

Audit & Finance Standing Committee
September 18, 2013

TO: Chair and Members of Audit & Finance Standing Committee

SUBMITTED BY: Original Signed
Brad Anguish, Director, Community and Recreation Services

DATE: September 3, 2013

SUBJECT: Halifax Metro Centre – Interim Management Agreement

ORIGIN

June 7, 2011: Auditor General’s Report: “A Review of Concerts Held on the North Commons – January 2006 to March 2011: (Concert Report) presented to Regional Council.

October 19, 2011: Work Plan for the Implementation of Recommendations resulting from the Auditor General’s Report on Concerts on the North Commons presented to the Audit & Finance Standing Committee.

July 18, 2012: Auditor General’s Report:” Review of the Transfer of Box Office Operations from the Halifax Metro Centre to Trade Centre Limited” presented to Audit & Finance Standing Committee.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter including Section 75.

RECOMMENDATIONS

It is recommended that the Audit and Finance Standing Committee recommend that Halifax Regional Council authorize the Mayor and Municipal Clerk to execute the Interim Management Agreement (Attachment 1) with Trade Centre Limited for the management of the Halifax Metro Centre.

BACKGROUND

In June 2011, HRM's Auditor General presented a report on concerts which outlined concerns with various processes undertaken by both HRM and Trade Centre Limited (TCL). This report also outlined a variety of recommendations to address deficiencies in processes as well as the relationship between HRM and TCL. Several of those recommendations related to the requirement for an updated management agreement between HRM and TCL for the operation of the Halifax Metro Centre.

The Halifax Metro Centre (HMC) is a HRM owned facility but is joined to the provincially owned World Trade and Convention Centre. Both facilities are managed by TCL, which is a Provincial Crown Corporation. A tri-partite agreement establishing the rights and obligations of the City and the Province with respect to the HMC and the Convention Centre, including financial contributions, ownership, operation, and the role of TCL, was signed in May 1982. Under this agreement, HMC is managed and operated by TCL, with the City (now HRM) financing the operation of HMC. All profits are to accrue to the account of the City, and all financial records and accounts of HMC are to be kept separate from those of the Convention Centre.

As a result of the Auditor General's review of the Concerts on the North Common (Concert Report), concerns were raised related to the brevity and age of the original 1982 agreement, current requirements for reporting from TCL and operational oversight by HRM. As a result of these concerns, several recommendations in the Auditor General's report required an updated and expanded management agreement for the operation of the HMC.

The Auditor General's concert report also outlined concerns related to the transfer of the box office operations from HRM to TCL. As a result, HRM's Auditor General completed a further report "Review of the Transfer of Box Office Operations from the Halifax Metro Centre to Trade Centre Limited". This report outlined further recommendations to be included in an updated management agreement as well as other actions to ensure an appropriate relationship and processes between HRM and TCL for the management of HMC. Many of those recommendations require additional and more detailed analysis in order to be fully implemented.

DISCUSSION

Work associated with all of the Auditor General's recommendations regarding HMC is underway and is expected to result in a comprehensive management framework and agreement for the operation of the HMC. In the interim, staff believe it is in the best interest of both HRM and TCL that current operational requirements and processes are formally outlined in an interim management agreement. The proposed agreement in Attachment 1 will formalize the reporting and operational requirements as well as the relationship for the HMC while more in depth work on the Auditor General recommendations is completed.

Due to the limited scope and direction with the original 1982 agreement as well as oversight concerns outlined by the Auditor General, there are operational aspects of the HMC that HRM

needs to better understand. Reporting requirements outlined in the interim agreement will provide the background information to assist with necessary understanding and analysis by HRM staff. As a result, the improved oversight, roles and responsibilities will be able to be used to inform HRM's response to other Auditor General recommendations.

The proposed interim agreement is intended to more clearly identify the existing roles and responsibilities of the parties with respect to the management and operation of HMC, building upon the 1982 agreement. The interim agreement addresses several of the Auditor General recommendations including HRM oversight, TCL financial reporting, separate bank accounts and improved communication. There are some operating expenses which have historically been shared between the Halifax Metro Centre and Trade Centre Limited for purposes of efficiency and due to the configuration of the buildings. HRM has undertaken an operational review of HMC with respect to these expenses along with other operational matters. The results of that review are presented in the information report entitled "Operational Review – Halifax Metro Centre". The interim agreement is aligned with the findings of the operational review.

