



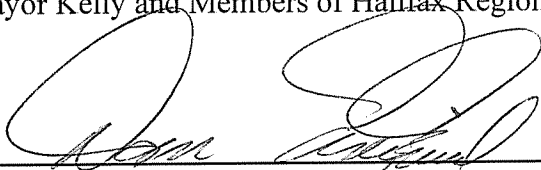
PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 11.1.11

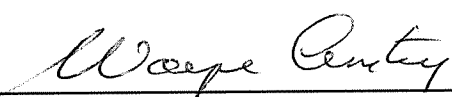
Halifax Regional Council
April 7, 2009

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: March 3, 2009

SUBJECT: **Proposed Funding Agreement for the Halifax Seaport Farmers' Market**

ORIGIN

1. **August 12, 2008**, Regional Council approves *HRM Community Facility Partnership Fund* policies and procedures;
2. **August 12, 2008**, Regional Council authorizes a one million dollar (\$1,000,000) grant in fiscal year 2008/09, to the Halifax Port Authority, or its designate, for leasehold improvements associated with the Seawall Farmers' Market project, pending a detailed review of the terms and conditions of funding.

RECOMMENDATION

It is recommended that Regional Council approve the draft funding agreement (Attachment 1) between HRM and the Nova Scotia Farmers' Market Development Cooperative and the City Market of Halifax Cooperative Limited to facilitate the disbursement of the \$1,000,000 grant for purposes of leasehold improvements associated with the Halifax Seaport Farmers' Market project.

BACKGROUND

Over the past several years, major capital grants have been requested by Pier 21 Society, NSCAD, Halifax Farmer Market Cooperative, St. Mary's University, Soccer Nova Scotia, and the Lake District Recreation Association. Typically, such requests exceed the financial capacity or program objectives of existing municipal grants programs and some do not fall within HRM's direct service mandate as defined under the Municipal Government Act (1998). Generally, it is acknowledged that such projects can provide broad community benefit and that there may be merit in providing some form of municipal assistance.

In August 2008, Council demonstrated support for such large-scale capital requests by establishing a new HRM Community Facility Partnership Fund valued at \$1,000,000. The aim of the program is to enhance HRM's social and economic sustainability through the development or strengthening of formal partnerships in collaborative, innovative capital initiatives. The program targets investment in social and cultural infrastructure that indirectly supports economic development through the creation of "quality of place" (ie. enhances the region's ability to attract and retain new enterprise). The program encourages projects that maximize the potential to leverage HRM funding and strengthen partnerships with community, business, and government interests. Some, not all project, actually generate revenues for the municipality.

The first project to be awarded funding is the new Halifax Seawall Farmers' Market venture to be used for leasehold improvements. Since the Farmers' Market is a commercial entity, the Municipality was unable to provide a grant directly to them. The Port Authority is going to be the Farmers' Market's landlord, therefore it was decided to provide the grant to the Farmers' Market through the Port Authority for the various lease-hold improvements that will be made.

DISCUSSION

Subsequent to Council's motion to issue the grant to the Port Authority, the commercial entity known as the City Market of Halifax has established a non-profit entity known as the Nova Scotia Farmers' Market Cooperative. It is simpler and more reflective of Council's intent to provide the grant to this organization rather than the Port Authority. It should be noted that the Federal government's ACOA grant also required that a non-profit entity be in place to receive their funding.

It is for these reasons that staff recommends Council approve the attached Funding Agreement (Attachment 1) which identifies the NS Farmers' Market Development Cooperative as the recipient of the financial award. The Agreement also includes the City Market of Halifax Cooperative Limited as a third party to the Agreement.

a) Funding Agreement Conditions:

It is essential that HRM show due diligence and provides the necessary conditions around the award of the grant to the NS Farmers' Market Development Cooperative. Specifically, HRM must ensure that risk is minimal, that there is full accountability and that the funds provided are directed to

aspects of the project that are appropriate to public expenditures. The following highlights some key conditions as set out in the Financial Agreement to address these concerns:

