



Item No. 11.1.4
Halifax Regional Council
December 10, 2013

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: November 21, 2013

SUBJECT: Request for Encroachment – Tacoma Drive and Gordon Avenue Banners

ORIGIN

Application from Main Street Dartmouth Area Business Improvement District.

LEGISLATIVE AUTHORITY

Under Section 3 of HRM By-law E-200 Respecting Encroachments Upon, Under or Over a Street, no person is to construct or maintain any structure on the street right of way without being issued an encroachment license by Council.

RECOMMENDATION

It is recommended that Halifax Regional Council **approve** the request to allow side-mounted banners to be installed on utility poles within the HRM right of way, subject to the attached encroachment agreement.

BACKGROUND

Several Business Improvement Districts (BIDs) within HRM currently maintain side-mounted banner brackets on utility poles and light standards within their district boundaries. This activity is encouraged by HRM through service agreements between HRM and the BIDs as part of their Beautification Programs. Some BIDs use the banners to help define their commercial district; the banners display a standard message or theme throughout (e.g., Downtown Dartmouth Banners). Other districts use the banners to advertise major events, such as the Natal Day Celebrations, Tall Ships Festivals and IIHF Hockey Championships (e.g., Downtown Halifax Banners).

DISCUSSION

The banners proposed by the Main Street Dartmouth Area Business Improvement District – called the Main Street Area BID in the remainder of this report – would be installed within the geographic limits of the Main Street Area BID along Tacoma Drive and Gordon Avenue in Dartmouth. They will serve to identify the commercial district and complement the “Main Street” signage located near the intersection of Main Street and Woodlawn Road along with the existing banners on Main Street. It is part of an initiative by the BID to raise the profile of the area as a place to do business. The banners will vary between four different designs displaying the Main Street Area BID’s Brand, promoting the Maritime Fiddle Festival, promoting Main Street Area BID’s support for Service People and promoting their support for Veterans. Preliminary banner designs are attached; however the final graphics may vary from those shown in this report.

FINANCIAL IMPLICATIONS

The applicant is required to pay a one-time license fee of \$60.00 and an annual encroachment fee proportional to the area of the encroachment. The areas of the encroachments are negligible. As such, the banners would be subject to the minimum charge of \$10/year, as per Administrative Order Number 15. This new annual revenue will be directed to cost centre R112-4912.

COMMUNITY ENGAGEMENT

The Main Street Area BID is driving this request as a service to its members. The board of the BID which represents its members (comprised of the business owners adjacent to Main Street in the affected area) supports this initiative. As a result, HRM staff has not conducted an independent engagement process.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

ALTERNATIVES

Council could choose not to allow the proposed banners to be installed on the utility poles along Tacoma Drive and Gordon Avenue. This is not recommended by staff as the request to identify the Business Improvement District with banners is consistent with existing banner programs in many other areas of HRM.

ATTACHMENTS

1. Encroachment Agreement with plan showing banner locations
2. Proposed banner designs

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

Report Prepared by: Krista Hogan, EIT, Utilities Construction Inspector, 490-6822

Report Approved by: _____
Christopher Davis, P.Eng., Supervisor, Right of Way Services, 490-7462

Report Approved by: _____
Taso Koutroulakis, P.Eng., PTOE, Manager, Traffic & Right of Way Services, 490-4816

Financial Approval by: _____
Greg Keefe, Director of Finance & ICT/CFO, 490-6308

Report Approved by: _____
David Hubley, P.Eng., Acting Director, Transportation & Public Works, 490-4855

This **Encroachment License Agreement** made this ____ day of _____, 20____.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
(“HRM”)

and

**MAIN STREET DARTMOUTH AND AREA BUSINESS
IMPROVEMENT ASSOCIATION**, a body corporate
(the “Licensee”)

Recitals

- A. **Whereas** the Licensee wishes to install side-mounted banners (the “Encroachment”) on utility poles within the HRM street right of way along Tacoma Drive and Gordon Avenue as shown and described in Schedule “A”;
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 20____, the HRM agreed to give the Licensee an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

In consideration of the mutual promises contained in this agreement the parties agree as follows:

License

1. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of Tacoma Drive and Gordon Avenue, identified in Schedule “A” to install and maintain the Encroachment.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and said relocation shall be at the sole expense of the Licensee.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the

Encroachment and all subsequent work which involves the excavation of the street.

