



PO Box 1749  
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**Item No. 11.1.7**

**Halifax Regional Council  
July 8, 2008**

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

**SUBMITTED BY:**

A handwritten signature in cursive script, appearing to read "G. Kaiser".

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Geri Kaiser, Acting Chief Administrative Officer

A handwritten signature in cursive script, appearing to read "Paul Dunphy".

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Paul Dunphy, Acting Deputy Chief Administrative Officer - Operations

**DATE:** June 5, 2008

**SUBJECT:** Dartmouth East Community Center Lease Agreement

**ORIGIN**

Staff

Information report : March 8, 2005

**RECOMMENDATION**

It is recommended that Regional Council approve the attached draft Agreement between the Halifax Regional Municipality and a company to be incorporated by the Dartmouth East Boys and Girls Club providing for the subsidiary corporation to manage and operate the Facility on behalf of HRM upon facility opening in fall of 2008.

**BACKGROUND:**

The Dartmouth East Recreation Society, an incorporated organization under the Societies Act, was struck to coordinate the construction of a 20,000 square foot recreation facility on HRM land on the Caledonia Road in Dartmouth. The community center is slated for official opening in September of 2008 and is to be managed and operated by the Dartmouth Boys and Club of East Dartmouth pursuant to the provisions of an agreement between HRM and the Club.

This recreation facility will provide a much needed community asset for the residents of Dartmouth East as well as serve as a replacement for the Boys and Girls Club of East Dartmouth whose facility was demolished in 1999. It was identified as a need for the community in the 2004 Indoor facility Master Plan and a formal study was then conducted to determine needs and identify the optimum site. Both the Dartmouth East Recreation Society and Boys and Girls Club of East Dartmouth have been instrumental in raising over 50,000 dollars in funding for the operations of the center (equipment, supplies, etc.) and in leveraging over a million dollars in grant funding.

Legal counsel for the Dartmouth East Boys and Girls Club recently raised concerns about the Club's inexperience in facility management. As a result, he advised that to address these liability concerns that the Club was requesting that the management of the Center be conducted by a wholly owned subsidiary of the Club. This will reduce potential legal liabilities which may impact on the continued viability of the Club. Additionally the Club is seeking an option to lease a portion of the Centre during the next 20 years in the event that the management agreement is terminated during that time frame.

**DISCUSSION**

Staff have been involved in negotiating an agreement with the Boys and Girls Club of Dartmouth East to ensure optimum use of the building for the public and to set terms of the agreement to ultimately coincide with the HRM facility lease agreement program over the next few years. Some highlights of the agreement as are:

1. The subsidiary corporation of the Boys and Girls Club of Dartmouth East will be the managers and operators of the complete facility.
2. The subsidiary corporation will be accountable for programming, maintenance and all other scheduled usage of the building.
3. The same insurance coverage applies as in the 21 other facility agreements.
4. HRM will fund the operators based on a 3 year declining scale and financial commitment until such time as there is no deficit. At this point the Club can apply for Contributions Funding.

If Council approves the agreement in principle the Club will complete the incorporation of a subsidiary and the terms of an option to lease will be negotiated.

There is one outstanding issue relating to HST rebates and the charging of rental fees that is still

being investigated corporately. Applicability of the HST legislation requires a true lease relationship and involves considerations which may not be applicable to current relationship between the parties. Once staff is apprised of the resolutions of those issues there may be consensual revisions to the agreement in the following year.

**BUDGET IMPLICATIONS:**

First year funding support for \$70,000 plus snow/salting for parking lot and walkways, lawn care and planting was approved by Regional Council in the 08-09 Capital Budget, project CB200453 as part of the Operating from Capital category.

Transitional support for 2009-10 fiscal is \$50,000 and for 2010-11 fiscal is less than \$50,000 subject to negotiation after review of revenues and expenses.

