposed Business Improvement District of the steering committee's intent to proceed.
- 8. The Community Council(s) responsible for the District(s) containing the whole or part of the proposed Business Improvement District shall, for the purposes of conducting an area rate vote and public meeting:
  - a) approve, approve with amendment, or reject the proposed area rate, minimum levy, and maximum levy based on the budget and activity plan; and



- b) approve, approve with amendment, or reject the proposed Business Improvement District boundaries.
- 9.
- (1) If the Community Council(s), pursuant to section 8, approve(s) the steering committee's request to conduct an area rate vote, the Municipality shall hold a public meeting and conduct an area rate vote
  - (2) If the Community Council(s) reject(s) the steering committee's request to conduct an area rate vote, the steering committee shall be provided with a copy of the minutes of the Community Council's meeting(s) at which the matter is considered.
  - (3) If the Community Council(s), pursuant to section 8, approve(s), with amendment, the area rate, minimum levy, maximum levy or boundary proposed by the steering committee, the Community Council(s) may:
    - a) substitute a lower or higher area rate, lower or higher minimum levy or a lower or higher maximum levy, than the area rate, minimum levy and maximum levy proposed by the steering committee; and/or
    - b) substitute a boundary that is geographically smaller or geographically larger than the boundary proposed by the steering committee;
- 10
- (1) If, pursuant to section 9(3), Community Council approves, with amendment, the proposed area rate, minimum levy, maximum levy or boundary, the amendments shall be referred back to the steering committee for its consideration.
  - (2) If the steering committee ratifies Community Council's amendments, made pursuant to section 9(3), the Municipality shall hold a public meeting and conduct an area rate vote reflecting the boundaries, area rate, minimum levy and maximum levy, as amended by Community Council, and ratified by the steering committee.
  - (3) If the steering committee declines to ratify Community Council's amendments, made pursuant to section 9(3), the request to proceed with an area rate vote shall be considered to be rejected.
  - (4) If the steering committee does not make a decision within 180 calendar days from the date of the Community Council decision under subsection 10(1), the request to proceed with an area rate is deemed to be rejected by the steering committee.

## **Public Meeting**

11. The public meeting required under section 9 shall:
  - a) be advertised publicly;
  - b) identify the affected areas;
  - c) communicate the rationale for the proposed area rate;
  - d) communicate an initial recommended area rate, minimum levy and maximum levy to be applied in the Business Improvement District's first year of operation;
  - e) communicate that a Business Improvement District area rate will be applied in perpetuity unless the Business Improvement District is dissolved;
  - f) communicate that the initial recommended area rate, minimum levy and maximum levy to be applied, may, subject to Business Improvement Association recommendation and Council approval, change on an annual basis;
  - g) clarify the role of the Business Improvement District and Business Improvement Association;
  - h) be conducted in a manner that affords those attending the meeting an opportunity to comment on the area rate's appropriateness; and
  - i) clarify the area rate vote's balloting process.

## **Notice of Public Meeting**

12. The Chief Administrative Officer shall notify Commercial Property Owners within the proposed boundaries of the proposed Business Improvement District of the public meeting.
13. A Commercial Property Owner who receives notice of a public meeting under section 12 shall, within 21 calendar days of the receipt of the notice, provide the Chief Administrative Officer, in writing, with a list of all the Tenants of that property and their mailing addresses.
14. The Municipality shall send notification of the public meeting to the mailing addresses of the Tenants provided under section 13, and to Commercial Property Owners, at least 14 calendar days in advance of the public meeting.

## Area Rate Ballot Package

15. (1) The Chief Administrative Officer shall provide an area rate ballot package to:
- a) in the case of a proposed Business Improvement District or a proposed amalgamated Business Improvement District, all persons in the proposed Business Improvement District or in the proposed amalgamated Business Improvement District that are Commercial Property Owners on the most recent assessment roll;
  - b) in the case of a proposed Business Improvement District or a proposed amalgamated Business Improvement District, all Tenants in the proposed Business Improvement District or in the proposed amalgamated Business Improvement District that are identified under section 13;
  - c) in the case of a proposed expanded Business Improvement District, all persons in a proposed expanded Business Improvement District that are Commercial Property Owners on the most recent assessment roll and are not within the original boundaries of the existing Business Improvement District;
  - d) in the case of a proposed expanded Business Improvement District, all Tenants in the proposed expanded Business Improvement District that are identified under Section 13 and are not within the original boundaries of the existing Business Improvement District;
  - e) in the case of a proposed contracted Business Improvement District, all persons that are Commercial Property Owners on the most recent assessment roll and that would be removed from the boundaries of the existing Business Improvement District if the proposed contracted Business Improvement District is approved; and
  - f) in the case of a proposed contracted Business Improvement District, all Tenants that are identified under Section 13 that would be removed from the boundaries of the existing Business Improvement District if the proposed contracted Business Improvement District is approved.
- (2) The area rate ballot package shall include:
- a) an area rate ballot;
  - b) an explanatory letter:
    - i. communicating the rationale for the proposed area rate;

- ii. specifying the initial recommended area rate, minimum levy and maximum levy to be applied in the Business Improvement District's first year of operation;
  - iii. clarifying that a Business Improvement District area rate will be applied in perpetuity, in an amount set annually, unless the Business Improvement District is dissolved; and
  - iv. clarifying that the initial recommended area rate, minimum levy and maximum levy to be applied, may, subject to Business Improvement Association recommendation and Council approval, change on an annual basis
- c) a map of the proposed Business Improvement District:
- i. defining the proposed boundaries of the proposed Business Improvement District; or
  - ii. defining the proposed boundaries of a proposed Business Improvement District that is the result of a proposed expansion or contraction of the boundaries of an existing Business Improvement District; or
  - iii. defining the proposed boundaries of a proposed Business Improvement District that is the result of a proposed amalgamation of two or more existing Business Improvement Districts.
16. (1) Ballots returned to the Municipality before 4:00 pm on the date specified on the ballot shall be counted.
- (2) Ballots returned to the Municipality after 4:00 pm on the date specified on the ballot shall not be counted.

### **Count Results**

17. (1) If a majority of the area rate ballots returned are marked in favour of establishing an Area Rate Levy, the Chief Administrative Officer shall request that Council establish by Administrative Order a new Business Improvement District, or amalgamate two or more Business Improvement Districts, or change the boundaries of an existing Business Improvement District.

