



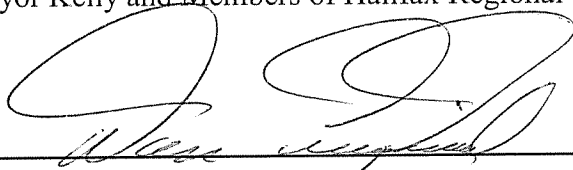
PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

10.3.9

**Halifax Regional Council**  
**March 18, 2003**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

  
\_\_\_\_\_  
Dan English, Acting Chief Administrative Officer

**DATE:** March 4, 2003

**SUBJECT:** Business Improvement Association Service Agreement Renewal

**ORIGIN**

Since 1996, the Municipality has entered into a service agreement with each of the four Business Improvement Associations located within the Capital District boundaries, including Downtown Dartmouth, Downtown Halifax, Spring Garden Road, and Quinpool Road, to provide services related to the revitalization of the downtown cores.

**RECOMMENDATION**

It is recommended that Council approve the attached Service Agreement between HRM and the four Business Improvement Associations, which will come into effect on April 1, 2003, for a period of two (2) years, in order to continue to provide services related to the betterment and revitalization of the downtown neighbourhoods in cooperation with the Capital District.

## **BACKGROUND**

There are currently four Business Improvement Associations (BIAs) who operate within the boundaries of the Capital District. The BIAs are supported by a tax levied on the commercial and business occupancy assessment of those businesses and commercial land owners located within Downtown Dartmouth, Downtown Halifax, Spring Garden Road, and Quinpool Road. This levy is enabled by section 56 of the Municipal Government Act, which authorizes Council to contract, by way of a management agreement, for services related to beautification, marketing and promotions.

The current management agreement between HRM and the four BIAs will expire on March 31, 2003.

## **DISCUSSION**

The Capital District was publically launched by the Mayor in November, 2001. The Capital District Task Force provides integrated service delivery and point of contact operations for the HRM services related to preserving and enhancing the Capital District as a healthy and vibrant destination for residents, businesses and visitors.

The Capital District 2002/2003 business plan identifies as part of its deliverables, the coordination of service delivery and the opportunity for stakeholders to come together, share resources, and achieve greater results. To help fulfill this deliverable, the Capital District Joint Initiative Strategy was conceived to bring together the four BIAs and encourage joint activity plans which include streamlined budget and levy approval processes, cooperative marketing and promotion projects and the pooling of resources. This strategy helps to reduce redundancies and encourage synergies. The Joint Initiative Strategy has been endorsed by each of the BIAs and their Board of Directors, recognizing the benefits of working together and the greater impacts which can be achieved through cooperation.

The BIAs also develop activity plans for their individual operating budgets. These activity plans require the BIAs to describe goals and objectives for each project along with performance measures for each. Their budgets then reflect the activity plan goals and objectives. The performance measures act as an evaluation tool, enabling the HRM to determine whether the tax levy has been used to fulfill the stated objectives set forth in the management agreement and in the individual activity plans. The activity plans are a tool to measure the impact and effectiveness of the BIAs and encourage accountability for expenditures.

## **BUDGET IMPLICATIONS**

There are no budget implications. The Municipality simply collects the levies on behalf of each of the Business Improvement Associations.

**FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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

**ALTERNATIVES**

Council can reject the Service Agreement

**ATTACHMENTS**

Service Agreement between HRM and Business Improvement Associations

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

Report Prepared by: Marion Currie, Capital District Joint Initiative Coordinator, 466-2997

Report Approved by: Carol Macomber  
Carol Macomber, Capital District Project Manager 490-5908

Betty MacDonald  
Betty MacDonald, General Manager, Governance & Strategic Initiatives, 490-4769

THIS AGREEMENT made as of the \_\_\_\_\_ of \_\_\_\_\_ 2003,

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

(the "Municipality")

-and-

*(Insert - Name of Business Improvement Association)*

(the "Association")

WHEREAS the Halifax Regional Municipality is desirous of appointing the Association 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.

