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Item No. 10.1.4
Halifax Regional Council
April 6, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
Wayne Anstey, Acting Chief Administrative Officer

DATE: March 4, 2010

SUBJECT: Proposed Funding Agreement for the Citadel Theatre, Halifax

ORIGIN

On February 9, 2010, Regional Council authorized a \$500,000 capital grant in fiscal year 2009/10 to the Citadel Theatre Society to fit-up the Citadel High auditorium for the purpose of a community theatre.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the draft funding agreement (Attachment 1) between HRM, the Halifax Regional School Board, and the Citadel Theatre Society to facilitate disbursement of the \$500,000 capital grant for the purpose of interior fit-up of the Citadel Theatre.

BACKGROUND

In August, 2008, Council demonstrated support for large-scale capital projects by establishing the *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 of formal partnerships in collaborative, innovative capital initiatives. The program targets investment in infrastructure that indirectly supports economic and cultural development through the creation of "quality of place" (ie. enhances the region's ability to attract and retain new enterprise or sectoral impacts). The program encourages projects that maximize the potential to leverage HRM funding and strengthen partnerships with community, business and government interests. Some, not all, projects actually generate revenue or provide alternate service delivery.

DISCUSSION

It is essential that HRM show due diligence and provides the necessary conditions to minimize risk and ensure full accountability for the expenditure of public funds. The following highlights some key conditions as set out in the proposed Funding Agreement (**Attachment 1**):

- a. The payment schedule and process whereby an initial payment of \$200,000 is made upon proof of construction readiness, with a final payment of \$300,000 upon proof that the interior fit-up is complete.
- b. The Citadel Theatre Society will be required to provide audited financial statements.
- c. The Halifax Regional School Board will act as Project Manager and provide HRM with indemnification.
- d. The Citadel Theatre Society shall be ineligible for further HRM capital funding under the *HRM Community Grants Program* for a period of ten (10) years. The term of exclusion is commensurate with the value of the capital grant (\$500,000) and recognizes that under the *HRM Community Grants Program* the maximum capital grant is >\$25,000. A grant of \$500,000 is the equivalent of receiving the maximum value of grant for 20 consecutive years.

As a provincially owned and operated public school, the Citadel High School is exempt real property taxes.

- e. The society and HRM agree to a cooperative communications protocol.
- f. The Minister of Education shall approve the agreement as per Section 133 of the Education Act.

This agreement is formative in that it is the first major grant to a school-based facility; as such the agreement must comply with Section 133 of the Education Act. Specifically, Clause (5) of the Act stipulates that any agreement with respect to a community facility shall:

- (a) describe the community facility and school property to which the agreement relates;
- (b) set out the capital cost of the community facility, expressed as either
 - (i) an amount of money, or
 - (ii) a proportion of the combined capital cost of the community facility and the school property to which the agreement relates;
- (c) set out the respective obligations of the parties to the agreement respecting the operation and maintenance of the community facility;
- (d) set out the respective rights of the parties to the agreement with respect to access to and use of the facility;
- and
- (e) include such provisions as are necessary or conducive to carrying out the intent and purpose of the agreement.

In accordance with the terms set out above, the facility is described in the preamble to the agreement and the capital cost expressed as an amount (\$3,200,000). With respect to Items (c) and (d) the agreement makes clear that HRM has no rights or responsibilities in the on-going operation or maintenance of the facility, nor preferential access to or use of the facility. The grant is strictly a capital grant with no explicit or implied obligation with respect to an operating subsidy. HRM is not a party to any Joint Use Agreement¹. Item (e) is addressed using a formal funding agreement, the purpose of which is to establish the mechanism through which funds are disbursed, the approved expenditures, financial reporting, indemnification, intended outcomes, and a communications protocol.

Should Council agree to pursue a funding agreement the community theatre project can proceed while the Citadel Theatre Society pursue further investment for the balance of \$3,200,000 in total funding.

¹ The Joint Use Agreement currently in effect with Citadel High School is simply to give each party the right of first refusal to bookings; in this case HRM owns a community centre on site and cooperate with the HRSB re: access to gymnasium space etc. Any extension of this agreement to include the auditorium/theatre would be independent of this funding agreement and at the discretion of HRM Community Recreation.

BUDGET IMPLICATIONS

The proposed funding agreement is the formal mechanism to implement Council's motion of Feb 9/10 to disburse five hundred thousand dollars (\$500,000) in support of the Citadel Theatre from Q138-HRM Community Facility Partnership Fund reserve. An initial payment of \$200,000 will be disbursed upon proof of construction readiness and the remaining \$300,000 will be paid upon proof that the interior fit-up is complete.

Budget Summary: Q138- HRM Community Facility Partnership Fund Reserve

Cumulative Unspent	\$1,000,000
Grant to Citadel Theatre Society	<u>(\$500,000)</u>
Balance available March 31, 2010	\$500,000

Under the Supplementary Funding Memorandum of Understanding between HRM and the Halifax Regional School Board, the later agreed not to "request or seek" funds beyond amounts provided through supplementary education funding. The HRSB is a party to the Citadel Theater Society Funding Agreement due to the legal requirements of the Education Act and not due to any change or interpretation of the Supplementary Education MOU.