(2) Council may, upon receipt of the Chief Administrative Officer's request that Council establish by Administrative Order a new Business Improvement District, amalgamate two or more Business Improvement Districts, or change the boundaries of an existing Business Improvement District:

a) approve the establishment of a new Business Improvement District, or the amalgamation of two or more Business Improvement Districts, or a change to the boundaries of an existing Business Improvement District; or

b) reject the establishment of a new Business Improvement District, or the amalgamation of two or more Business Improvement Districts, or a change to the boundaries of an existing Business Improvement District;

(4) If, pursuant to clause 17(2)(a), Council approves the establishment of a new Business Improvement District, or the amalgamation of two or more Business Improvement Districts, or a change to the boundaries of an existing Business Improvement District, Council shall, by Administrative Order, set the the boundaries, area rate, minimum levy and maximum levy of the Business Improvement District.

18. If a majority of the ballots returned are marked against establishing an Area Rate Levy, the Chief Administrative Officer shall declare the Area Rate Levy defeated.

#### **Failure to Provide Notice**

19. Failure to provide notice to any person under this by-law does not invalidate an Administrative Order.

Done and passed in Council this      day of      , 2012.

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Mayor

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Municipal Clerk

**HALIFAX REGIONAL MUNICIPALITY**  
**ADMINISTRATIVE ORDER NUMBER 47**  
**RESPECTING THE CREATION OF THE BUSINESS IMPROVEMENT DISTRICTS**

**BE IT RESOLVED AS AN ADMINISTRATIVE ORDER** of the Council of the Halifax Regional Municipality as follows:

**Short Title**

1. This Administrative Order may be cited as Administrative Order Number 47, the Business Improvement District Administrative Order.

**Establishment of District**

2. Regional Council hereby establishes the following Business Improvement Districts:
  - (1) the Downtown Dartmouth Business Improvement District;
  - (2) the Main Street Dartmouth Business Improvement District;
  - (3) the Spring Garden Road Business Improvement District;
  - (4) the Downtown Halifax Business Improvement District;
  - (5) the Quinpool Road Business Improvement District;
  - (6) the North End Business Improvement District;
  - (7) the Spryfield Business Improvement District; and
  - (8) the Sackville Business Improvement District.
3. A business improvement district contains that portion of the municipality outlined in black on a plan attached as a Schedule to this Administrative Order.

**Area Rate**

4. The amount of money Regional Council, from time to time, provides to carry out those activities set out in section 70 of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, as amended, will be recovered by means of an area rate.
5. The area rate will be set annually by resolution of the Regional Council pursuant to the *Halifax Regional Municipality Charter*.

**Schedules**

6. Any schedule referenced in this Administrative Order forms part of this Administrative Order.

**Effective Date**

7. This Administrative Order shall come into effect on the date of adoption by Regional Council.

Done and passed in Council this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_.

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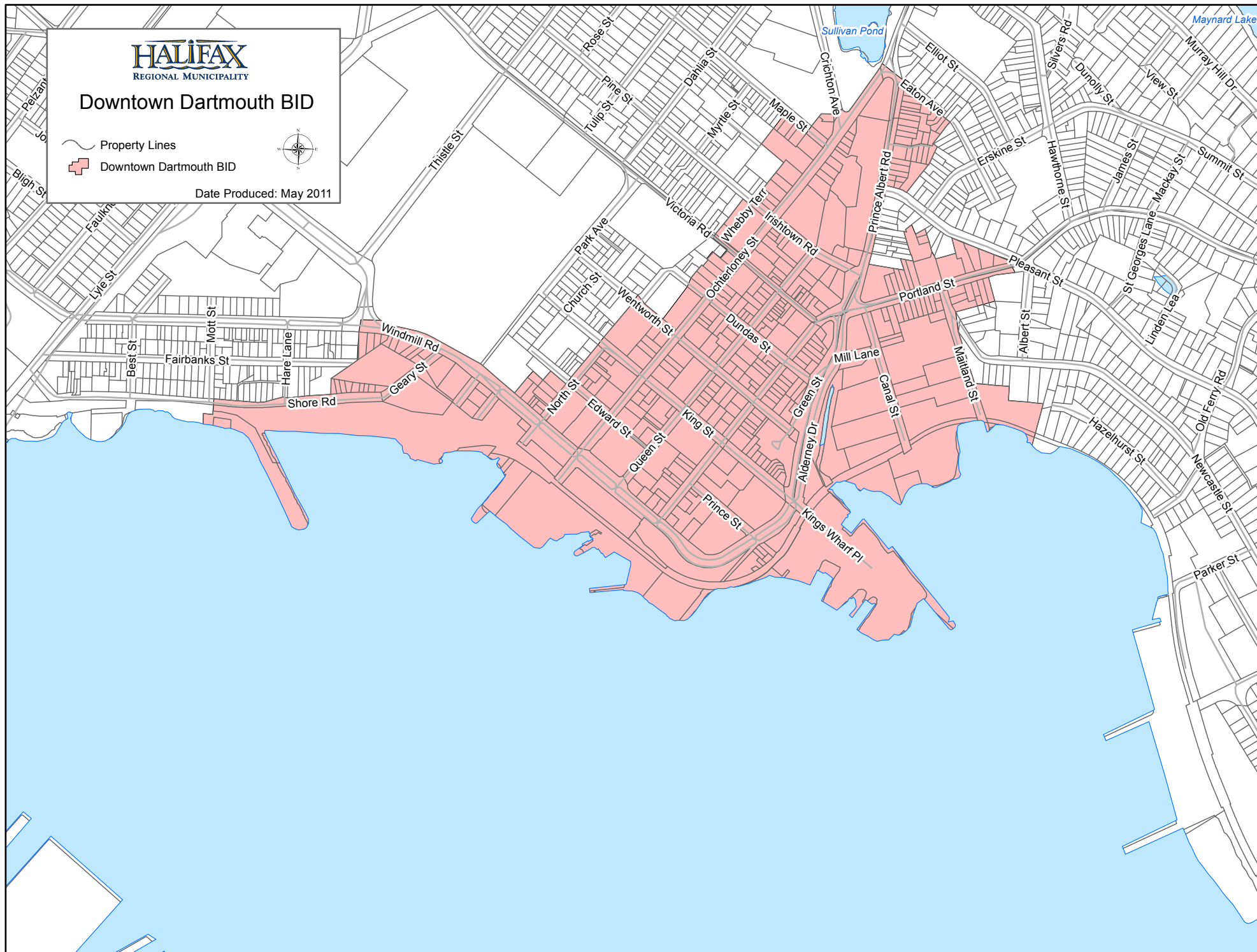
MAYOR