- a. The payment schedule and process to a reimbursement approach whereby an initial payment of \$300,000 is made upon proof of construction readiness, with two subsequent payments of \$350,000 each upon proof that 50% of the construction is complete, and upon proof that the balance of the project is complete.
- b. NSFMDCC will be required to provide audited financial statements
- c. NSFMDCC will act as Project Manager and provide HRM with indemnification
- d. NSFMDCC shall be ineligible for further HRM funding or tax concessions on the basis that the organization serves primarily business and private interests. The draft Funding Agreement includes a schedule waiving the Nova Scotia Farmers Market Development Cooperative, or any sub-lease executed by same, for consideration of any full or partial exemption from real property tax or any other municipal fee or levy (eg. local improvement charge, capital cost recovery charge, business improvement district levy, fire protection etc) within a period of 20 years.
- e. NSFMDCC shall provide detailed, long term, operating plan, as a condition of funding.
- f. The draft *Funding Agreement* includes a schedule waiving the Nova Scotia Farmers Market Development Cooperative from any form of municipal grant, donation or incentive.
- g. The draft *Funding Agreement* includes requirement for retention of professional project manager for duration of project

Conclusion

Should Council agree to pursue a funding agreement with the Nova Scotia Farmers Market Development Cooperative the new project can proceed, while the for-profit entity, the City Market of Halifax Cooperative Limited, pursues further private investment through a shareholder program (a second phase is in progress). It should be noted that the Nova Scotia Farmers Market Development Cooperative has also obtained funding in support for the Halifax Seawall Farmers' Market venture from ACOA, the Province of Nova Scotia, and The Halifax Port Authority.

BUDGET IMPLICATIONS

The proposed Funding Agreement is the formal mechanism to implement Council's motion to disburse one million dollars (\$1,000,000) in support of the Halifax Farmers' Market venture. If Council chooses to accept the recommended Funding Agreement, the one million dollar (\$1,000,000) award would be expended from Account#CBX01147- Capital Grants, Community Owned Facilities.

Budget Summary:

Capital Account CBX01147 - Capital Grants, Community Owned Facilities

Cumulative Unspent Budget	\$1,000,000
Grant to Farmers Market	<u>\$1,000,000</u>
Balance	\$ 0


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

1. Approve the draft funding agreement with amendments (Attachment 1) between HRM and the Nova Scotia Farmers Market Development Cooperative and the City Market of Halifax Cooperative Limited to facilitate the disbursement of the \$1,000,000 grant for purposes of leasehold improvements associated with the Halifax Seawall Farmers' Market project.
2. Not approve the draft funding agreement (Attachment 1) between HRM and the Nova Scotia Farmers Market Development Cooperative and the City Market of Halifax Cooperative Limited to facilitate the disbursement of the \$1,000,000 grant for purposes of leasehold improvements associated with the Halifax Seawall Farmers' Market project. This is not recommended.

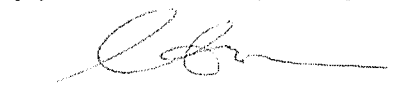
ATTACHMENTS

Attachment 1: Draft Funding Agreement 

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: Andrew Whittemore, Manager, Community Relations & Cultural Affairs 490-1585

Report Approved by: 
Paul Dunphy, Director, Community Development

Financial Approval by: 
Catherine Sanderson, Senior Manager, Financial Services, 490-1562

**Attachment 1
FARMERS' MARKET
FUNDING AGREEMENT**

THIS AGREEMENT made the day of March, 2009

BETWEEN:

Halifax Regional Municipality ("HRM"), a statutory body corporate duly incorporated under the laws of the Province of Nova Scotia,

of the first part

AND:

Nova Scotia Farmers' Market Development Cooperative ("NS Farmers' Market Development Cooperative"), a co-op association under the laws of Nova Scotia with a registered office at 2538 Agricola Street, Halifax, Nova Scotia

of the second part

AND:

City Market of Halifax Cooperative Limited, a co-op association under the laws of Nova Scotia with a registered office at 1496 Lower Water Street, Halifax, Nova Scotia

of the third part

WHEREAS HRM has created the *HRM Community Facility Partnership Fund* ("Facility Partnership Fund") in order to facilitate with large scale capital requests from local groups, public institutions, and businesses that are undertaking community infrastructure projects;

AND WHEREAS Halifax Regional Council on August 12, 2008 approved a grant to Port Authority or its designate, the NS Farmers' Market Development Cooperative from the Facility Partnership Fund to aid in the construction of the Halifax Seaport Farmers' Market located on Port Authority grounds at Pier 20;

AND WHEREAS the Federal Government is the owner of the lands on which the Halifax Seaport Farmers' Market will be built, and the Port Authority has been granted powers of control and management of those lands in the *Canada Marine Act* R.S. 1998, c. 10 and its Letters Patent published in the Canada Gazette February 27, 1998.