(2) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the “Engineer”).

(3) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.

Maintenance

5. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

6. HRM may at any time and without notice inspect the Encroachment.

7. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If the Licensee does not, within 15 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

8. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.

9. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 7 and 8 within 15 business days of receiving notice of the costs of the work or expense incurred.

(2) HRM may, in addition to any other remedies available at law, lien the Licensee’s property for any of the costs or expenses owed to HRM for the work.

Street Maintenance

10. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

Indemnity

11. (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.
- (2) This section shall survive the termination of this license agreement.

Insurance

12. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any renewal of the insurance.

Fees

13. The Licensee shall be invoiced for, and shall pay, the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is 0.02 square metres.

14. The Licensee acknowledges that the fee prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council.

Occupational Health and Safety Act, SNS 1996, c 7

15. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

Termination

16. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:
- (a) pay to HRM all encroachment fees owing;
 - (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 7 and 8; and
 - (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days, unless otherwise agreed to between the parties.
- (2) The Licensee may terminate this license agreement under the following conditions:
- (a) notification to HRM in writing of its intention to terminate this licence agreement;
 - (b) payment to HRM of all encroachment fees owed;

- (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 7 and 8;
- (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
- (e) any other terms and conditions as may be necessary in the opinion of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer for the restoration of the street.

(3) If the Licensee does not, within the sixty calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.

(4) The termination of this Encroachment License Agreement shall not relieve the Licensee from any obligations under this Agreement including:

- (a) paying all fees, costs and expenses owed to HRM under this Encroachment License Agreement; and
- (b) restoring the street right of way to the satisfaction of HRM.

Notices

17. Any written notice or communication relating to the administration of this license agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
 Director of Transportation & Public Works
 P.O. Box 1749
 Halifax, N.S. B3J 3A5

And

Main Street Dartmouth and Area Business Improvement Association
 208-175 Main Street
 Dartmouth, N.S. B2X 1S1

18. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

19. This license agreement shall enure to the benefit of and be binding upon the

parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

20. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

21. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

22. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

23. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

IN WITNESS WHEREOF the parties hereto have executed this license agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in
The presence of:

**MAIN STREET DARTMOUTH AND
AREA BUSINESS IMPROVEMENT ASSOCIATION**

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that _____, one of the parties thereto, signed, sealed and delivered the same in his presence