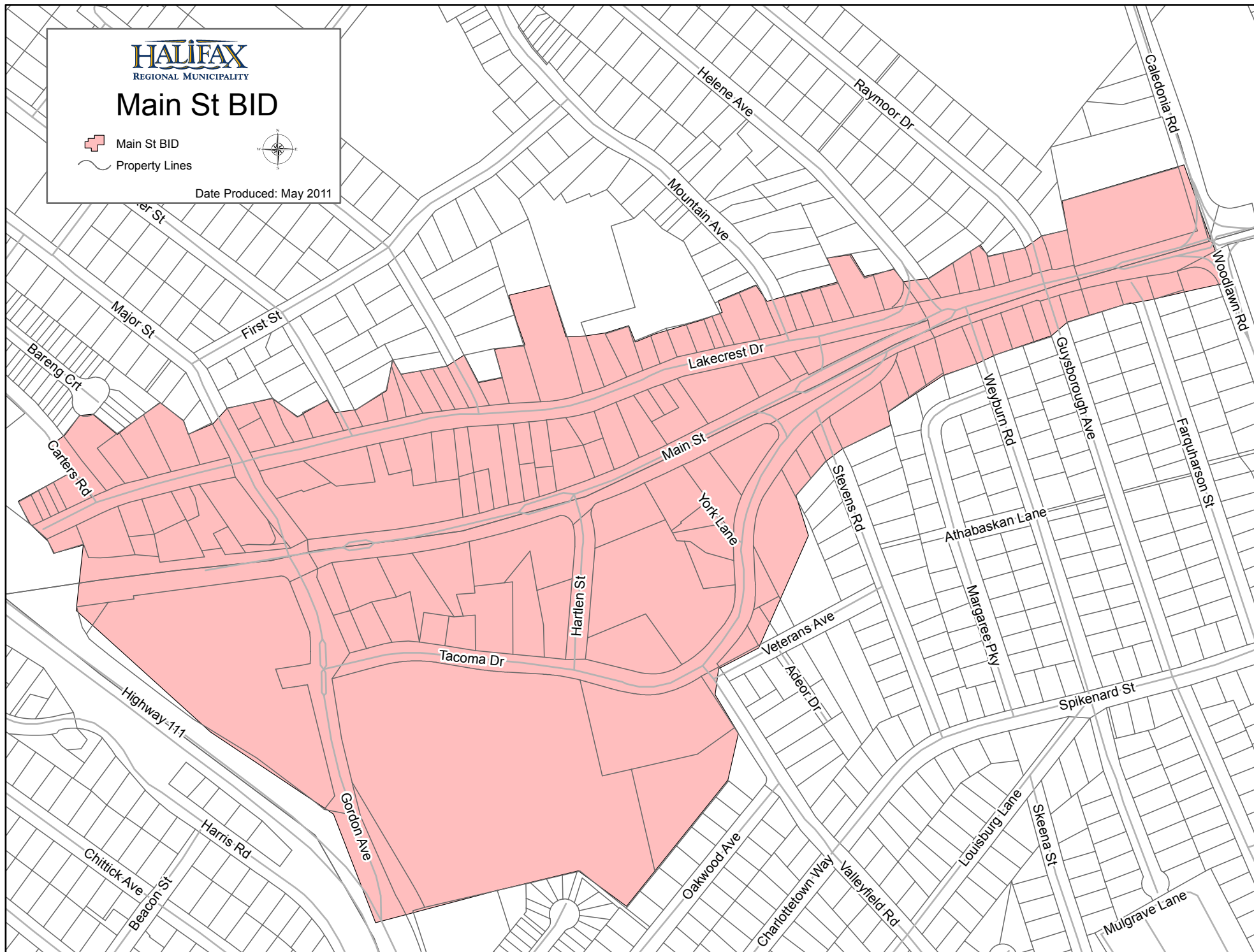
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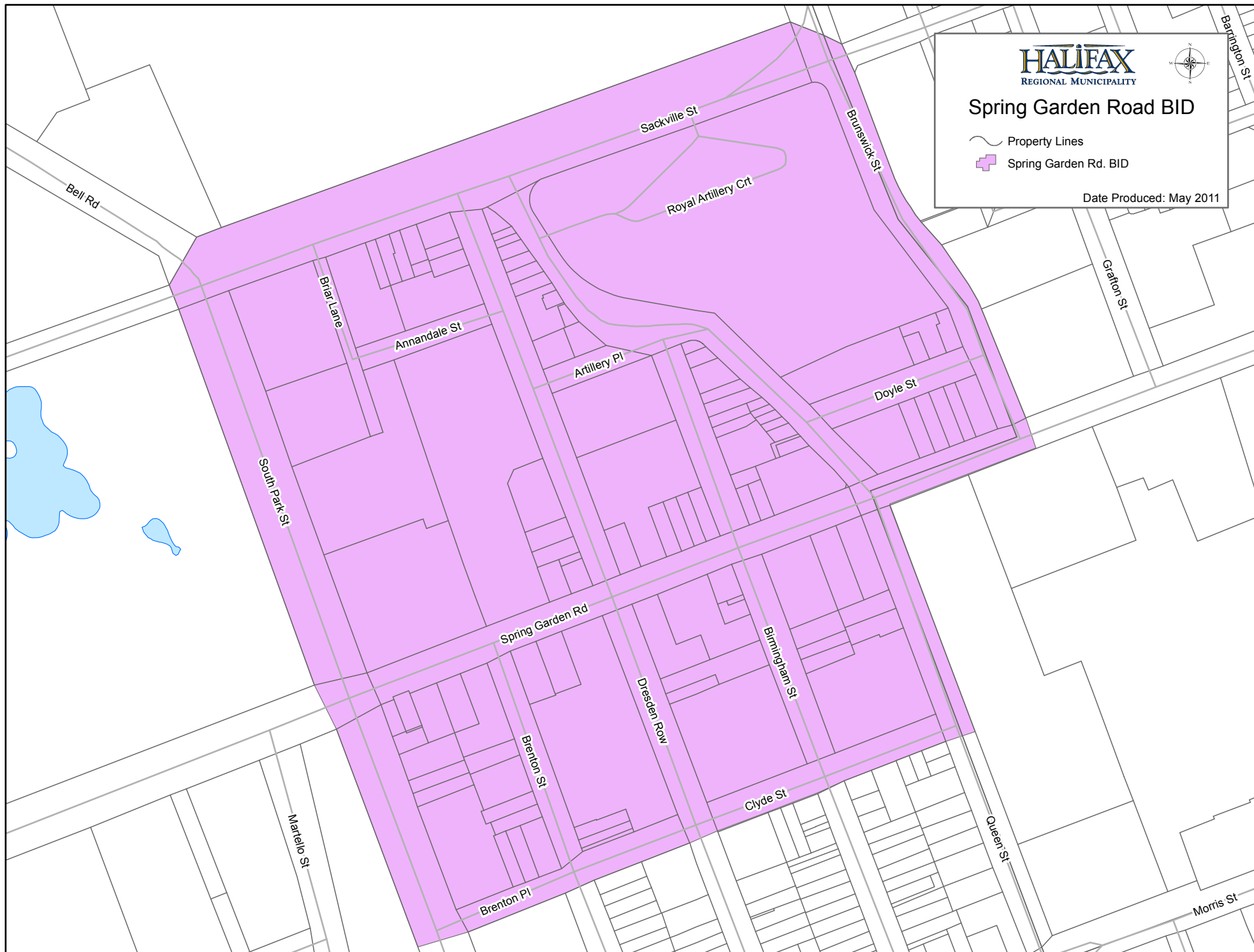
MUNICIPAL CLERK