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. Regional Council could approve the funding agreement between HRM, the Halifax Regional School Board, and the Citadel Theatre Society with amendments. Depending on the scope and/or impact of any amendments the agreement could proceed with the applicable changes, or return to Council for further consideration.


ATTACHMENTS

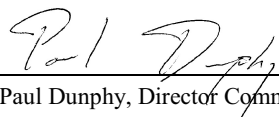
1. Draft Funding Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.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: Peta-Jane Temple, Team Lead Grants & Contributions, Community Development 490-5469.

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

Financial Approval by: 
Cathie O'Toole, CGA, Director of Finance, 490-6308

Report Approved by: 
Paul Dunphy, Director Community Development

Attachment 1

**CITADEL THEATRE SOCIETY
FUNDING AGREEMENT**

THIS AGREEMENT made the [] day of, [], 2010

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:

Citadel Theatre Society (“Citadel Theatre”), a non-profit society incorporated under the laws of Nova Scotia with a registered office at 1855 Trollope Street, Halifax, Nova Scotia, and a party to the Citadel Legacy Committee an unincorporated volunteer group formed for the purpose of fund-raising in support of the Citadel High School

of the second part

AND:

Halifax Regional School Board, a statutory body corporate duly incorporated under the laws of the Province of Nova Scotia

of the third part

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

AND WHEREAS Halifax Regional Council on February 9, 2010, approved a grant of \$500,000 to the Citadel Theatre Society from the Facility Partnership Fund to aid in completion of the interior fixtures and specialized operating equipment of the Citadel Theatre located at 1855 Trollope Street, Halifax, the total construction budget for which is estimated to be \$3,200,000

AND WHEREAS the Halifax Regional Municipality has no rights or responsibilities in the on-going operation or maintenance of the facility, nor preferential access to or use of the facility

AND WHEREAS the Nova Scotia Department of Education is the owner of the lands on which the Citadel Theatre has been built, and the Citadel Theatre Society has been granted specific powers of control and management of the Citadel Theatre in a Joint Use Agreement with the Halifax Regional School Board as attached in “Schedule C Joint Use Agreement”.

THEREFORE the parties hereto covenant and agree as follows:

Definitions

“Citadel Theatre” means the Citadel Theatre planned to be built at 1855 Trollope Street, Halifax, on the property of the Nova Scotia Department of Education.

“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 Citadel Theatre Society, in the amount of \$500,000.

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 Citadel Theatre is deemed to meet the goals set out within the Facility Partnership Fund as it will strengthen partnerships with the arts and cultural community, as well as between the Halifax Regional School Board and municipal government while facilitating the development of community infrastructure that will have a long-term public benefit.

Principles

2. The funding provided by HRM is to be used solely for the interior fit-up of the Citadel Theatre. In return the Citadel Theatre Society and Nova Scotia Department of Education through their agent the Halifax Regional School Board 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 Citadel Theatre Society.
4. HRM is not and shall not be a guarantor of the Citadel Theatre Society or the Citadel Theatre, 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 \$500,000 to the Citadel Theatre Society for the development of the Citadel Theatre.
7. The Citadel Theatre Society shall provide a detailed operating plan for the first five (5) years that the Citadel Theatre is in operation. Specifically, the plan shall include projected income and expenditures and a description of that portion of programming aimed at achieving the outcome measures outlined in Schedule A “Project Specific Outcomes.”
8. Payment by HRM to the Citadel Theatre Society shall be contingent upon the following conditions:
 - a. An itemized breakdown of incremental costs for specialized design, construction, and equipment enhancements directly related to the interior fit-up of the auditorium to serve the arts community. Such costs shall exclude any fund-raising commission or associated costs, administrative costs including contractual or permanent employees, or ancillary amenities located outside the auditorium.
9. The payments by HRM, totaling \$500,000 shall represent the complete financial commitment for HRM. There shall be no supplemental or incremental funds available to the Citadel Theatre Society from HRM. Moreover, HRM shall not be liable for any losses incurred by the Citadel Theatre Society, Halifax Regional School Board, or Nova Scotia Department of Education
10. HRM agrees to remit to the Citadel Theatre Society two (2) payments totaling \$500,000:
 - a. The first payment shall be made in the amount of \$200,000 upon proof being provided to HRM by the Citadel Theatre Society of a fully executed construction contract for the interior fit-up.

- b. The second payment in the amount of \$300,000 shall be made on proof that 100% of the interior fit-up of the Citadel Theatre has been completed. Proof must be in the form of a Certificate of Completion delivered to HRM by the architect in charge of the project.
- c. Upon completion of the Citadel Theatre, the Citadel Theatre Society shall deliver a final report to HRM within three (3) months of the completion of the project.
- d. The report provided to HRM shall include a description of all work done, a financial statement for the period covered by the reports, and a five-year business plan as described above in Item 7.