In addition, HRM and the Province of Nova Scotia are currently determining the management structure for the new convention centre (Nova Centre). Depending on the outcome of those negotiations, the management structure of the new convention centre may have an impact on the operation of the HMC since it is connected to the existing World Trade and Convention Centre. Therefore, along with the collection of necessary data and information, an interim agreement will also provide sufficient time to complete the negotiations for the new facility and determine any impact to HMC that needs to be reflected in the long term agreement.

For these reasons, it is recommended that the proposed interim agreement (Attachment 1) be put in place between HRM and TCL for the management of the HMC until additional more in-depth work on Auditor General recommendations and an operating framework for the new Nova Centre are completed. The proposed interim agreement is for a term of 2 years, with an option to renew for one additional year, which is anticipated to provide sufficient time to complete these requirements.

Indemnification

HRM and TCL staff has negotiated an interim agreement that reflects the current operating model, augmented with appropriate reporting requirements. While the content of the draft interim agreement has been determined to meet the needs of both entities in the operation of the HMC, there is one area in which the parties do not agree. Agreement has not been achieved with respect to indemnification.

Indemnification clauses are standard clauses in commercial agreements and are intended to protect one party from losses caused by the actions of another party. Indemnification clauses further outline the requirement of one party to cover all costs of the other party arising as result of a legal claim. In the case of this interim agreement, indemnification would mean that TCL would be required to pay HRM's costs, including damages and legal costs, where HRM suffers a loss as a result of the actions of TCL under the agreement.

In the proposed interim agreement, both parties have agreed that HRM is to provide Property and Commercial General Liability insurance for the facility, while TCL will provide Commercial General Liability insurance of not less than Five Million Dollars (\$5,000,000) with HRM as a named Additional Insured. There is also a notification process for claims and requirements for Third party insurance and other risk mitigation strategies. However, since not all legal claims can be covered by insurance, HRM Legal, Insurance & Risk Management Services has recommended inclusion of an indemnification clause to further protect the municipality's interests. As TCL is a Provincial Crown Corporation, indemnification would need to be provided by Provincial Cabinet rather than TCL directly.

Inclusion of an indemnification clause is a best practice and in recent years, HRM has implemented a practice to require these clauses for organizations occupying or managing HRM owned facilities. While this practice provides a higher level of protection for HRM, there are some unique factors in this situation which provide rationale for proceeding with an agreement without an indemnification clause. These include:

1. The agreement is intended to be interim only and is therefore of a short term (two years with an option for one year extension).
2. The interim agreement will provide for information needed to complete additional work on the relationship and management of the HMC. Several aspects of operational oversight will be included in that work and exploration of appropriate indemnification can be completed as part of that work.
3. HRM has the option to add TCL as a Third Party to any claim arising from HMC where HRM is named as a defendant, though this would incur costs on the part of HRM, not all of which would be recoverable.
4. Historically, the HMC receives few claims and legal actions.
5. Provincial Cabinet approval can be a lengthy and involved process which would result in further delay in the formalizing of an agreement for the management of the HMC.

TCL's Board has supported approval of the attached interim management agreement which does not include an indemnification clause. While inclusion of an indemnification clause would be ideal, further delay of an agreement for the operation of HMC is not recommended as it will continue to impact HRM's ability to complete work on the Auditor General's recommendations. Therefore, since the agreement will provide for standard insurance clauses and some of the risks associated with the lack of indemnification clause are mitigated by the items listed above, it is recommended that the draft interim agreement as attached be implemented.

FINANCIAL IMPLICATIONS

There are no financial implications to this report. HMC's budget will be presented to Regional Council as part of the annual budget process and financial reporting for HMC will be included in HRM's annual financial reporting.