NOW THEREFORE, the parties hereto covenant and agree as follows:

## DEFINITIONS

### Section 1.01 Definitions

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

- (a) "Area" means the business improvement district area described in schedule "A".
- (b) "Association" means the *(Name - Business Improvement Association)*
- (c) "Commencement Date" means April 1, 2003.
- (d) "Chief Administrative Officer" means the Chief Administrative Officer for the Halifax Regional Municipality.
- (e) "Municipality" means Halifax Regional Municipality.
- (f) "Capital District Project Manager" means the Capital District Project Manager for the Halifax Regional Municipality.

## DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION

### Section 2.01 Appointment of Society

The Municipality hereby appoints the Society (and the Association hereby accepts such appointment) to undertake on behalf of the Municipality, services (“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 Association shall deliver Services related to the promotion of the area as a business improvement district for the 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 Association. The 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, 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.

### Section 2.03 Preparation of Activity Plan and Budget

- (a) The Association shall prepare and submit to the Municipality for approval, through the Capital District Project Manager, a plan of activities and budget for each municipal fiscal year ending (April 1 - March 31) along with a recommended area rate, to be levied against all commercial realty and business occupancy assessments in the area, for financing the proposed plan of activities and budget-, including a recommended minimum and maximum amount to be levied upon each commercial realty and business occupancy assessment, if desired. The budget shall include a three percent reserve for uncollectible area rates. These items shall be submitted according to the following time line:

Proposed new levy rates to be sent to HRM Finance in order to run off most up to date assessment role for budget year	Mid December
Assessments roles sent to Association	Early January
Budgets and levy rates approved by Association Board	Mid January

Activity plans, budgets & levy formulas submitted to HRM Capital District Project Manager	first week Feb
All budgets & levies required by HRM Finance	Second week Feb
Budgets & levy formulas approved by HRM Regional Council	Mid to late March

- (b) Prior to submitting its action plans and budget to the Municipality, the Association shall hold a board meeting, publically advertised and open to all persons assessed for commercial realty and business occupancy in the area at which such persons shall be afforded an opportunity to comment on the proposed action plans and budget. The minutes of the board meeting, along with copies of all submissions made at the meeting shall be provided to the Capital District Project Manager, at the time the action plan and budget are submitted.

Section 2.04 **Operating Account**

The Association 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.

**DUTIES AND RESPONSIBILITIES OF THE MUNICIPALITY**

Section 3.01 **Assessment Information**

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

Section 3.02 **Interim Financing**

The Municipality shall, on April 1<sup>st</sup> in each fiscal year, deposit in the Operating Account of the Association, interim financing for the operation of the Association, which shall be equal to forty percent of the Association’s approved budget for the Area in the previous year.

Section 3.03 ***Approval of Action Plan and Budget***

The Municipality shall approve such final budget (“Final Budget”) as the Municipality considers appropriate.

#### Section 3.04 **Disbursements**

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

- (c) interim financing as described in Section 3.02
- (d) forty percent of the Final Budget on August 1 of each year; and
- (e) the remaining funds of the Final Budget on November 1 of each year, less the three percent budgeted for uncollectible on the local area rate levied in the Area for each fiscal year.
- (f) any funds collected in excess of budgeted levies will be deposited to the Association as collected.

### **ACCOUNTING AND RECORDS**

#### Section 4.01 **Accounting Offices**

The Association 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 Association 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 4.02 **Receipts and Records**

The Association 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 Association 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 4.03 **Annual Consolidated Reports**

Within ninety (90) days after the close of the Fiscal Year, the Association shall cause to be prepared by an independent accountant or accounting firm and furnished to the Municipality through the Capital District Project Manager, an audited financial report

("Financial Report") for the Services. The Financial Report shall include a balance sheet as of the end of the prior Fiscal Year, a statement of income or loss, and a statement of changes in financial position for the prior Fiscal Year. The statement of income or loss shall disclose the amount of income earned or loss sustained, the amount of cash, if any, available for distribution to the Municipality, and shall include the amount of depreciation, depletion, amortization, interest, extraordinary interest and extraordinary charges. The Association shall furnish the Financial Report to the Capital District Project Manager as soon as practicable after the Financial Report has been prepared.

