


Item No. 11.1.9
Halifax Regional Council
August 6, 2013

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: June 30, 2013

SUBJECT: Facility Lease Agreement – East Dartmouth Community Centre

ORIGIN

Motion of Regional Council dated July 8, 2008 approving the draft Agreement attached to the staff report dated June 5, 2008 between Halifax Regional Municipality and a company to be incorporated by the Dartmouth East Boys and Girls Club providing for the subsidiary corporation to manage and operate the Facility on behalf of HRM upon facility opening in the fall of 2008.

Motion of Regional Council dated June 11, 2013 requesting a staff report outlining the transition from the current management agreement to a standard Facility Lease Agreement for the operation of the East Community Centre by The Boys & Girls Club of East Dartmouth and that the report be brought back to Council in a timely manner.

LEGISLATIVE AUTHORITY

Halifax Regional Municipal Charter including Section 79 (1) (k) (av) (v) and Section 63 (1) and (2).

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Mayor and the Municipal Clerk to enter into a Facility Lease Agreement (Attachment 1) with the Boys and Girls Club of East Dartmouth to lease and operate the East Dartmouth Community Centre as per the key terms and conditions set out in Table #1 in the discussion section of this report.

BACKGROUND

The East Dartmouth Community Centre is a 23,770 square foot recreation facility constructed under the coordination of the Dartmouth East Recreation Society. The need for the facility was determined in the 2004 Indoor Facility Master Plan and it was intended to serve as a new location for the Boys and Girls Club of East Dartmouth whose facility was demolished in 1999. The former Dartmouth East Recreation Society and the Boys and Girls Club of East Dartmouth were both instrumental in raising funds towards the completion of this facility. After construction of the facility, the Dartmouth East Recreation Society ceased to exist.

The facility opened to administration staff in November 2008 and facility wide programming began in February 2009. The Boys and Girls Club of East Dartmouth created a subsidiary corporation to carry out the management and operation of the facility. A management agreement was to be executed between the subsidiary corporation and Halifax Regional Municipality as per the Council motion of July 8, 2008.

The management agreement approved by Regional Council was for a two year term with a one year option and included an annual renewal clause. The management agreement was not executed between the parties due to legal concerns related to the establishment of the subsidiary corporation for the management and operation of the facility. However, transitional funding in the amount of \$50,000 was being provided to the group while negotiations on the agreement were ongoing. In addition, HRM has been providing snow removal and grass cutting services at the facility.

As a result of the challenges with the execution of the management agreement, Council directed (June 11, 2013) that staff transfer the facility to the Facility Lease Agreement (FLA) program. This approach is consistent with the Regional Council approved Community Facility Master Plan which identifies community based service delivery as the preferred management model for Category One Facilities (neighborhood community centres). The FLA has been used and approved by Regional Council in all of the recent agreements for this class of facility.

The FLA management model recognizes ongoing responsibility of the Municipality as the owner of the facility, but provides possession and occupation of the community facility to the community Board as a tenant, in consideration of the tenant ensuring the availability of the facility for public and community use. It is the intention of the FLA to provide an opportunity for community organizations to collaborate and deliver approved services through an alternative service delivery approach.

Intended Outcomes of the FLA model include:

- access, engage and mobilize community skill sets required for facility management and program delivery;
- build, strengthen and sustain community capacity of volunteer organizations offering community programming and facility management;
- maximize potential use of facilities managed and operated by community organizations;
- promote public use of HRM facilities;

- safeguard the HRM assets; and
- respond to local community recreation, social and cultural needs.

The *Halifax Regional Municipality Charter (Charter)* Section 63 (1) allows for a lease to a non-profit organization for less than market value, when it is carrying out activities beneficial to the municipality. In accordance with Section 63(2) of the *Charter*, approval of 2/3 majority of Regional Council is required to enter into the Facility Lease Agreement with the Boys and Girls of East Dartmouth.

DISCUSSION

The Boys and Girls Club of East Dartmouth (B&GED) had concerns regarding their inexperience in facility management. As a result, the B&GED caused a limited liability corporation (3233108 NS Ltd) to be created in order to manage and operate the East Dartmouth Community Centre. The corporation is a limited liability, corporate entity and was incorporated under the Companies Act, not the Societies Act, and the articles detailing the association permit the directors to declare dividends. The ability to disburse profits to shareholders is a fundamental requirement of for-profit enterprises. As it is incorporated, the corporation would fall into the category of a for-profit enterprise, regardless of whether profits or dividends are achieved. Since it is not legally defined as a non-profit organization, HRM cannot provide the numbered company with an operating subsidy (grant) regardless of the lease agreement or other arrangements. In addition, HRM cannot provide a less than market value lease to the for-profit numbered company as it would be a violation of the *HRM Charter* Section 63 (1).

In order to address this situation and provide for the operation of the facility by a community board, staff has met with the Board of Directors of the Boys and Girls Club of East Dartmouth to discuss options. An overview of the Facility Lease Agreement including program and reporting requirements was provided. On May 27, 2013, the Boys and Girls Club of East Dartmouth Board of Directors passed a resolution to enter into a Facility Lease Agreement with HRM to operate the East Dartmouth Community Centre.

The Boys and Girls Club of East Dartmouth has been a primary recreation service provider in the community and are well positioned to deliver programming as an alternative service delivery provider. As a result, it is recommended to enter into the FLA program with The Boys and Girls Club of East Dartmouth under the key terms and conditions of the lease as outlined in Table #1.