**SCHEDULE 1 TO ADMINISTRATIVE ORDER 47**

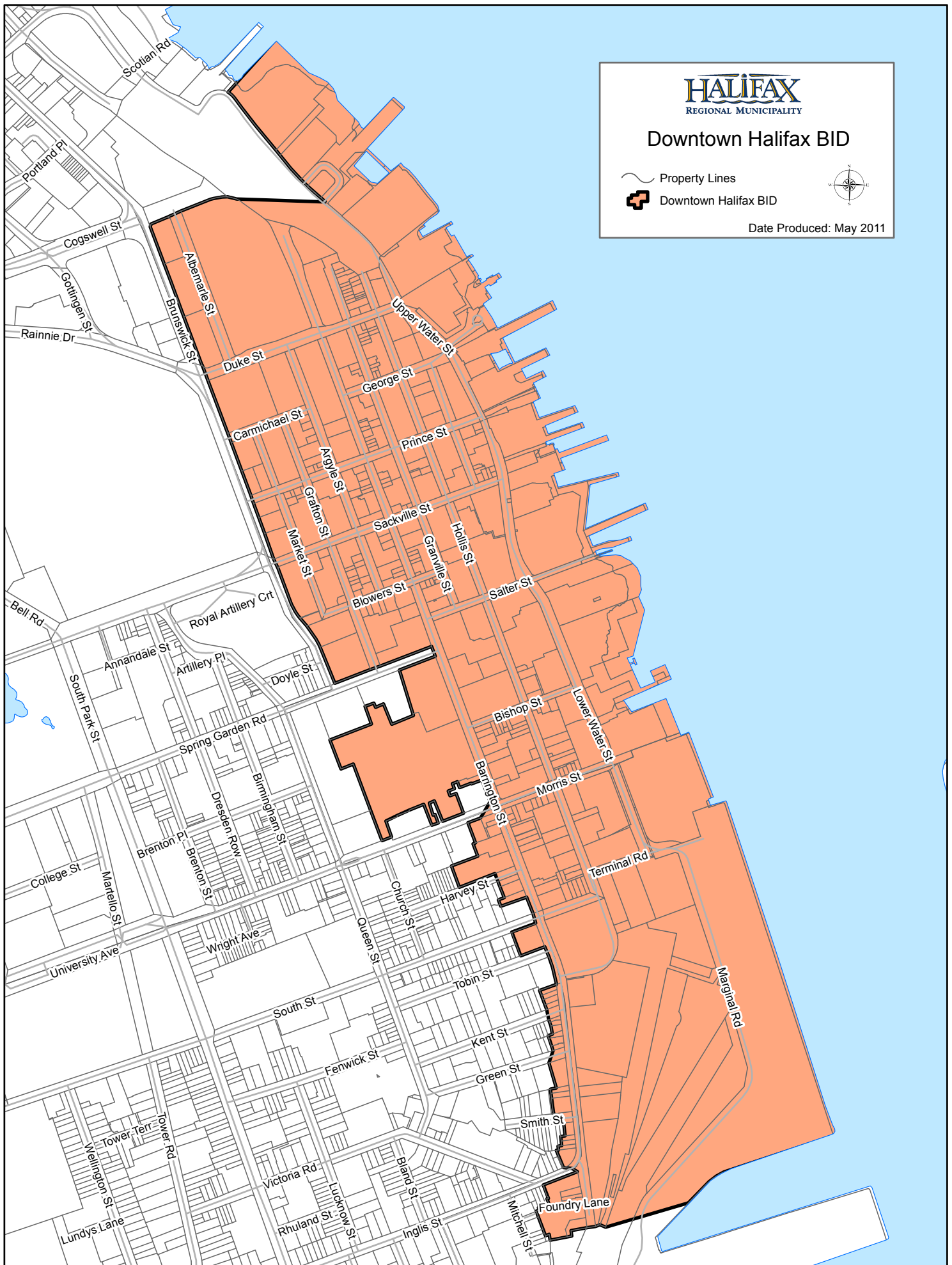


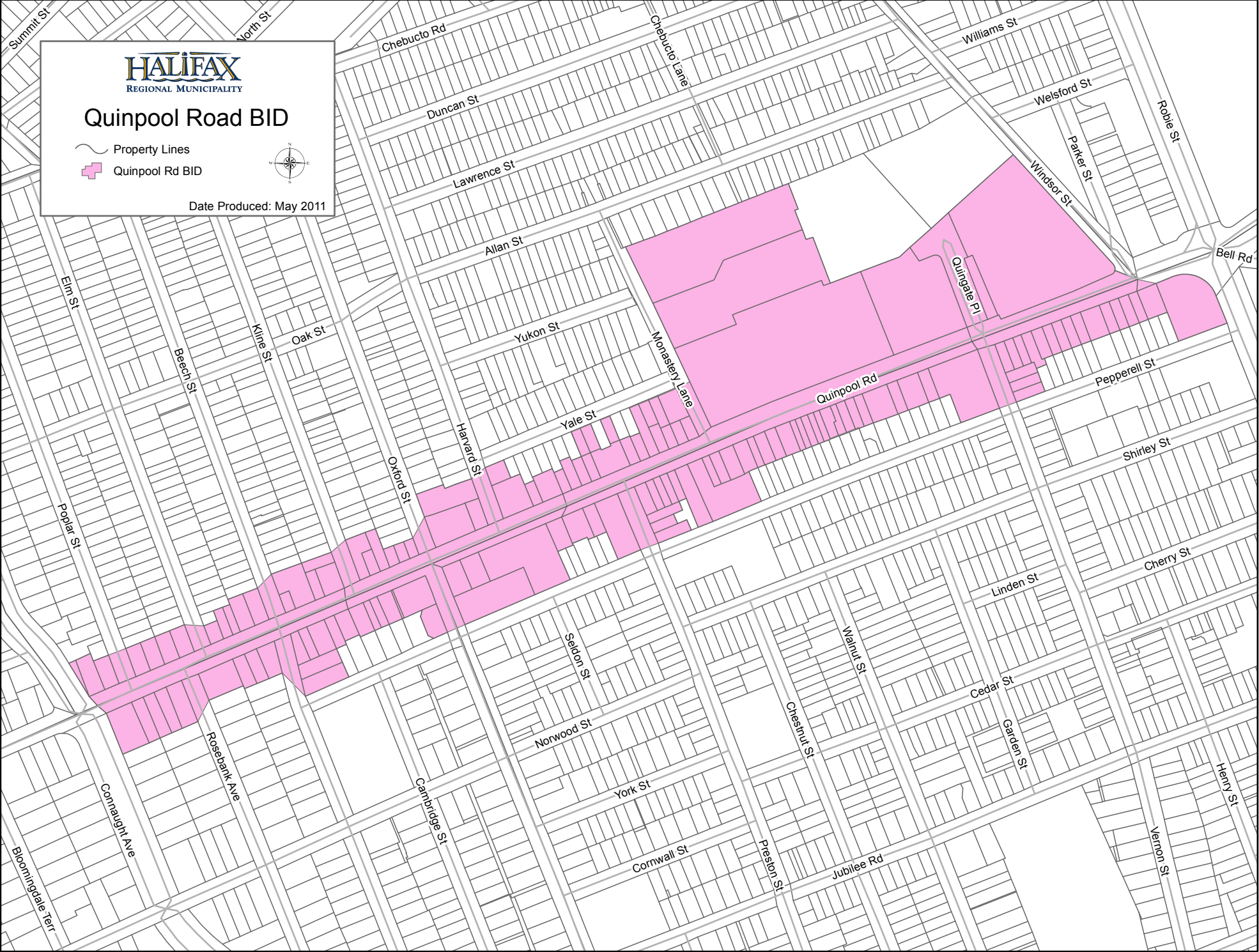










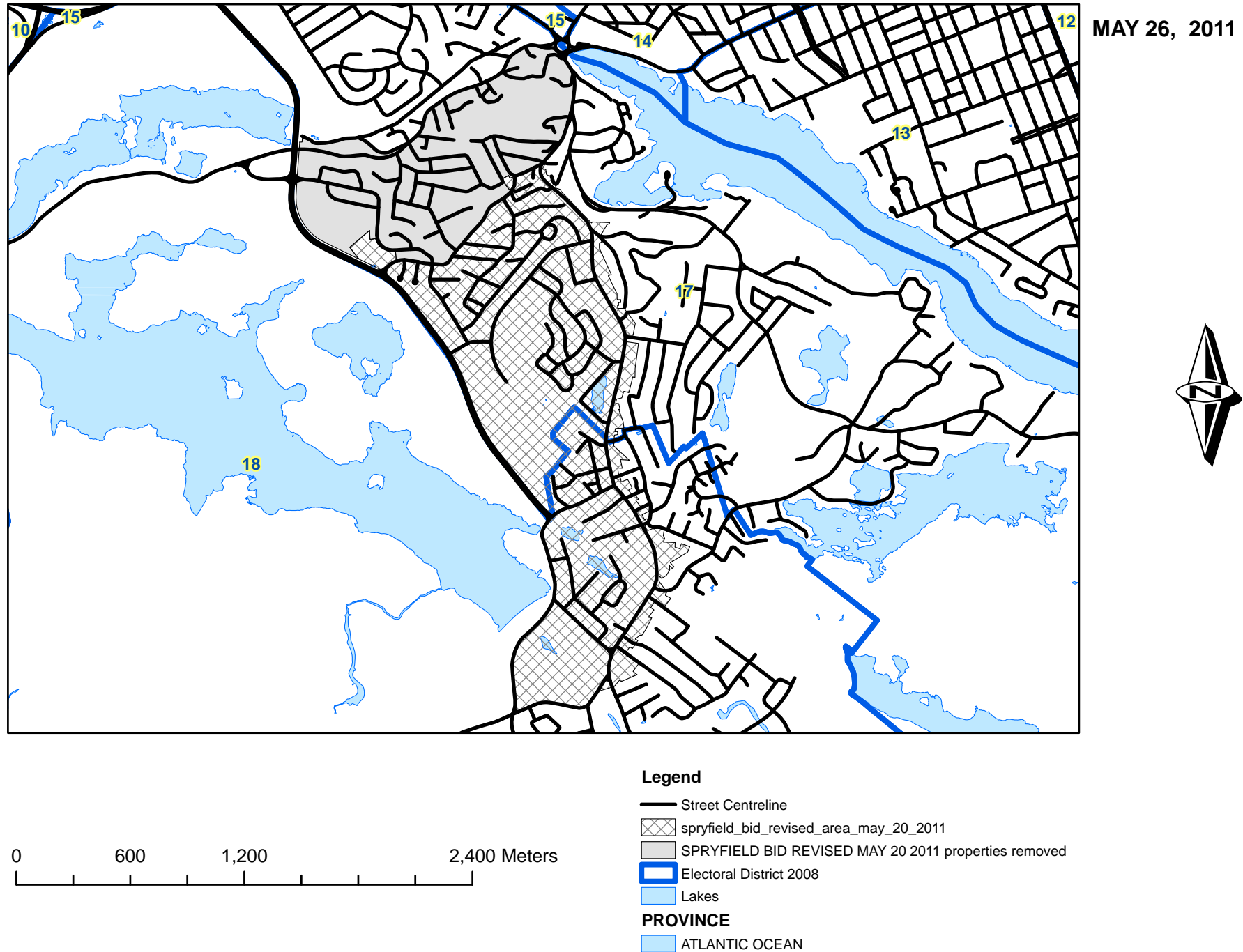




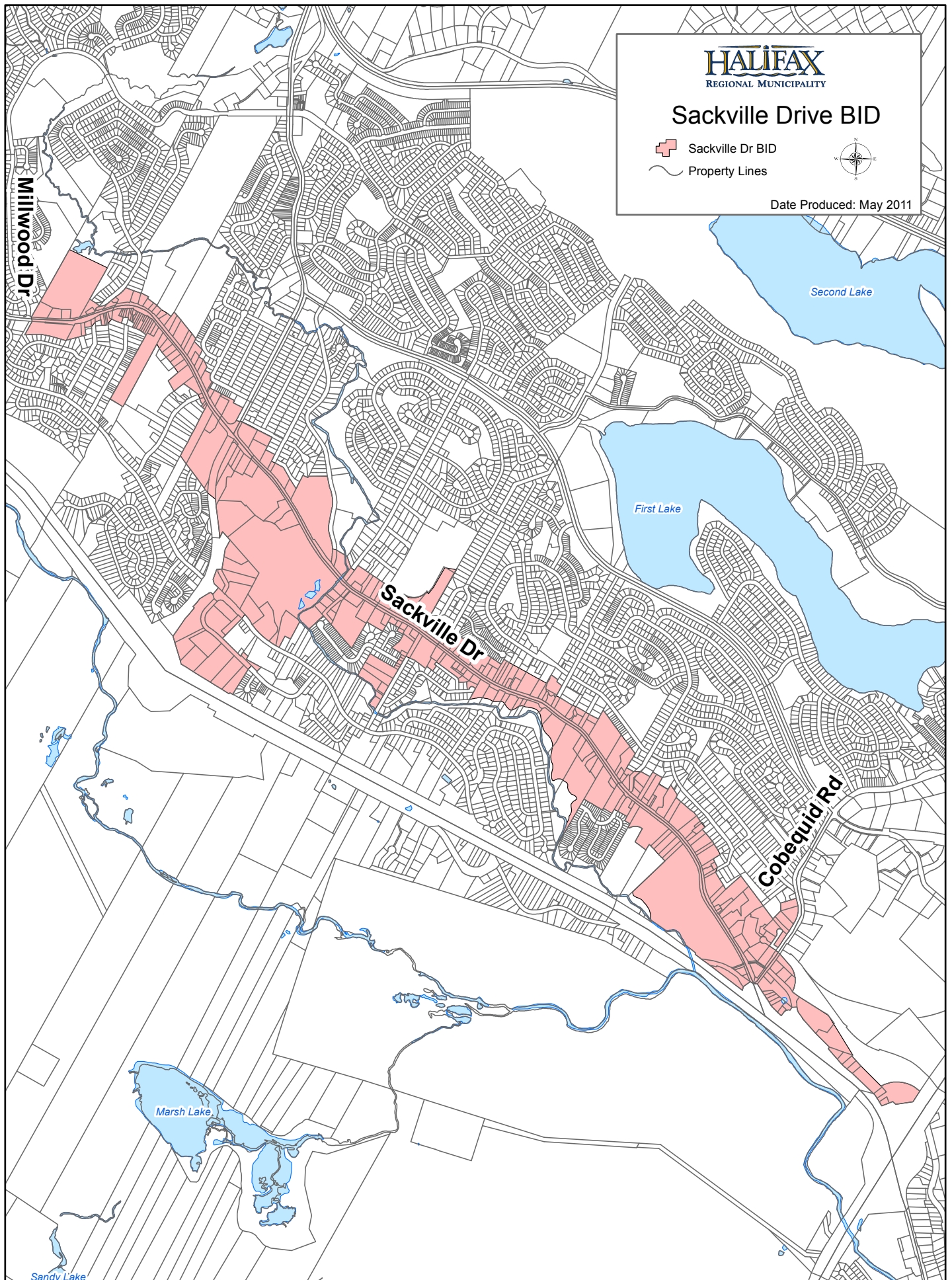
## REVISED MAP FOR NORTH END BUSINESS IMPROVEMENT DISTRICT



# May 26, 2011 Cris Cross New Area for Spryfield Bid Gray Area Properties Being Removed









# **Services Agreement**

**Between:**

**Halifax Regional Municipality**

**And**

**[INSERT BUSINESS IMPROVEMENT ASSOCIATION NAME]**

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8.08 Entire Agreement	
8.09 Confidentiality	
8.10 Governing Law	

## 8.11 Time of Essence

This **Service Agreement** made this [Day #] day of [Month], [Year].

BETWEEN:

**HALIFAX REGIONAL MUNICIPALITY, a body corporate,**  
(hereinafter called the "Municipality")

OF THE FIRST PART

- and -

**[INSERT BUSINESS IMPROVEMENT ASSOCIATION NAME]**

**a body corporate,**  
(hereinafter called the "Business Improvement Association")

OF THE SECOND PART

**WHEREAS** the Municipality seeks to support the attraction, retention and promotion of institutions, industries and businesses, to encourage tourism and to facilitate the stabilization and expansion of employment opportunities;

**AND WHEREAS** the Municipality deems it appropriate to contract with a body corporate to identify business development priorities, resolve service delivery issues, make business districts more attractive to investors, developers and clientele and otherwise assist the Municipality in achieving its economic development mandate;

**AND WHEREAS** the Business Improvement Association is a body corporate established to engage in outreach, advocacy, promotion and beautification, and to otherwise carry out economic development within the Municipality;

**AND WHEREAS** the Council of the