**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:**

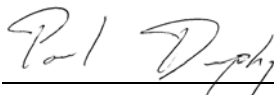
Regional Council could choose not to enter into an agreement with the Boys and Girls Club of Dartmouth East. This would not be advised as the Club had been instrumental in fund raising for the construction and operation of the facility. Boys and Girls Club of Dartmouth East has a strong committed board and staff who are well positioned to operate and manage the building. As well, the mandate of the Boys and Girls Club of Dartmouth East is congruent with the recreation mandate of HRM.

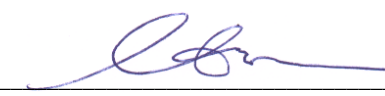
**ATTACHMENTS**

Agreement between the Halifax Regional Municipality and the Boys and Girls Club of East Dartmouth

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: Karen MacTavish, General Manager, 490-4734

Report Approved by:   
Paul Dunphy, Director, Community Development

Report Approved by:   
Catherine Sanderson, Sr. Manager, Financial Services, 490-1562

## AGREEMENT

Between the

**Halifax Regional Municipality (“HRM”)**

and the

\_\_\_\_\_ (“the Manager”)

hereinafter collectively called “the parties”.

WHEREAS HRM is the owner of a building and lands located within the municipality and known the East Dartmouth Community Centre (“the Centre”);

AND WHEREAS the Manager is an incorporated company wholly owned by the Boys & Girls Club of East Dartmouth and wishes to be responsible for the management of the daily operations of the Centre;

AND WHEREAS the Manager and HRM wish to cooperate and work together jointly in respect of promotion and facilitation of public use and access to the Centre;

IN CONSIDERATION of the mutual covenants and conditions hereinafter contained, the parties agree as follows:

1. The parties agree to work together cooperatively in respect of the development, promotion and facilitation of public use and access to the Centre

### **Management of the Center**

2. The Manager shall have the responsibility for the day to day management, operation and administration of the Centre in accordance with and subject to the terms and conditions of this Agreement and unless and except to the extent otherwise directed by HRM from time to time in writing to the Manager. The Manager shall perform its duties and exercise the powers and authority set out in this Agreement in a competent, efficient and economical manner. The Centre shall be maintained in a clean and safe condition subject to inspection by HRM.

3. The board of directors of the Manager shall consist of the Executive Director of the Boys & Girls Club of East Dartmouth, two “community centre” members who are on the board of directors of the Boys & Girls Club of East Dartmouth and three members of the community not associated with the Boys and Girls Club and an HRM nominee as provided for herein. The responsibilities of the board of directors will include advise and recommendations concerning activities, promotions, usage and policies, and opportunities that the Centre may wish to pursue for rent, lease or activity purposes. To facilitate communication between HRM and the Manager, HRM may nominate one

staff member for appointment as a member of the board of directors of the Manager. Ownership of the Manager shall not change while this agreement is in effect.

4. In furtherance of its management responsibilities, the Manager shall select and hire a competent Facility Manager to supervise and manage the day-to-day operations of the Centre. The Facility Manager shall report to the Board of Directors of the Manager. This position will be based on a contract term and will not exceed the term of this Agreement with HRM.

5. The Manager's management responsibilities shall include, but are not limited to the following:

- Room and storage bookings, leases (invoicing and receipt of payment), deposits, customer service.
- Contract services (i.e. hire and manage cleaning services, waste removal, etc)
- Other potential contract services (i.e. vending machines, catering, bar services, etc.)
- Provide bookkeeping services; ensure applicable bills are paid in a timely manner, receive and record deposits, develop monthly income statements, ensure proper tracking and filing systems are in place.
- Logistics – set-up separate bank account, deposit/cheque system, phone system.
- Meet (minimum) quarterly with the facility advisory subcommittee.
- Facility maintenance (including informing HRM, Infrastructure & Asset Management of capital repairs required in a timely manner)
- Develop, in consultation with HRM, and implement centre policies and procedures.
- Recommend any policy change as it pertains to the facility.
- Ensure policies and procedures are followed by staff, facility renters and participants.
- Accountable for safe guarding and managing municipal, Boys & Girls Club & community assets (i.e. money, supplies, equipment, etc.)
- Develop and manage effective community partnerships for Centre usage.
- Ensure high quality service is provided to all customers.
- Administer regular questionnaires or feedback opportunities for clients to support evidence of success especially initially to define high quality.
- Participate in the development of long range strategic plans for the Centre with HRM.