COMMUNITY ENGAGEMENT

Not applicable.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

Alternative 1: Audit and Finance Standing Committee may choose to recommend that Regional Council not authorize the Mayor and Municipal Clerk to execute the interim management agreement. This is not recommended as the interim agreement is intended to update and formalize the agreement for the management of the Halifax Metro Centre to address several Auditor General recommendations while further work as outlined by the Auditor General is completed.

Alternative 2: Audit and Finance Standing Committee may choose to recommend that Regional Council revise the interim management agreement to include an indemnification clause. This is not recommended as it will further delay the completion of an agreement for the operation of the HMC and continue to leave HRM exposed to risks associated with the 1982 agreement as outlined by the Auditor General.

ATTACHMENTS

Attachment 1: Interim Management Agreement

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: Denise Schofield, Manager, Regional Recreation & Culture, 490-6252

Original Signed

Report Approved by: Martin Ward, A/Director, Legal, Insurance & Risk Management Services, 490-4226

Original Signed

Financial Approval by: Greg Keefe, Director of Finance & Information Technology, 490-6308

Attachment 1

INTERIM AGREEMENT

Between:

Halifax Regional Municipality

and

Trade Centre Limited



Halifax Regional Municipality
Regional Recreation and Culture
PO Box 1749
Halifax, Nova Scotia B3J 3A5

tel: 902.490.6252
fax: 902.490.5950
www.halifax.ca

This **Interim Agreement (“Agreement”)** made this day of , 2013

BETWEEN:

Halifax Regional Municipality

(hereinafter called “HRM”)
OF THE ONE PART

- and -

Trade Centre Limited

(hereinafter called “TCL”)
OF THE OTHER PART

WHEREAS HRM is the owner of the Halifax Metro Centre, located at 1800 Argyle Street, Halifax, Nova Scotia (the “Facility”);

AND WHEREAS the Facility is a premier venue for major entertainment and sporting events;

AND WHEREAS TCL is a Nova Scotia Provincial Crown Corporation that manages the World Trade & Convention Centre, Exhibition Park and the Facility;

AND WHEREAS by a tripartite agreement between HRM, TCL and the Province of Nova Scotia dated May 14, 1982 (the “1982 Agreement”), the parties to the 1982 Agreement agreed that the Facility would be managed and operated by TCL and that HRM would finance the operation of the Facility and accrue the profits therefrom;

AND WHEREAS HRM and TCL (collectively “the Parties”) wish to continue TCL’s role in the management and operation of the Facility;

AND WHEREAS the Parties wish to enter into this interim agreement to more clearly identify the existing roles and responsibilities of each relative to the management and operation of the Facility;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual conditions and covenants contained herein and the provision of other valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

Term

1. This Agreement shall come into effect when signed by the Parties hereto and will terminate two (2) years from the date of its execution, or on its earlier termination by either party pursuant to the terms of this Agreement. This Agreement may be renewed on the same terms for an additional one year term upon mutual agreement of the Parties. At the end of this renewal term, this Agreement will terminate.

Confirmation of TCL as Manager of the Facility

2. HRM hereby confirms TCL's appointment to manage, promote, develop, operate and administer the Facility as an independent contractor, on the terms and conditions set out in this Agreement and TCL hereby accepts such confirmation.

Duties and Responsibilities of HRM

3. The Manager of Regional Recreation and Culture, or his/her successor or designate, is designated by HRM to be the HRM Liaison for the purposes of this Agreement.
4. The HRM Liaison shall meet with the Director of Operations or his/her successor or designate, for the Facility at least once each quarter. The purpose of said meetings is to share information associated with the management of the Facility.
5. Any meeting requested by the HRM Liaison or the Director of Operations for the Facility shall occur within five (5) calendar days after notice is given, or at such other time as is mutually agreeable to the parties.
6. To assist TCL in fulfilling its mandate, the HRM Liaison shall:
 - a) Submit the Annual Budget and Business Plan received from TCL to Halifax Regional Council, within time frames consistent with HRM's annual budgeting process;
 - b) Review information as required by this Agreement as reported by TCL and follow-up with TCL as required;
 - c) Review and respond to issues identified by TCL or HRM relating to the management of the Facility or to this Agreement that may require approval by Halifax Regional Council; and
 - d) Notify TCL in writing at least 60 days before HRM adopts policies that will have an impact on the operation of the Facility.