AND WHEREAS the Port Authority has leased the lands on which the Halifax Seaport Farmers' Market will be built to the NS Farmers' Market Development Cooperative;

THEREFORE the parties hereto covenant and agree as follows:

Definitions

"Halifax Seaport Farmers' Market" means the Halifax Seaport Farmers' Market planned to be built at Pier 20 on the property of the Port Authority.

"Agreement" means this funding agreement, including all schedules to this agreement, as may be amended from time to time.

"Funding" means the moneys to be made available by HRM to the NS Farmers' Market Development Cooperative, in the amount of \$1,000,000.00.

Purpose

1. The Facility Partnership Fund is designed to enhance HRM's social and economic sustainability by investing in social and cultural infrastructure that will support economic development in HRM. Development of the Halifax Seaport Farmers' Market is deemed to meet the goals set out within the Facility Partnership Fund as it will strengthen partnerships within the community, as well as between business and government while fostering innovation and facilitating the development of community infrastructure that will have a long term public benefit throughout all of HRM.

Principles

2. The funding provided by HRM is to be used solely for the construction of the Halifax Seaport Farmers' Market. In return the NS Farmers' Market Development Cooperative shall provide recognition commensurate with the level of investment, as specifically outlined in "Schedule B Communications Protocol."
3. The funding provided for in this Agreement shall be paid by HRM to the NS Farmers' Market Development Cooperative.
4. HRM is not and shall not be a guarantor of the NS Farmers' Market Development Cooperative or the City Market of Halifax Cooperative Limited, nor shall there be any contingent or direct liability either implied or express.

5. Nothing in this Agreement will be deemed to create a partnership, agency or joint venture relationship between the parties hereto.

Funding and Reporting

6. Subject to the conditions set out in this Agreement, HRM agrees to provide \$1,000,000.00 to the NS Farmers' Market Development Cooperative for the development of the Halifax Seaport Farmers' Market.
7. The NS Farmers' Market Development Cooperative shall provide a detailed operating plan for the first five (5) years that the Halifax Seaport Farmers' Market is in operation.
8. Payment by HRM to the NS Farmers' Market Development Cooperative shall be contingent upon the following conditions:
 - a. The NS Farmers' Market Development will have received money for the construction of the Halifax Seaport Farmers' Market, from the Federal Government and the Government of the Province of Nova Scotia.
9. The payments by HRM, totaling \$1,000,000.00, shall represent the complete financial commitment for HRM. There shall be no supplemental or incremental funds available to the NS Farmers' Market Development Cooperative from HRM. Moreover, HRM shall not be liable for any losses incurred by the NS Farmers' Market Development Cooperative or the City Market of Halifax Cooperative Limited.
10. HRM agrees to remit to the NS Farmers' Market Development Cooperative three (3) payments totaling \$1,000,000:
 - a. The first payment shall be made in the amount of \$300,000.00 upon proof being provided to HRM by the NS Farmers' Market Development Cooperative of a fully executed construction contract.
 - b. The second payment shall be made on proof that 50% of the construction of the Halifax Seaport Farmers' Market has been completed, in the amount of \$350,000.00. Proof must be in the form of a Certificate of Completion delivered to HRM by the architect in charge of the project.
 - c. The third payment shall be made on proof that 100% of the construction of the Halifax Seaport Farmers' Market has been completed, in the amount of \$350,000.00. Proof must be in the form of a Certificate of Completion delivered to HRM by the architect in charge of the project.

- d. Upon completion of the Halifax Seaport Farmers' Market, the NS Farmers' Market Development Cooperative shall deliver a final report to HRM within three (3) months of the completion of the project.
- e. The report provided to HRM shall include a description of all work done, a financial statement for the period covered by the reports, and describe all aspects of the work as they meet the desired criteria and outcome measures outlined in "Schedule A: Project Specific Outcomes."