6. The Manager shall also be responsible for the following Community Program Delivery:

- Maintain and expand programs and services offered by the Manager.
- In cooperation with HRM, determine any gaps in service as related to the Manager mission.
- No similar or duplicate program service will be allowed after consultation with HRM or the Manager.
- Program delivery to be reviewed annually to ensure it responds to community needs.

### **Limitations on the Manager's Authority**

7. Unless expressly authorized in this Agreement, or by prior written direction or approval of HRM, the Manager shall not have the authority to do any of the following:

- obtain loans for or on behalf of HRM, whether secured or unsecured, or give grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Centre or any portion thereof or any interest of HRM therein, or obtain replacements of any mortgage or mortgage;
- prepay in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Centre or any portion thereof, except to the extent contemplated by the budget approved by HRM and in the ordinary course of operating the facility
- cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation
- cause HRM to enter into any contracts with respect to the facility other than contracts in the ordinary course of managing the Centre, which are in accordance with the provisions of this Agreement
- sell, exchange or convey the Centre or any portion thereof
- release, compromise, assign or transfer any claim, right or benefit of HRM, except in the ordinary course of managing the Centre pursuant to this Agreement
- allow a default judgment to be entered against HRM
- modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the facility
- grant easements or other property rights in the facility
- lease, purchase or sell any real property on behalf of HRM

**Allocation of the Centre's resources:**

8. HRM has the responsibility to hold public property in trust and to ensure public access to these properties is not compromised. As manager of the Centre the Manager has responsibility to ensure the Centre as a public resources is utilized to the benefit of the general public. Access is provided to the general public in priority to special interests and/or groups or private organizations. A facility meets the public use standards if a least 50% of the time it is operating any member of the public may access the amenity at either no cost or a cost reasonable for the type of facility use or service availability. The reasonableness of cost will be determined through comparable facilities, program user fees, demographics and facility location. Operational guidelines for the Centre will be approved by HRM.

9. HRM recognizes that the Boys & Girls Club of East Dartmouth has its own public service directed objectives, and that those objectives contain a mandate that aligns with the municipality's focus areas. To further the those objectives and in keeping with the spirit of the community centre theme and usage the Boys & Girls Club would have priority usage on certain public space (i.e. multi-purpose room/gym, activity/meeting rooms). The Manager would accommodate rentals when ever possible in order to generate funds for operations of the facility and to meet the needs of the community.

### **Annual Business Plan & Budget Practices**

10. The Fiscal Year of the Centre shall be the annual period ending on March 31<sup>st</sup> of each year or such other period that HRM may establish upon notice to the organization. The organization will be required to date their business and budgets to the HRM fiscal year - April 1<sup>st</sup> to March 31<sup>st</sup>.

11. The Manager shall develop an annual a business plan and operating budget for the Centre in accordance with the HRM planning practices that will facilitate the management, promotion, development, operation and administration of the program service delivery at the Centre, strictly in conformance with the annual HRM operating and capital budgets approved from time to time by HRM pursuant to the Agreement. Budgets should be developed specifically for the overall program service delivery focus and facility costs associated with the program delivery and facility requirements which may include facility renovations, upgrades and maintenance.

12. Reporting procedures shall include quarterly budget submissions to HRM Finance capturing prior year actuals, projected expenses, actual expenses (year to date) and variances. The quarterly submissions will be required March 31, June 30, September 30, and December 31. The March 31<sup>st</sup> submission will be a complete annual financial statement. The annual statement will include a statement of sources and uses of funds on an unaudited basis, (unless HRM or indicates a formal audited statement is required), the prior year actuals, current year projections, current year actuals and variances.

13. HRM shall advise the Manager in writing of any changes required by HRM to the proposed budget for the Centre and the Manager shall submit to HRM a revised budget reflecting the changes within 30 days. The proposed or revised budget, upon approval by HRM in writing, shall constitute an approved budget for the purpose of financial and operational efficiency.