Municipality enacted By-law B-700, the Business Improvement District By-law;

**AND WHEREAS** the Council of the Municipality passed Administrative Order [INSERT ADMINISTRATIVE ORDER NUMBER], creating the Business Improvement District known as [INSERT BUSINESS IMPROVEMENT DISTRICT NAME];

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto promise and agree as follows:

## ARTICLE ONE DEFINITIONS

### Section 1.01            **Definitions**

- (a) **“Area Rate Levy”** means a levy imposed by Council pursuant to section 70 of the Halifax Regional Municipality Charter, S.N.S. 2008. c. 39;
- (b) **“Business Improvement District”** means an area designated as a business improvement district pursuant to by-law B-700;
- (c) **“Chief Administrative Officer”** means the Chief Administrative Officer of Halifax Regional Municipality or his designate;
- (d) **“Employee”** includes agents, officers, servants, assigns and heirs;
- (e) **“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 Business Improvement Association; and
- (f) **“Municipality”** means Halifax Regional Municipality.

## **ARTICLE TWO APPOINTMENT OF THE BUSINESS IMPROVEMENT ASSOCIATION**

### **Section 2.01**

#### **Appointment of Business Improvement Association**

The Municipality hereby appoints the Business Improvement Association for the term of this agreement to undertake, on behalf of the Municipality, services which are more particularly set out in Section 3.02, as an independent contractor, on the terms and conditions set out in this agreement and the Business Improvement Association hereby accepts such appointment.

### **Section 2.02**

#### **General**

- a) The business improvement district is supported by an area rate levied on those businesses and commercial land owners located within its district. This area rate is levied pursuant to the Halifax Regional Municipality Charter, S.N.S. 2008. c. 39, including section 70.
- b) The Business Improvement Association shall be constituted as a Society or a Limited Company by Guarantee and shall maintain active status as required by the *Registry of Joint Stock Companies Act* or the *Societies Act*.
- c) The Business Improvement Association's by-laws, or articles of incorporation, shall stipulate that all commercial property owners and commercial tenants located within the Business Improvement District have the right to elect Board members, stand for Board nomination, and vote at general meetings and annual general meetings.
- d) The Business Improvement Association shall deliver services related to the promotion of their district as a business improvement district for retail and commercial activity.
- e) The Business Improvement Association may establish or maintain parking facilities for the Municipality.
- f) The Business Improvement Association 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 Business Improvement Association.
- g) The Business Improvement Association will support the delivery of HRM's economic development mandate through monitoring of local economic and business activity and trends in support of HRM's marketing efforts, and collaborate with other HRM economic development service providers.
- h) The Business Improvement Association 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, except where expressly provided to the contrary, and subject to responsibilities hereunder in a competent and professional manner.
- i) The Business Improvement Association shall work collaboratively with HRM to advance HRM's corporate directions relating to, but not limited to, regional planning, urban design, economic development, culture, youth, safety, graffiti, and fiscal and tax policy.