Right of Audit

- 11. HRM may audit and inspect accounts, records, receipts, invoices, vouchers, and other documents relating to the funding provided for the Halifax Seaport Farmers' Market. The audit and inspection rights include, but are not limited to:
 - a. The NS Farmers' Market Development Cooperative shall preserve all accounts, records, receipts, vouchers and all other documents, as outlined above, for a period of three years from the date of the final report made to HRM by the NS Farmers' Market Development Cooperative of the money provided by HRM for the Halifax Seaport Farmers' Market.
 - b. Access to the accounts, records, receipts, invoices, vouchers and all other documents relating to the purchase of supplies for, and the construction of the Halifax Seaport Farmers' Market. HRM will have the right to make copies of any or all of this material and to take extracts therefrom.

Indemnification

- 12. The NS Farmers' Market Development Cooperative, both during and following the expiry or termination of this Agreement, indemnify and save HRM, its employees and agents, harmless from and against all claims, losses, damages, costs, expenses and other actions made, sustained, brought, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury or death of a person, or loss or damage to property caused or alleged to be caused by any wilful or negligent act, omission or delay on the part of the NS Farmers' Market Development Cooperative, their officers, directors, employees, contractors, or agents in connection with anything purported to be or required to be provided by or done by the NS Farmers' Market Development Cooperative pursuant to this Agreement. This provision shall survive the termination of this Agreement.
- 13. If a Force Majeure Event occurs which prevents the NS Farmers' Market Development Cooperative from completing the Halifax Seaport Farmers' Market the NS Farmers' Market Development Cooperative will return any unused moneys provided by HRM without any further liability or obligation. For purposes of this clause, a Force Majeure Event means any

cause not entirely within the control of the NS Farmers' Market Development Cooperative and which it could not by exercise of reasonable diligence have avoided as the result of fire or other act of God, riot, labour strike, national or local emergency.

14. In the event of bankruptcy or insolvency on the part of the NS Farmers' Market Development Cooperative prior to completion of the Halifax Seaport Farmers' Market, HRM shall not be required to complete payment under the terms of this Agreement.

NS Farmers' Market Development Cooperative Covenants

15. The NS Farmers' Market Development Cooperative shall retain for the duration of the construction phase, a professional architect to manage the project.
16. The NS Farmers' Market Development Cooperative and the City Market of Halifax Cooperative Limited covenant that they shall not now, or any time in the 20 years from the date of this Agreement, apply for consideration for any full or partial exemption from real property tax or any other municipal fee or levy.
17. The NS Farmers' Market Development Cooperative recognizes that the funding provided by this Agreement is the only funding it shall receive from HRM. It waives all right to apply for and receive any form of municipal grant, donation or incentive.

Governing Law

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

Assignment

19. The NS Farmers' Market Development Cooperative and the City Market of Halifax Cooperative Limited shall not assign this Agreement or any portion of it, or allow its obligations under this Agreement to be performed by any person without the prior written consent of HRM, which consent may be withheld in HRM's sole discretion. Further, any sale, change of control or change of status at the Registry of Joint Stocks of the NS Farmers' Market Development Cooperative or the City Market of Halifax Cooperative Limited shall be deemed to be an assignment under this Agreement.

Notice

20. Any notice, demand, request herein provided or permitted to be given by either party hereto to the other shall be in writing and may be served by personal service, or facsimile, addressed as follows:

1. To NS Farmers' Market Development Cooperative at:
2538 Agricola Street
Halifax, NS B3K 4B6
Phone: (902) 425-9776
Fax: (902) 425-0632
Attention: Don Black

2. To City Market of Halifax Cooperative Limited
1496 Lower Water Street
Halifax, NS B3J 3R5
Phone: 429-6256
Fax: 492-4043
Attention: Fred Kilcup

3. To HRM
P.O. Box 1749
Halifax, Nova Scotia, B3J 3A5
Phone: (902) 490-4426
Fax (902) 490-4044
Attention: Dan English, Chief Administrative Officer

Amendments

21. This agreement may only be amended by all parties in writing.

Severability

22. If any term of this Agreement is held to be unenforceable by a court, that term will be severed from this Agreement and the rest of this Agreement will remain in force unaffected by the severance of that term.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be properly executed on the date hereinbefore set forth

SIGNED, SEALED AND DELIVERED
In the presence of:

HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

Municipal Clerk

NOVA SCOTIA FARMERS' MARKET DEVELOPMENT COOPERATIVE

Nova Scotia Farmers' Market
Development Cooperative

CITY MARKET OF HALIFAX COOPERATIVE LIMITED

City Market of Halifax Cooperative Limited

SCHEDULE "A"

PROJECT SPECIFIC OUTCOMES

1. Criteria: Demonstrate consistency with the guiding principles of the Community Facility Partnership Fund by constructing an iconic, environmentally sustainable building on the Halifax waterfront which is accessible to a diverse community of interests and provides a venue that is conducive for the development of local enterprises.