Duties and Responsibilities of TCL

7. TCL shall manage, promote, develop, operate, maintain and improve the Facility in accordance with, and subject to the Agreement and the budget approved from time to time by TCL Board and Halifax Regional Council.
8. TCL shall perform its duties and exercise the powers and authority set out in this Agreement in a timely, diligent, competent, professional and workmanlike manner and in accordance with any applicable directives, instructions, guidelines, policies and procedures provided to it by the HRM Liaison that are not inconsistent with the terms of this Agreement.
9. As manager of the Facility, TCL shall:
 - a) Submit and Annual Budget and Business Plan, approved by the Board of TCL, to HRM;
 - b) TCL shall provide the HRM Liaison with a Monthly Report as per sections 39-41. The monthly report corresponding to the quarter-end date shall be received one week prior to the quarterly meeting scheduled between TCL and HRM.
 - c) Ensure independent oversight of management of the Facility;
 - d) Notify the HRM Liaison if aspects of operations are expected to have an unforeseen material impact on financial performance;
 - e) Keep the HRM Liaison appraised of any issues or events which cause concern and of which HRM would reasonably expect to be notified (lawsuits, legal letters, injuries, system failures, etc.) in writing within 5 business days of TCL becoming aware of the incident.
10. TCL through its affiliate Ticket Atlantic is hereby authorized to act as the exclusive ticketing service provider for the Facility for the term of the Agreement. The Parties acknowledge that HRM is undertaking a review of the transfer of the Ticket Atlantic box office to TCL and the subsequent provision of a 40 cent per ticket commission fee from TCL to HRM. The Parties agree to maintain payment of this fee within the existing parameters. This ticketing service provider relationship, including the ticket commission fee rate, may be renegotiated subject to the results of HRM's review of the transfer of the Ticket Atlantic box office to TCL.

Authority as Agent

11. TCL is hereby authorized to act as agent for HRM solely for the purpose of carrying out the authority and responsibilities set forth in this Agreement, subject, however, to any limitations set forth in this Agreement or in any notice in writing at any time delivered to TCL by the HRM Liaison. HRM shall execute and provide to TCL any document or other

evidence which may be reasonably required by TCL to demonstrate to third parties the authority of TCL set out in this Agreement.

12. Subject to the provisions of this Agreement, HRM authorizes TCL to enter into such contracts and agreements as agent of HRM as may be necessary in the performance of the duties, responsibilities and obligations of TCL as described in this Agreement and, more particularly, HRM appoints TCL as its agent for the following purposes:
 - a) to rent out the Facility or parts thereof to user groups, in compliance with this Agreement
 - b) to charge and collect on behalf of HRM from users of the Facility, certain fees, rates, rents and other items of revenue, plus applicable taxes, including HST, relating to the operation and maintenance of the Facility, and to deposit immediately all amounts so collected into the operating account established pursuant to this Agreement;
 - c) to retain suppliers as independent contractors in furtherance of TCL's execution of its responsibilities under this Agreement, subject to the Annual Budget and Business Plan approved by TCL Board and HRM for the Facility, and the terms of this Agreement;
 - d) to enter into premium product, advertising, sponsorship and marketing contracts;
 - e) to enter into leases and other tenancy agreements, contracts, licenses or other arrangements in forms approved by HRM with tenants, occupants, licensees, concession grantees or other uses consistent with such a facility;
 - f) in the event of an emergency requiring immediate remedial action to be taken, and if TCL is unable to contact the HRM Liaison for instructions, TCL shall be authorized to act as agent for HRM for the purpose of taking any remedial action immediately necessary in the circumstances; and
 - g) as otherwise authorized from time to time by the HRM Liaison in writing.
13. Where TCL is expending funds in accordance with section 12 and the total value of the contract or agreement will exceed \$500,000, the expenditure must first be approved by Halifax Regional Council. TCL shall contact the HRM Liaison prior to entering into such an agreement, and the HRM Liaison will facilitate its consideration by Halifax Regional Council.