Right of Audit

- 11. HRM may audit and inspect accounts, records, receipts, invoices, vouchers, and other documents relating to the funding provided for the Citadel Theatre. The audit and inspection rights include, but are not limited to:
 - a. The Citadel Theatre Society 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 Citadel Theatre Society of the money provided by HRM for the Citadel Theatre.
 - b. Access to the accounts, records, receipts, invoices, vouchers and all other documents relating to the purchase of supplies for, and the construction/interior fit-up of the Citadel Theatre. HRM will have the right to make copies of any or all of this material and to take extracts therefrom.

Indemnification

- 12. The Citadel Theatre Society, 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 Citadel Theatre Society, their officers, directors, employees, contractors, or agents in connection with anything purported to be or required to be provided by or done by the Citadel Theatre Society pursuant to this Agreement. This provision shall survive the termination of this Agreement.
- 13. If a Force Majeure Event occurs which prevents the Citadel Theatre Society from completing the Citadel Theatre the Citadel Theatre Society 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 Citadel Theatre Society 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 Citadel Theatre Society prior to completion of the Citadel Theatre, HRM shall not be required to complete payment under the terms of this Agreement.

Citadel Theatre Society Covenants

15. The Citadel Theatre in collaboration with the Nova Scotia Department of Education shall retain for the duration of the construction phase, a professional architect to manage the project.
16. The Citadel Theatre Society covenant that they shall not now, or any time in the 10 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 Citadel Theatre Society recognizes that the funding provided by this Agreement is the only funding it shall receive from HRM for a period of 10 years. It waives all right to apply for and receive any form of municipal grant, donation or incentive. Specifically, no funds shall be granted under the *HRM Community Grants Program*, *HRM Trails Capital Grants*, *HRM Special Events Reserve*, or HRM Public Art Policy.

Governing Law

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

Assignment

19. The Citadel Theatre Society 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 at HRM's sole discretion. Further, any sale, change of control or change of status at the Registry of Joint Stocks of the Citadel Theatre Society 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 Citadel Theatre Society at:
1855 Trollope Street
Halifax, Nova Scotia, B3H 0A4
Phone: (902) 491-4444
Fax: (902) 491-1700
Attention: Justin McDonough

2. To Halifax Regional School Board at:
PO Box 578
2021 Brunswick Street
Halifax, Nova Scotia B3J 2S9
Phone: 464-2000
Fax: 464-5581
Attention: tba

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

CITADEL THEATRE SOCIETY

Citadel Theatre Society

HALIFAX REGIONAL SCHOOL BOARD

Halifax Regional School Board

APPROVED BY:

NOVA SCOTIA DEPARTMENT OF EDUCATION

Hon. Marilyn More, Minister of Education. Government of Nova Scotia

SCHEDULE "A"

PROJECT PRINCIPLES & OUTCOMES

PRINCIPLES

- a. Consistency with the guiding principles of HRM's Community Facility Partnership Fund (2009) by constructing an iconic, environmentally sustainable building which is accessible to a diverse community of interests and provides a venue that is conducive to the development of non-professional and professional arts.
- b. Consistency with the guiding principles of HRM's Community Engagement Strategy (2008) by engaging the public (the community), including culturally diverse communities and youth, and removing the barriers to accessibility, inclusion and participation, in the management, operation and programming of the theater.
- c. Consistency with the guiding principles of HRM's Cultural Plan (2006) by providing developmental opportunities (i.e.: education, training, internships, creation, artist residencies, rehearsal, etc.) and presenting opportunities (i.e.: performances, concerts, festival, cultural event, etc.) to arts and cultural groups, artists, creators (the arts community), and notably for youth and young adults, including non-professional and professional opportunities.

OUTCOMES

The Society shall, three (3) years after the completion of the facility, meet and report on the following objectives:

Environment

1. Confirm that the facility is certified of LEED construction.

Public Engagement

2. Leverage public investment in the range of \$3,200,000 to develop a community theater.
3. Describe any subsidized programming provided to the community (independent of the HRSB or the school system), and the impact for removing the barriers to accessibility and participation.
4. Describe the audience profile, including the per cent (%) of community-targeted programming, and within that, the per cent of programming targeting culturally diverse communities and youth.

5. Identify the per cent (%) of Citadel Theatre Society board members representing the community at large and the interests of the general public (independent of the HRSB or the school system).

Arts Community

6. Identify the per cent (%) of total use (rentals) by arts user groups and/or individuals (independent of the HRSB or the school system), and within that, the per cent of non-professional versus professional users.
7. Identify the per cent (%) of total use (rentals) by the Citadel High School, the HRSB or other educational institutions, with a detailed description of use (i.e.: instructional program, apprenticeship program, internship, conference, performance, etc.)
8. Identify the per cent (%) of Citadel Theatre Society board members representing the arts community.

SCHEDULE “B”

COMMUNICATIONS PROTOCOL

Halifax Regional Municipality and the Citadel Theatre Society 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 project.

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, web sites, advertising, promotional material or signage.

Halifax Regional Municipality and the Citadel Theatre Society 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 Citadel Theatre Society, and will provide for other government involvement and media participation.
2. In addition to joint communications activities, Halifax Regional Municipality and the Halifax Theatre Society 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 Citadel Theatre Society for allocation to the new Citadel Theatre.
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 Citadel Theatre Society 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.