Outcome measures: LEED certified construction, leverage public investment to develop a \$9.75 Million Halifax Seaport Farmers' Market at Pier 20.

2. Criteria: Support implementation of HRM's Economic Strategy by providing opportunities for immigrant entrepreneurs, small business owners, local artisans and rural producers to sell their products to a larger urban market and to promote awareness of the benefits of "buying local"¹.

Outcome measures: Percentage increase in a) the number of immigrant vendors; b) total number of local vendors; and c) estimated volume of sales in locally produced food and products.

3. Criteria: Support implementation of HRM's Regional Plan by furthering objectives related to urban design (HRM by Design); encouraging investment in the urban core; and increased livability.

Outcome measures: a) Value of construction; b) compliance with HRM Urban Design Guidelines; c) Percentage increase in commercial assessment; promote increased use of public transit by Seaport Market customers.

4. Criteria: Enhance HRM's brand recognition and reputation locally and internationally by developing a landmark, iconic building at a key entry point in the Halifax Gateway.

Outcome measures: a) Increased tourism revenues from Cruise ship passengers and other visitors interested in visiting the Seaport Farmers' Market; b) recognition and promotion of the Seaport Farmers' Market by tourism and destination marketing as a "must-see" venue in Halifax; c) enhanced international profile in external markets of the Seaport Market as a "next generation" farmers market that integrates key elements of economic, community and environmental sustainability.

¹Within the context of this agreement the term 'local' shall mean: produced within the geographic boundary of Halifax Regional Municipality.

SCHEDULE "B"

COMMUNICATIONS PROTOCOL

Halifax Regional Municipality and the NS Farmers' Market Development Cooperative have agreed that the public has a right to transparency and public accountability, which is best served by full information about the benefits of this new deal for the municipality and its communities.

This communications protocol establishes the principles and practices that will guide all announcements and events related to this agreement, funding to parties in the agreement and the agreement itself. Communications activities may include, without limitation, major public events or announcements, or communications products such as speeches, press releases, websites, advertising, promotional material or signage.

Halifax Regional Municipality and the NS Farmers' Market Development Cooperative have agreed that:

1. A public event will mark the signing of the agreement. This event will be developed by communications officials from Halifax Regional Municipality and the NS Farmers' Market Development Cooperative, and will provide for other government involvement and media participation.
2. In addition to joint communications activities, Halifax Regional Municipality and the NS Farmers' Market Development Cooperative may include messaging in their own communications products and activities, around their commitment to the funding contribution and other initiatives and investments in the municipality and other communities.

Halifax Regional Municipality agreed that:

1. It will make periodic announcements, through public events, press releases and/or other mechanisms, regarding the transfer of funds to the Halifax Port Authority and the NS Farmers' Market Development Cooperative for allocation to the new Halifax Seaport Farmers' Market.
2. It will make regular announcements, on the status of the project and the benefits it will provide to the community. Key milestones may be marked by public events, press releases and/or other mechanisms.
3. It will report regularly to the public on outcomes of the investments entered into under this agreement.

The NS Farmers' Market Development Cooperative agreed that:

1. All communications referring to the projects supported under this agreement will clearly acknowledge the contributions made by the Halifax Regional Municipality.
2. All communications materials referring to the contributions made by the Halifax Regional Municipality as part of this funding agreement will be accompanied by the use of the Halifax Regional Municipality logo.
3. It will ensure permanent signage at the location of the project receiving funds under this funding agreement, prominently identify the Halifax Regional Municipality and include its corporate logo. Where there is no fixed location for signage, a prominent marker will recognize the Halifax Regional Municipality's contribution. All signage/plaques will be located in such a way as to be clearly visible to users, visitors and/or passersby.

General

1. The timing of public events shall be sufficient to allow for all involved parties and stakeholders to plan their involvement. Each party shall provide a minimum of 7 days notice of an event or announcement.
2. The parties to the agreement will each receive appropriate recognition in joint communications materials.
3. Joint communications material and signage will reflect Halifax Regional Municipality communications policy, including municipal graphics guidelines.