Limitation of Authority

14. Unless expressly authorized in this Agreement, or by prior written approval of HRM, TCL shall not have the authority to do any of the following:
 - a) obtain loans for HRM, whether secured or unsecured, or give or grant options, rights

of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facility or any portion thereof or any interest of HRM therein, or obtain replacements of any mortgage or mortgages;

- b) prepay in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated by the Annual Budget and Business Plan approved by HRM or in the ordinary course of operating the Facility;
- c) 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;
- d) cause HRM to enter into any contracts with respect to the Facility other than contracts in the ordinary course of managing the Facility which are in accordance with the provisions of this Agreement;
- e) sell, exchange or convey the Facility or any portion thereof;
- f) release, compromise, assign or transfer any claim, right or benefit of HRM, except in the ordinary course of managing the Facility pursuant to this Agreement;
- g) allow a default judgment to be entered against HRM;
- h) modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
- i) grant easements or other property rights in the Facility;
- j) lease, purchase or sell any real property, including the Facility or any part thereof, on behalf of HRM;
- k) undertake purchases where TCL has not complied with the Procurement practices set out in sections 21-23 hereof;
- l) utilize Facility funds for any purposes other than the operation of the Facility;
- m) permit or undertake cash advances from the Facility bank account; or
- n) utilize inter-corporate accounts for the operation of the Facility.

Contracts

15. TCL shall have the right, subject to the terms of this Agreement and to the limits of the Annual Budget and Business Plan approved by TCL Board and HRM pursuant to this Agreement, to contract on behalf of HRM for cleaning, maintenance, repairs, capital assets, security or any necessary service required for the proper operation of the Facility.

16. Contracts will be in place for all events hosted in the Facility and for all major tenants, and these contracts will be negotiated in a timely basis, including provisions that limit TCL and HRM's financial and other risks.
17. TCL shall provide HRM with copies of all contracts executed by TCL in its capacity as manager of the Facility upon request, and a list thereof to the HRM Liaison with each Monthly Report, except that TCL shall provide HRM the opportunity to view all contracts executed by TCL in its capacity as manager of the Facility for events hosted in the Facility upon request, and a list thereof to the HRM Liaison with each Monthly Report.
18. With respect to licensing, retail space leasing, and advertising and sponsorship contracts, TCL shall provide the following services:
 - a) provide tenant and user coordination services including the review of rental applications, offers to lease, and advertising and sponsorship contracts and consult with the HRM Liaison regarding the terms thereof;
 - b) prepare leases or user license agreements as applicable;
 - c) negotiate with tenants and/or users regarding any modification to the terms of such leases or user license agreements arrange for their execution; and
 - d) receive plans and specifications for any tenant changes, leasehold improvements, signage or other agreement and arrange for any approvals required in connection with them.
19. TCL shall work collaboratively with the HRM Liaison to develop HRM endorsed templates for leases, contracts, licenses and other arrangements.
20. All contracts for the Facility entered into subsequent to the execution of this Agreement shall:
 - a) be of a term that is subject to cancellation with not more than (12) months' notice, or such longer period as may be advised by the HRM Liaison;
 - b) if for an expenditure, be for an expenditure that is within the limits of the Annual Budget and Business Plan approved by the Municipality pursuant to this Agreement;
 - c) only be with groups and organizations that do not conflict with HRM's corporate policies; and
 - d) if resulting in an expenditure, not have a term in excess of one year or, if resulting in a revenue, not have a term in excess of five years, unless HRM, through the HRM Liaison, has provided prior written approval of such term.

Purchasing Policy

21. When making purchases of goods or services relating to operational requirements for the Facility, TCL shall utilize the process provided for in the TCL Procurement Policy, so that it is in compliance with the *Public Procurement Act*, S.N.S. 2011, c. 12, and following the principles and objectives of public procurement as described in the Province of Nova Scotia Sustainable Procurement Policy.
 - a) Where it is economically advantageous, TCL will endeavour to partner with HRM on the strategic procurement of common goods and services.
22. When making purchases with respect to capital items for the Facility, TCL shall utilize HRM's Procurement Office, which will apply the HRM Procurement Policy as set out in Administrative Order #35.
23. With respect to sponsorship and advertising within the Facility, TCL shall follow any applicable HRM policies approved by Regional Council.