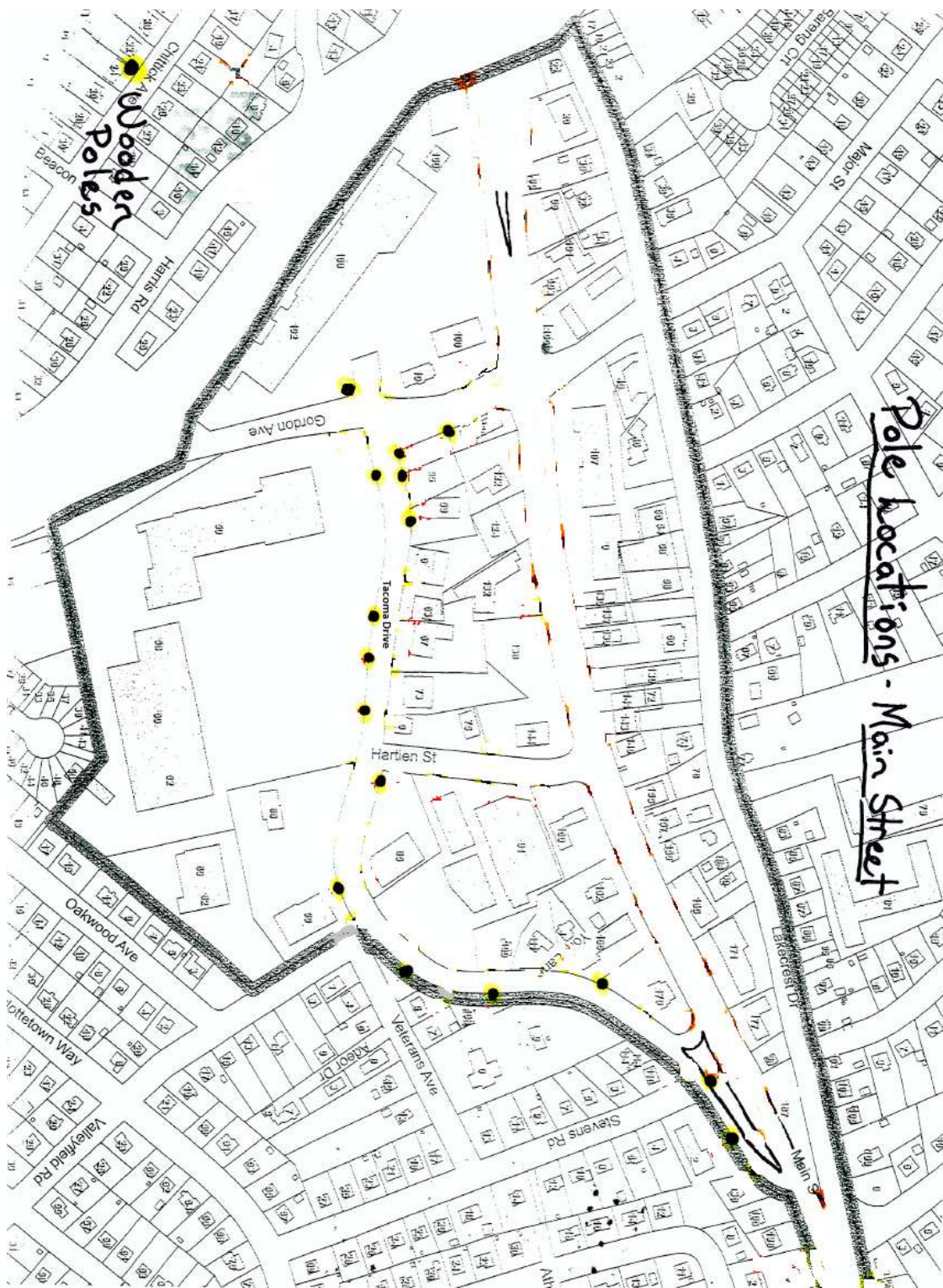
A Commissioner of the Supreme Court of Nova Scotia