14. In the event the Centre sustains, in any quarter of a fiscal year, a deficit from its operating budget budget, the Manager shall note in the quarterly budget report submission to HRM. The submission shall set out the magnitude of the operating or capital deficit, the reason for the deficit and the recommendations for dealing with the deficit, as the case may be. HRM accounting principles restrict municipal tax dollars directed to pay out debts which are properly those of the Manager. HRM will review financial status and determine if the Centre or program delivery is at risk or in jeopardy and based on outcome of a review determine a resolution strategy, alternative service delivery method or required intervention.

15. The parties agree that the program service delivery and the Centre operation shall be managed in a prudent and fiscal manner. HRM agrees that any surplus generated from the program service



delivery and or operation of the facility in excess of the budgeted amount provided for in the budget approved by the HRM, may be held in reserve accounts for a dedicated purpose.

### **Operating Account**

16. The Manager shall open a bank account in its name at a Chartered Bank or other deposit institute for the purpose of recording of all the Centre's revenue and payment of expenses. The bank account shall designate only those persons that are recommended by the board of directors of the Manager. The Manager shall follow such directions and instructions in the operation of the account and the maintenance of its books and records as it may receive from time to time from HRM. HRM shall have the right, at its own expense, and with reasonable notice, to audit or examine the books of account and accounting records maintained by the Manager pursuant to this Agreement. HRM shall have continued authorized access the financial accounts held in the name of the Manager after the termination of the Agreement as long as the Manager is in a debt position to HRM.

### **Insurance and Liability**

17. HRM will insure all real and personal property that are owned by HRM or for which HRM is legally responsible. This coverage insures for all risks of direct physical loss or damage including fire or other hazards. HRM does not provide property insurance coverage for any personal property owned by the Manager or third parties.

18. HRM will provide insurance coverage related to legal liability imposed upon HRM for its negligent acts that causes bodily injury and/or property damage to a Third Party arising from entering onto, leaving or while on HRM premises, any products sold or other HRM operations, including programs. HRM does not provide Commercial General Liability insurance coverage for the negligence arising out of the Manager's programs or the activities thereof.

19. The Manager is required to provide, as provided for herein, certain insurance coverage with a Certificate of Insurance provided to the HRM at the time of signing of this agreement as well as at the Manager's yearly renewal may wish to consider based upon their scope of activities.

20. The Manager is required to insure against claims related to the wrongful acts or omissions committed or omitted by Directors and Board member. "Wrongful acts or omissions" means those acts or omissions including, not limited to, decisions, organization policies, libel, slander, acts or omissions, which result in bodily injury to other people (the public) or damage to their property. Libel and Slander may be excluded from certain directors and officers policies.

21. The Manager is responsible to obtain insurance coverage in respect of all personal property owned by the Manager or for which the Manager is legally responsible. This coverage insures for all risks of direct physical loss or damage including fire and other hazards.

22. The Manager is required to obtain Commercial General Liability (CGL) insurance coverage

in respect of legal liability imposed upon Club for its negligent acts that causes bodily injury and/or property damage to a third party arising from the Manager's operations, including programs. HRM does not provide Commercial General Liability insurance coverage for the negligence arising out of the Manager's programs or the activities thereof. Insurance coverage must be satisfactory to HRM. HRM generally requires a minimum coverage limit of two (2) million dollars but additional coverage may be required, especially if liquor is served at functions at the Centre.

23. HRM shall indemnify, defend, and hold harmless the Manager 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 Manager required to be performed by the Manager pursuant to this Agreement, provided, however, that the Manager, its 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.

24. Should a incident or loss occur where the Manager is deemed to have been negligent in their actions, the HRM reserves the right to launch any actions necessary to recover HRM's costs. The Manager shall at all times indemnify and save harmless HRM and its officers, servants or agents from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to any action taken or things done or maintained by the Manager, or the exercise by the Manager in any manner of its rights or obligations arising hereunder, except claims for damage resulting from the negligence of any officer, servant or agent of HRM while acting within the scope of his duties or employment.