Licenses and Permits

24. TCL shall obtain and renew as necessary all licenses, permits and approvals which may be required in connection with the operation and maintenance of the Facility. TCL shall at all times comply with the conditions of such licenses, permits and approvals and shall comply with and observe all laws, by-laws and regulations applicable to the Facility and the operation thereof.

Finance, Records and Information Services

Revenues & Expenses

25. All revenues generated, and operating expenses and capital expenses made, by TCL in their capacity as manager of the Facility and in accordance with this Agreement, are the property of HRM.
26. All revenues generated with respect to any activities associated with the operation or management of the Facility are the property of HRM, and TCL agrees that any revenues received or held by it shall be deemed to be received and held by TCL in trust for HRM.

Accounts

27. TCL shall maintain a bank account (the "Facility Operating Account"), which is separate from the accounts of TCL, at a chartered bank authorized by HRM and used exclusively for the purpose of conducting the Facility's operations.

28. The bank account signing officers shall only be those persons who are approved by the TCL Board. Two signatures will be required on each cheque or withdrawal from the account.
29. Any money deposited into, withdrawn or paid from the Facility bank account will be specifically related to the operations of the Facility.
30. Revenues shall be deposited to the Facility Operating Account and shall be used to pay operating and capital related expenses.
31. TCL shall maintain all of the books and records for the Facility on behalf of HRM in accordance with the practices and procedures established by PSAS. All such books and records shall be maintained by TCL at the Facility and be accessible to HRM upon request by the HRM Liaison.
32. Advance ticket sales related to Ticket Atlantic shall not be represented in the Facility accounting records.

Property of the Municipality

33. All equipment located in or purchased for the Facility at any time, and all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility shall be and remain the property of HRM and, upon termination of this Agreement, TCL shall return or turn over possession of the same to HRM.
34. HRM retains the right, through its designated agents or employees to be entitled with 24 hours' notice from the HRM Liaison to inspect or audit the books and records of TCL that relate to the Facility.

Management Fee

35. No management fee shall be paid by HRM to TCL for the activities carried out pursuant to this Agreement.

Collection of Fees

36. TCL shall collect the fees and charges (including all applicable taxes) for the use of the Facility and the services offered therein. All such fees and charges collected by TCL shall be deposited in the Facility Operating Account. HST and any other taxes collected in respect of the Facility's operations will be accounted for separate and apart from other fees and charges collected, and maintained in separate general ledger account. Any amounts payable will be forwarded on a monthly basis to HRM for remittance.

Operating Surplus, Deficit, and Subsidy

37. In accordance with Section 4 of the 1982 Agreement, all profits (revenues less operating and capital expenditures) from the Facility shall accrue to HRM.
38. If, in any fiscal year, a deficit is realized from the operating budget, TCL shall prepare and submit a written report (the Deficit Report) at the time it submits its annual reports to HRM for the fiscal year-end, outlining the magnitude of the deficit, the reasons, and the recommendation for dealing with it in the coming year.

Monthly Reports

39. TCL shall provide to the HRM Liaison, on a monthly basis, such information and supporting documentation as may be required for HRM to enable it to compute the amount of HST or other taxes collected by TCL on HRM's behalf during the preceding month.
40. TCL shall also provide to the HRM Liaison a Monthly Report, including the following components in relation to the Facility:

Financial & Management Reporting

- a) No later than 15 days after each month end:
 - i. Financial Reporting Templates as provided by the HRM Liaison, subject to change from time-to-time;
 - b) Within 30 days of each month end:
 - i. Comparison of budget to actual operating and capital costs and financial projections to year end;
 - ii. Cash flow projections for the remainder of the year;
 - iii. Reconciled bank balance account and transactions;
 - iv. Summary analysis of the profitability of Facility events;
 - v. Make-up of deferred liability accounts;
 - vi. The calculations supporting the commission by Ticket Atlantic;
 - vii. List of all contracts executed by TCL in its management of the Facility including the names of the parties, the general subject matter and the term; and
 - viii. List of upcoming contract negotiations.
41. TCL's first monthly report after the execution of this Agreement shall provide a list of all contracts currently in effect with respect to the Facility, including the names of the parties, the general subject matter, and the term. Copies of these contracts shall be available for review to the HRM Liaison upon request pursuant to Section 17.