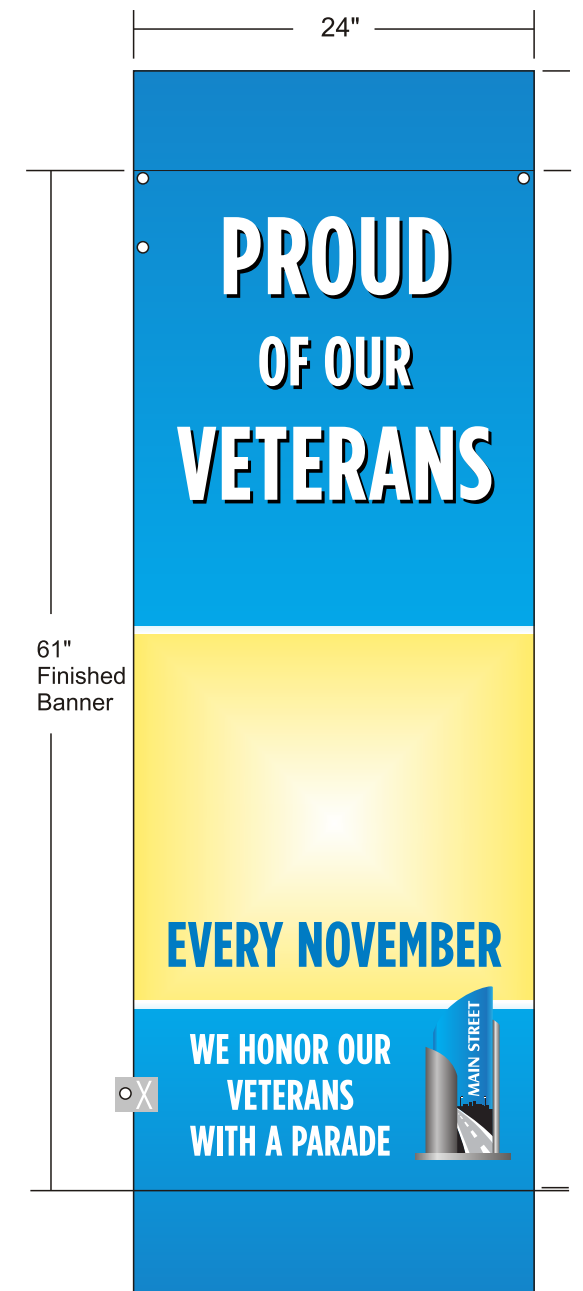
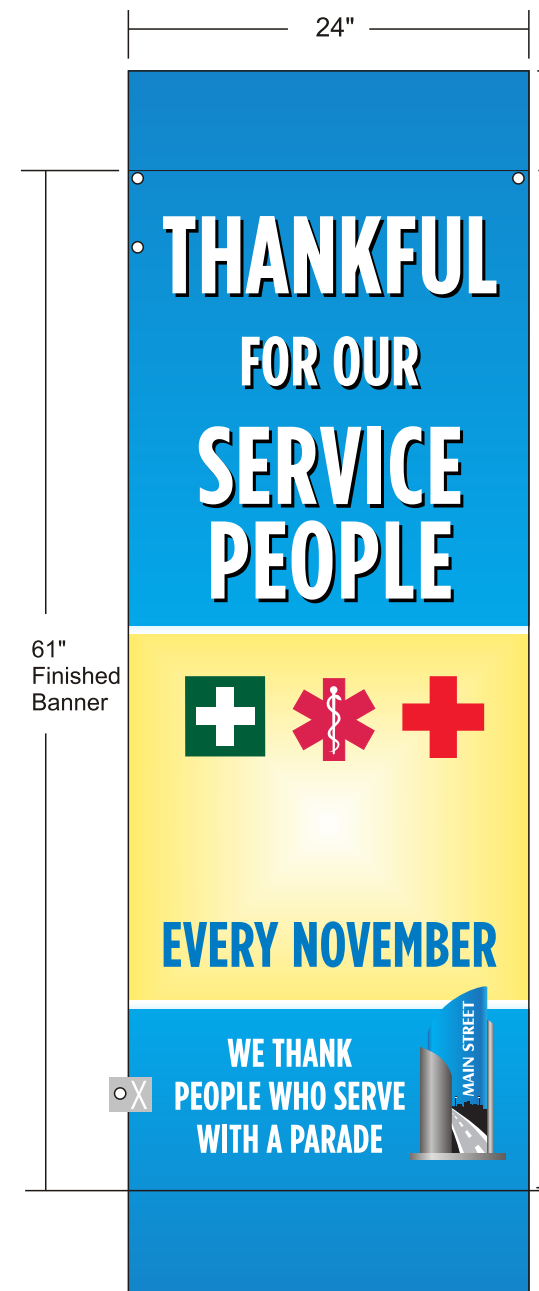
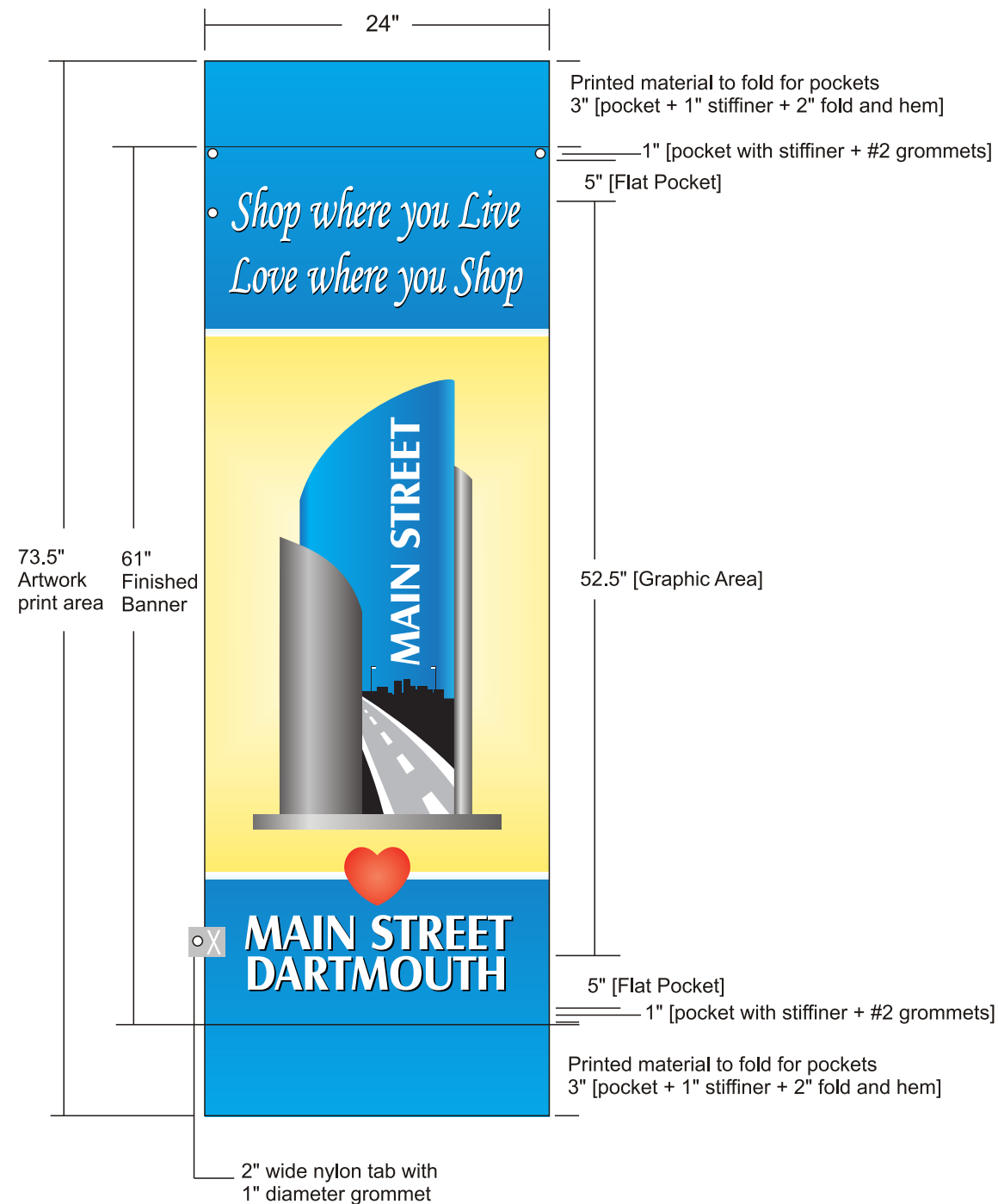
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule "A" – Location of the Proposed Banners





Supply and Install

21 Double-sided Street Banners
- 2 Layers, Full-color Digi-print 130z banner material
sewn back to back with tab, 1" webbing and grommets

FOR: MAIN STREET DARTMOUTH BUSINESS IMPROVEMENT DISTRICT

DATE: JUNE 2013

LOCATION: TACOMA, MAIN STREET DARTMOUTH - HRM

DESIGN BY: TYM DEAL