Section 4.04 **Other Reports**

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

Section 4.05 **Property of the Association**

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

Section 4.08 **Settlement**

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

**COMMENCEMENT AND TERMINATION**

Section 5.01 **Commencement and Initial Term**

This agreement shall take effect on the Commencement Date and shall continue in force, unless earlier terminated as set out in Sections 5.02 or 5.03, for a period of two (2) years.

Section 5.02 **Termination by the Municipality**

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



- (a) In the event that the Association 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 Association, or in the case of a breach which cannot with due diligence be cured within such period of 15 days, if the Association 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 Association of such notice;
- (b) In the event that the Municipality is presented with a petition requesting that the Association's activities pursuant to this agreement cease, signed by at least:
  - (i) Fifty-one percent of the persons assessed for business occupancy within the Area and whose total business occupancy assessments within the Area is at least fifty-one percent of the total business occupancy assessment of all persons within the Area; and
  - (ii) Fifty-one percent of the persons assessed for real property tax of commercial property within the district and whose total commercial property assessment within the Area is at least fifty-one percent of the total commercial property assessment of all persons within the district.
- (b) In the event that any of the following occur with respect to the Association:
  - (a) if the Association shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent; or
  - (b) the Association shall admit in writing its inability to pay its debts as they mature; or
  - (c) the Association gives notice to any governmental body of insolvency or pending insolvency or suspension or pending suspension of operations; or
  - (d) the Association shall make an assignment for the benefits of creditors or take any other similar action for the protection of benefit creditors.

### Section 5.03 **Termination by the Association**

This agreement may be terminated by the Association, upon giving the Municipality written notice of its election to terminate this agreement in the event that the Municipality breaches any of the terms and provisions of this agreement and such breach continues for a period of 15 days after written notice thereof from the Association 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.

## **INDEMNIFICATION**

### **Section 6.01 Indemnification by Association**

The Association agrees to indemnify and hold harmless the Municipality and each officer and employee of the Municipality, against any loss, expense, damage, claim, liability, obligation, judgement or injury suffered or sustained by the Municipality as a result of any act or omission or alleged act or omission of the Association or any employee acting under the supervision of the Association 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 Association or employee, as the case may be, has acted in good faith.

### **Section 6.02 Indemnification by Municipality**

The Municipality agrees to indemnify and hold harmless the Association and each officer, director and employee of the Association, against any loss, expense, damage, claim, liability, obligation, judgement or injury suffered or sustained by the Association as a result of any act or omission or alleged act or omission on behalf of the Municipality or in the furtherance of the interests of the Municipality, except where such activities are carried out negligently or fraudulently, all of which shall be charged to and paid by the Municipality as incurred, provided always that the Association acted in good faith and without negligence.

### **Section 6.03 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.

## **INSURANCE**

### **Section 7.01 Insurance**

During the term of this agreement, the Association shall provide, pay for and maintain with companies satisfactory to the Municipality, the types of insurance as jointly required by the Municipality and the Association. All liability policies shall

provide that the Municipality is an additional named insured as to the operations of the Association under this agreement. The insurance coverages 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 coverages. Thirty (30) days notice must be given to the Municipality of any cancellation, intent not to renew, or reduction in policy coverage.

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

- (a) if to the Municipality:

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

- (b) if to the Association

*(Insert - Name and address of BIA)*

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 and the same shall be enforceable to the fullest extent permitted by law.

### 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 enure 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 Association and may not be assigned by the 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 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 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 agreements or understanding, if any, whether written or oral, which either party may have had relating to the subject matter hereof.

Section 8.09 Governing Law

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

Section 8.10 Time of Essence

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

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

HALIFAX REGIONAL MUNICIPALITY

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

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

*(Insert - Name of Business Improvement Association)*

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

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