Annual Reports

42. TCL shall provide a draft Annual Report on the Facility to the HRM Liaison no later than 45 days after year-end, and a final Annual Report no later than 90 days after year-end, including the following components:
 - a) Financial Reporting
 - i. Audited Financial Statements
 - ii. Banking resolutions
 - b) Management Reporting
 - i. Facility's detailed Operations Budget reporting outlining any significant variances or concerns;
 - ii. Discussion and analysis of fiscal year-end results highlighting significant variances compared to the budget and latest monthly forecast and, if applicable, a report explaining any deficit realized; and
 - iii. Other reports as HRM may reasonably require.
 - c) Facility Condition Assessment
Condition meetings between TCL and the HRM Liaison will occur to review results of regular inspections of the entire Facility conducted by TCL for the purpose of determining repairs, maintenance or renovations that may be required to maintain the asset condition through adherence to the asset maintenance schedule and inspection reports.

Annual Budget and Business Plan

43. TCL shall prepare and furnish to the HRM Liaison a Facility Annual Budget and Business Plan by February 28th each fiscal year (which date is subject to change by the HRM Liaison in the event of a change to the HRM budget and business planning process).
44. The Business Plan shall include the following components: i) Vision and Mission Statements, ii) Strategic Priorities, iii) Goals, iv) Annual Budget, v) Performance Measures, and vi) Risk Analysis. This plan is to be submitted as per timelines set out in this Agreement or determined by the HRM Liaison.
45. The Annual Budget will include: 1) an operating component consisting of operating expenses and anticipated revenues, 2) a detailed schedule of the allocation of shared services, and 3) a project component consisting of project costs (which includes capital expenditures).
46. TCL and HRM staff shall jointly review the Budget to agree upon the priorities for operations and discuss potential alternatives available with respect to capital projects and ensure alignment with the Municipality's priorities. Final Budget will subsequently be included with HRM's annual budget for approval by Regional Council.

47. Where TCL proposes changes to the Facility's operation outside of the approved Annual Budget and Business Planning process, a business plan to support the proposed operational change shall be provided to the HRM Liaison, and may require approval by Regional Council.

Long Term Plan

48. TCL shall, as part of the Municipality's Budget Process, provide to HRM Liaison, a 5 year plan for financing service level improvements and alterations to the Facility as a planning guide for future required improvements or alterations to the Facility. This will be updated annually.

Insurance and Indemnification

49. HRM shall provide property and liability insurance coverage for the Facility.
50. TCL shall obtain and keep in effect such insurance policies TCL deems reasonable and prudent for its operation and management of the Facility. Such insurance will include a Commercial General Liability policy with limits of not less than Five Million Dollars (\$5,000,000) with liquor liability not excluded and with Halifax Regional Municipality named as Additional Named Insured.
51. TCL shall notify HRM in writing as soon as possible after it becomes aware of any injury occurring in, on or about Facility, which could reasonably be expected to result in a claim being made against HRM and/or TCL which involves the Facility.
52. TCL and HRM shall fully cooperate with each other in the defense of any claim, or legal proceeding where a claim is made against either of them relating to the Facility.
53. Any third party contracts awarded by TCL in accordance with this Agreement shall require contractors to provide TCL with a Certificate of Insurance evidencing a Commercial General Liability policy with limits of not less than Two Million Dollars (\$2,000,000.00) or, for those situations involving a higher risk (including, but not limited to, those involving welding, boiler and machinery, chemical, pyro techniques, or sale of alcohol) not less than Five Million Dollars (\$5,000,000.00), with HRM named as Additional Named Insured on the policy. Third party contractors will also provide evidence of WCB coverage for their employees. It will be the responsibility of the contractor to obtain same from any sub-contractors they may employ.