## **ARTICLE THREE DUTIES AND RESPONSIBILITIES OF THE BUSINESS IMPROVEMENT ASSOCIATION**

### **Section 3.01      Indemnification by the Business Improvement Association**

The Business Improvement Association agrees to indemnify and hold harmless the Municipality and each employee of the Municipality, against any loss, expense, damage, claim, liability including negligence, obligation, judgment or injury suffered or sustained, including bodily injury or death, by the Municipality as a result of any act or omission or alleged act or omission of the Business Improvement Association on or any employee acting under the supervision of the Business Improvement Association.

### **Section 3.02      Business Improvement Services**

The Business Improvement Association agrees to provide HRM with business improvement services as follows:

- (a) Enhanced maintenance services which augment municipal litter and graffiti abatement programs through means such as community cleanups, graffiti removal and/or sidewalk sweeping programs;
- (b) Beautification programs which improve the image of business districts through local improvements such as plantings, banners, lighting, window displays and/or seasonal decorations as appropriate;
- (c) Communications, advocacy and outreach programs which provide a conduit to HRM's business community through dissemination of information, advocacy, and facilitating change in support of local business district and related municipal matters;
- (d) Assistance to HRM in facilitating solutions to service delivery issues in partnership with the business community, and in responding to municipal service requests through reporting and/or provide assistance with local inventories of municipal service issues;
- (e) Local area business area marketing and promotion services through such means as business directories, websites, tourism and retail promotions, marketing collateral and/or hosting community festivals and events as appropriate; and
- (f) Advice and input regarding HRM's annual business planning and budget process.

### Section 3.03

#### **Preparation of Activity Plan and Budget**

- (a) Each Fiscal Year the Business Improvement Association shall prepare, and submit to the Municipality for approval, a proposed Area Rate Levy, activity plan and budget;
- (b) The proposed Area Rate Levy shall include a recommended minimum and maximum amount to be levied upon each commercial property located in the Business Improvement District;
- (c) The proposed budget shall be consistent with a recommended Area Rate Levy and activity plan; and
- (d) The proposed activity plan shall outline the Business Improvement Association's activities for the upcoming fiscal year, be consistent with the submitted budget and be consistent with section 3.02 of this Agreement.

### Section 3.04

#### **Accounting Records**

The Business Improvement Association shall maintain a complete and proper set of accounting records following the Generally Accepted Accounting Principles as established from time to time by the Canadian Institute of Chartered Accountants.

### Section 3.05

#### **Municipal Audit**

The Municipality shall have the right, at its own expense, and with reasonable notice, to audit or examine the books of account and records maintained by the Business Improvement Association pursuant to this agreement.

### Section 3.06

#### **Financial Reports**

The Business Improvement Association shall provide to the municipality within ninety (90) calendar days of year end, a Balance Sheet, an Income Statement and a Statement of Sources and Uses of Funds on an audited basis, as approved by the Business Improvement Association Board of Directors, in accordance with its by-laws.

### Section 3.07

#### **Other Reports**

The Business Improvement Association shall, when requested, prepare and furnish to the Municipality, an annual report to Council on year end achievements and such other reports, board minutes, articles of incorporation, by-laws or statements as the Municipality may reasonably require.



## **ARTICLE FOUR**

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

## Section 4.01

The Municipality shall provide annually to the Business Improvement Association, assessment roll data for the next fiscal year, as soon as practicable, after receiving it from the Property Valuation Services Corporation.

## Section 4.02 Approval of Business Plan & Budget

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

## Section 4.03 Disbursements

Subject to 5.05,

- (a) the Municipality shall remit a first installment, equal to 50 per cent of the previous year's levy rates, including minimum and maximum levies, applied to the current year's assessment values, no later than April 30th of each year; and
- (b) the Municipality shall remit a second installment, equal to the current year levy rate, including any change to minimum and maximum levies, applied to the current year's assessment values less the amount of the first installment, no later than October 30th of each year.

## Section 4.04 Shortfalls and Surpluses

Subject to 5.05,

- (a) If, in any fiscal year, the Municipality receives, in respect of an Area Rate Levy, a lesser amount in aggregate than the amount payable, the Municipality shall, when it remits the second installment to the Business Improvement District the following year, reduce the amount of that remittal by the amount of the shortfall; and
- (b) If, in any fiscal year, the Municipality receives, in respect of an Area Rate Levy, a greater amount in aggregate than the amount that the Area Rate Levy was calculated to raise, the Municipality shall remit the surplus to the Business Improvement District with the second installment the following fiscal year.

## **ARTICLE FIVE TERM/TERMINATION**

### **Section 5.01 Commencement and Initial Term**

- (a) The initial term of this agreement shall be for a maximum of 12 months, commencing on the later date of the execution of this Agreement by the Municipal Clerk or Mayor, and continue in force until March 31st.
- (b) This agreement may be renewed for a period of 12 months, commencing on April 1<sup>st</sup> of the calendar year in which the initial term expires and may continue to be renewed for further renewal periods of twelve months.
- (c) The renewals periods will continue until either:
  - (i) one party notifies the other party that it elects not to renew this Agreement and such notification shall be at least six (6) months prior to the end of the initial term or any renewal term; or
  - (ii) this Agreement is otherwise terminated pursuant to any other section of Article 5 of this Agreement.

### **Section 5.02 Termination without Notice**

Notwithstanding the initial term or any renewal term in section 5.01, this agreement may be terminated immediately and without notice if:

- (a) the enabling statutory authority or the required approvals under which the Municipality has entered into this agreement are repealed, rescinded, or amended by the Province of Nova Scotia;
- (b) the Municipality and the Business Improvement Association agree in writing to terminate this Agreement; or
- (c) an event of default specified in subsection 5.04 occurs.

### **Section 5.03 Termination with Notice**

Either party may terminate this agreement by providing six (6) months written notice to the other party.