25. The Manager shall notify HRM in writing as soon as possible after it becomes aware of any injury occurring in, on or about the Centre, which could reasonably be expected to result in a claim being made against HRM or the Manager and of all claims against HRM and/or the Manager which involves the facility. The Manager shall take no steps (such as the admission of liability) which would operate to bar HRM 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 HRM or the Centre, or otherwise prevent HRM from protecting itself against any such claim, demand or legal proceeding. The Manager shall fully cooperate with HRM in the defence of any claim, demand or legal proceeding.

26. The Manager shall not discharge, cause or permit to be discharged or how soever to pass in to the sewer systems or surface facilities connected to the Centre any deleterious material, toxic, noxious, contaminated or poisonous substances, and in the event of the escape or discharge of such material or substances, the cost incurred and the clean up to the satisfaction to HRM, shall be at the Manager's expense.

## **Marketing & Promotion Strategy**

27. The parties recognize that Centre's financing will in part be dependent on the Manager's fund raising efforts. It is further recognized that the Manager's funding raising goals in respect of the Centre shall be flexible, taking into account the anticipated interest of businesses and the public in donating funds and projected costs.

28. As a general principle the Manager will be accountable for the annual finance of the Centre's operations. However transitional financial support will be provided from HRM to the Manager during the first three years of the operation of this agreement as follows:

Year 1 - \$70,000 plus snow/salting for parking lot and walkways, lawn care and planting

Year 2 - \$50,000

Year 3 - less than \$50,000: amount to be negotiated after review of revenues and expenses

29. The parties shall develop and implement a marketing and promotion strategy for attracting rentals and increasing community usage to the centre. This strategy may include the development and production of promotional materials, research of community needs and recreation trends for rental potential and program development, and networking with community groups and agencies for rental program, and other partnership purposes.

### **Human Resources**

30. All personnel involved in the management, administration and operations of the facility, including the Facility Manager and any other staff, will be employees of the Manager. The wages, salaries and benefits of such employees shall be paid directly by the Manager. The Manager shall be responsible for the supervision, instruction, and training of such employees subject to best practices and recommendations provided from time to time by HRM. The staff requirements will be determined and based on the scope of program delivery, the square footage of a facility and the amount dedicated to recreation service delivery.

31. The Manager shall be responsible for all Worker's Compensation coverage, payroll responsibilities and Revenue Canada remittance documentation pertaining to employee Canada Pension Plan, Employment Insurance, vacation pay and Income Tax deductions.

32. The Manager agrees to follow fair and equitable employment practices and observe all applicable laws when recruiting, hiring, compensating, training and terminating the employment of employees of the Manager working at the Centre. The Manager will develop its own comprehensive written operational manual with staffing and personnel policies to reflect policies, procedures and responsibilities agreed upon by both parties concerning the management of the facility. To maximize training opportunities Centre staff may have access to HRM training on a cost recovery basis to the Manager when space is available.

### **Term and Termination**

33. This Agreement shall be for a term of 2 years and an option for the Manager to renew for an

additional year and there after to renew annually and continue in force, unless either party shall notify the other by written notice that it elects not to renew this Agreement at least 60 days prior to the end of the initial term or any renewal term. Review of the Agreement on an annual basis will provide the opportunities to evaluate the Manager's capacity, program delivery, Centre operation and community impact. This agreement may be terminated by either party upon providing ninety (90) days written notice. In the event this Agreement is terminated by HRM the Manager is assured current program and office space for the remainder of the three year term. Agreeable terms will be negotiated or subject to arbitration.

34. Signage at the Center shall acknowledge the contributions of both the Municipality and the Boys & Girls Club of Dartmouth East.

35. To facilitate the administration of this Agreement, the initial contact person at HRM shall be Karen MacTavish, General Manager, Community Recreational Services, and the contact person at the Manager shall be its President from time to time.

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2008

Halifax Regional Municipality  
*per*

\_\_\_\_\_  
*per*

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
President

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Secretary