Employees

54. All personnel employed by TCL in the management, administration and operations of the Facility, continue to be selected for employment by, and will be employees of, TCL, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. TCL shall be solely responsible for the hire, dismissal, control, direction, supervision, instruction, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of TCL and shall be paid directly by TCL.
55. TCL shall continue to be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory payroll deductions and remittance to appropriate taxing authorities. TCL shall ensure that fidelity bonds, criminal records checks and sex-abuse registry records have been obtained and are in place in respect of all employees of the Facility where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations. TCL will take all measures required in compliance with the Occupational Health and Safety Act to ensure the safety of employees and onsite contract workers.

Termination

56. This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever on twelve (12) months written notice to the other party.
57. This Agreement may be terminated in writing by either party for a material breach of any of its terms, provided that the party that is in material breach is given written notice of the breach and does not cure the breach within four (4) months of being provided with such notice.
58. Where this Agreement is terminated in accordance with the terms herein, TCL shall on the effective date of termination:
 - a) vacate and surrender the Facility to HRM and no longer provide management services as contemplated under this Agreement;
 - b) no longer hold itself out to be the agent of HRM in respect of the Facility;
 - c) provide HRM with an updated list of the names and addresses of all tenants and current user groups of the Facility, as well as all suppliers;
 - d) provide to HRM a detailed list of all entities to which TCL held itself out as an agent of HRM in respect of the Facility;

- e) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility, and assign, transfer and deliver to HRM TCL's right, title, interest in and possession of same;
 - f) deliver to HRM all of TCL's books and records respecting the Facility;
 - g) take any other action that HRM, acting reasonably, shall request in writing.
59. Termination of this Agreement does not release either of the Parties from any obligations which accrued while the Agreement was in force.

General

60. This Agreement is governed by the laws of the Province of Nova Scotia.
61. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant in this Agreement and any such invalid provision or covenant shall be deemed to be severable.
62. Each covenant contained in this Agreement is a separate and independent covenant and a breach of covenant by any party will not relieve the other party from its obligation to perform each of its covenants, except as otherwise expressly provided in this Agreement.
63. No supplement, modification, amendment, waiver or termination of this Agreement shall be binding unless mutually agreed to in writing by the parties.
64. With respect to maintaining confidential information:
- a) Each of the Parties acknowledge that in respect of the management of the Facility and/or during the Term, each may come into contact with confidential information pertaining to the business or operations of the other that is unrelated to the covenants and obligations of that Party hereunder (collectively, "Confidential Information"). Each of the Parties agrees to maintain the strict confidentiality of such Confidential Information of the other party and shall not use any Confidential Information for purposes other than performing its obligations pursuant to this Agreement. Without limiting the generality of the foregoing, each Party shall make reasonable efforts to (i) not disclose the Confidential Information or permit the same to be disclosed, (ii) to ensure that its employees or agents that are exposed to such Confidential Information maintain the confidentiality of such information, and (iii) to protect the Confidential Information in a manner consistent with the standard of care such party uses with respect to its own Confidential Information.
 - b) Notwithstanding the foregoing, a Party may disclose the Confidential Information if required by any applicable law or any rule or regulation of any governmental entity or court having jurisdiction over that Party; provided, however, that the Party making

the disclosure shall promptly notify the other Party and only make the disclosure to the extent legally required based on the advice of legal counsel.

- c) Notwithstanding any provision contained herein, the Parties acknowledge that each is subject to freedom of information and protection of privacy legislation.
65. All notices, demands, requests, approvals or other communication of any kind which the parties may be required or may desire to serve on each other in connection with this Agreement shall be delivered by Registered Mail to:

Halifax Regional Municipality

Manager of Regional Recreation and Culture
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A3

Trade Centre Limited

President and Chief Executive Officer
Trade Centre Limited
PO Box 955
Halifax, NS B3J 2V9

66. This Agreement shall bind the parties, and their successors, heirs, executors and administrators.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have properly executed this Indenture, to come into force and effect on the date first above written.

Trade Centre Limited

Witness

Scott Ferguson, President & CEO

Witness

Halifax Regional Municipality

Witness

Mike Savage, Mayor

Witness

Cathy Mellett, Municipal Clerk