#### Section 5.04

#### **Events of Default**

The following constitute events of default, the proof of which to the contrary lies upon the Business Improvement Association:

- (a) The Business Improvement Association becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
- (b) An order is made or resolution passed, by the Board of the Business Improvement Association, for winding up or for the dissolution of the Business Improvement Association or it is dissolved;
- (c) The Municipality is in receipt of a petition to disestablish the Business Improvement District signed by a majority of the Business Improvement Association's members;
- (d) The Business Improvement Association ceases actual bona fide operation for a period of ninety (90) consecutive calendar days, as determined solely by the Municipality;
- (e) The Business Improvement Association has knowingly submitted false or misleading information to the Municipality, which shall be determined solely by Municipality;
- (f) The Business Improvement Association is in breach of the performance of, or compliance with, any term, condition, or obligation on its part to be observed or performed hereunder, as determined solely by the Municipality, and
  - (i) notice of default has been given to the Business Improvement Association; and
  - (ii)
    - (a) the default is not remedied within fifteen (15) business days after receipt by the Business Improvement Association of notice of default, or
    - (b) a plan satisfactory to the Municipality to remedy such an event of default is not implemented within ninety (90) calendar days and fully and diligently carried out.

#### Section 5.05

#### **Remedies on Default**

If an event of default specified in subsection 5.04 occurs, the municipality may, in addition to any other remedies otherwise available at law, exercise either or both of the following remedies:

- (a) Terminate forthwith any obligation by the Municipality to disburse area rate levies pursuant to section 4.03, including any unpaid installment outstanding prior to the date of such termination; and
- (b) Require the Business Improvement Association to pay to the Municipality an amount equal to the area rate levies disbursed by the Municipality to the Business Improvement Association, less the sum of all amounts previously paid

out in accordance with this Agreement and such additional amounts as the Business Improvement Association may be obliged to pay pursuant to the terms of this Agreement.

## **ARTICLE SIX INSURANCE**

### **Section 6.01 Insurance**

The Business Improvement Association shall be responsible for obtaining and maintaining at its sole cost and expense:

- (a) insurance on all real property including, but not limited to, contents, buildings, leasehold improvements, fixtures and equipment, whether owned, leased or rented, or for which the Business Improvement Association may otherwise be responsible, in amounts, and against such risks, as the Business Improvement Association may deem advisable;
- (b) Commercial General Liability Insurance in amounts, and against such risks, as the Business Improvement Association may deem advisable, but in any event, no less than \$2,000,000 (Two Million Dollars) in limits;
- (c) Commercial General Liability Insurance coverage for any event where alcohol is served outside of a licensed establishment and for which the Business Improvement Association might be held liable (in whole or in part) and in amounts, and against such risks, as the Business Improvement Association may deem advisable, but in any event, no less than \$5,000,000 (Five Million Dollars) in limits with no exclusion for liquor liability;
- (d) Directors and Officers Liability Insurance for Board and Directors of the Business Improvement Association in amounts, and against such risks, as the Business Improvement Association may deem advisable, but in any event, no less than \$2,000,000 (Two Million Dollars) in limits;
- (e) such other insurance coverage as the Business Improvement Association may deem advisable.

### **Section 6.02 Commercial General Liability Insurance**

Commercial General Liability Insurance obtained and maintained by the Business Improvement Association pursuant to section 6.01 shall:

- (a) contain a cross liability clause, with respect to operations and activities of the Business Improvement Association, under which the Municipality shall be included as an Additional Named Insured;
- (b) include legal liability, contractual obligations, bodily injury, death and property damage as insured perils; and

- (c) comply with insurance coverage standards as established from time to time by the Insurance Bureau of Canada.

**Section 6.03                      Proof of Coverage**

- (a) The Business Improvement Association shall provide HRM with an executed Certificate of Insurance within 21 calendar days of its execution.
- (b) The executed Certificate of Insurance, provided pursuant to section 6.03 (a), shall evidence insurance coverage and limits consistent with sections 6.01 and 6.02.

**Section 6.04                      Suits and Claims**

- (a) The Business Improvement Association shall notify the Municipality, in writing, as soon as possible after the Business Improvement Association becomes aware of any claim or possible claim against the Municipality and/or the Business Improvement Association which involves the Business Improvement Association.
- (b) The Business Improvement Association shall notify the Municipality in writing as soon as possible after it becomes aware of any injury occurring in, on or about the Business Improvement District, which could reasonably be expected to result in a claim being made against the Municipality or the Business Improvement Association and of all claims against the Municipality and/or the Business Improvement Association which involve the Business Improvement Association.
- (c) The Business Improvement 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 Business Improvement Association, or otherwise prevent the Municipality from protecting itself against any such claim, demand or legal proceeding.
- (d) The Business Improvement Association shall fully cooperate with the Municipality in the defence of any claim, demand, or legal proceeding.

**ARTICLE SEVEN  
EMPLOYEES**

**Section 7.01                      Personnel**

All personnel involved in the management, administration and operations of the Business Improvement Association including, without limitation to the foregoing the Executive Director, will be employees of the Business Improvement Association. The wages, salaries and benefits of such employees shall be paid solely and directly by the Business Improvement Association, unless otherwise stated and agreed upon in writing. The Business Improvement Association shall be responsible for the supervision, instruction, and training of such employees.

## **ARTICLE EIGHT GENERAL PROVISIONS**

### **Section 8.01                      Notices**

- (a) 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:

Any notices intended for the Municipality shall be delivered and addressed to:

**Municipal Clerk  
Halifax Regional Municipality  
1841 Argyle Street  
P.O. Box 1749  
Halifax, NS B3J 3A5**

Any notices intended for the Business Improvement Association shall be delivered and addressed to:

**[INSERT ADDRESS  
OF BUSINESS IMPROVEMENT ASSOCIATION]**

- (b) 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 registered 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 8.02                      Validity of Provisions**

In the event anyone or more of the provisions contained in this agreement shall 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 8.03                      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 8.04                    **Successors**

The provisions of this Agreement shall, subject to the terms and conditions hereof, be binding upon and ensure 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 Society and may not be assigned by the Business Improvement Association without the prior written consent of the Municipality.

#### Section 8.05                    **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 to enforce their rights hereunder.

#### Section 8.06                    **Headings**

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

#### Section 8.07                    **Interpretation**

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

#### Section 8.08                    **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 8.09                    **Confidentiality**

It is agreed by the parties this agreement is a public document for the purposes of Part XX of the Municipal Government Act ("Freedom of Information and Protection of Privacy") and that any information, document, or record, in any form, provided to the Municipality by the Business Improvement Association is subject to FOIPOP.

#### Section 8.10                    **Governing Law**

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

#### Section 8.11                    **Time of Essence**

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

IN WITNESS HEREOF the parties hereto have properly executed this Agreement as of the day and year first above written.

SIGNED, SEALED and DELIVERED:

**[INSERT NAME OF BUSINESS  
IMPROVEMENT ASSOCIATION]**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Chair of the Board  
(I have authority to bind the Business  
Improvement Association)

HALIFAX REGIONAL MUNICIPALITY

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk

\_\_\_\_\_  
Date:



# BID Formation and Boundary Change Process Flow Chart