Table # 1

| | |
|-------------------|-------------------------------------------|
| Property Address | 50 Caledonia Road, Dartmouth, NS, B2X 1K8 |
| Landlord | Halifax Regional Municipality |
| Tenant | Boys and Girls Club of East Dartmouth |
| Commencement Date | August 1, 2013 |

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| Rent | \$0.00 |
| Terms & Renewal Term | 5 years (August 1, 2013-July 31, 2018) - reviewed annually by HRM 1 year renewal (conditional) |
| Specific Conditions | <p>* Services must provide a direct contribution resulting in a positive impact to and for HRM citizens. These services shall contain an inclusion policy.</p> <p>* The Boys and Girls Club of East Dartmouth will follow the guidelines of Public Use as set out in the FLA. “Public Use” is to ensure resources are utilized to the benefit of the general public. A facility meets the public use standards if during at least 50% of the time it is operating, any member of the public may access the amenity at either no cost or a cost reasonable for the type of facility use or service availability.</p> <p>* The reasonableness of cost will be determined through comparable facilities, program user fees, demographics and facility location.</p> <p>* The Boys and Girls Club of East Dartmouth is obligated to carry a Commercial General Liability policy with limits of no less than two million dollars (\$2,000,000.). For those Community Association Boards whose operations include alcohol or where their operations of the Facility involve a higher risk, a Commercial General Liability insurance policy with alcohol not excluded with limits of no less than five million dollars (\$5,000,000.) is required.</p> <p>The Boys and Girls Club of East Dartmouth is also required to carry Directors and Officers insurance coverage to provide insurance coverage for the Board and their decisions with limits of no less than two million dollars (\$2,000,000).</p> <p>Halifax Regional Municipality is required to be named as Additional Insured on these policies.</p> <p>* The Boys and Girls Club of East Dartmouth will comply with all financial reporting requirements as indicated in the FLA.</p> <p>* The Boys and Girls Club of East Dartmouth is responsible for the payment of property tax for any subleases within the facility or on the premises and the Board shall collect the</p> |

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| | <p>property tax from each tenant on a proportionate share as stated in their agreements, unless the tenants are billed directly.</p> <p>* The Boys and Girls Club of East Dartmouth is required to have prior written permission from HRM to exclusively lease any space to an individual, business, or group which is to include all leases, renewals, addendums, etc.</p> <p>*Any agreement entered into by the Board shall not exceed past the term on the FLA.</p> <p>* No structural changes, alternations, additions, improvements, or signage should be made without prior written consent of the HRM.</p> <p>* The Boys and Girls Club of East Dartmouth will maintain and operate this facility within the LEED certification guidelines in cooperation with and under the guidance of HRM.</p> <p>* Site Specific – As a LEED facility, HRM TPW will be responsible to monitor and maintain all HVAC systems, mechanical systems, life safety systems, emergency generator (when applicable), water supply and septic systems.</p> <p>* Site Specific – The parking lot is shared with the Beazley field complex. Snow Plowing is completed by HRM. The B&GED oversee the snow removal and pay for the parking lot lighting.</p> |
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Funding

The Boys and Girls Club of East Dartmouth has indicated that the current funding level of \$50,000 is problematic in covering all operating costs for the facility. This is not unique to this facility and many facilities are challenged due to increased operating costs. Since 2008, the minimum wage has increased by 27% and utility rates (commercial) have increased by approximately 20%. The funding formula under the contribution fund has not been amended in recent years to reflect increases to facility operating costs. In addition, the B&GED indicates that track and field events at Beazley field are limiting the ability to host events during the months of May and June which reduces revenue opportunities.

Staff is undertaking a review of both the current funding formula and total amount of funding available for FLA facilities. An updated funding formula will be incorporated in the 2014/15 operating budget. HRM will continue to provide the current level of funding and undertake snow clearing and grass cutting services at the site pending the review of the funding formula.

The provision of services and funding levels will be updated accordingly for all FLA facilities once the contribution fund review is completed.

FINANCIAL IMPLICATIONS

The Boys & Girls Club of East Dartmouth will receive a total of \$50,000 in two installments as per the Contribution Fund reporting requirements. This is previously budgeted and not new financial support with funding from account D104-8001.

Transportation and Public Works (TPW) is responsible for life safety building systems as per the FLA program guidelines with funding from account W213. TPW is responsible for maintaining the mechanical systems with funding from ongoing OCC as this is a LEED certified facility. TPW is responsible for grass cutting and snow removal with funding from W200-6308.

COMMUNITY ENGAGEMENT

A community based needs assessment was completed in February 1999 to choose the location and required spaces within the building. As a result, the Dartmouth East Recreation Society was created to act as a temporary steering committee to coordinate the construction on behalf of the community. There is an informal advisory committee with community representation to discuss facility matters and as part of the FLA program, staff will meet regularly with this group and the Board of the Boys and Girls Club of East Dartmouth.

ENVIRONMENTAL IMPLICATIONS

None noted.

ALTERNATIVES

1. Council may choose to partner with another existing community board. This is not recommended because other boards are pursuing their own missions and facility management.
2. Council may direct staff to make arrangements for the municipally operate this facility. This is not recommended because it is not consistent with the model for Category One facilities at this time.
3. Council may choose to sell the facility rather than lease it. This is not recommended at this time as the facility provides a municipal resource to the community.

ATTACHMENTS

Attachment 1: Facility Lease Agreement – East Dartmouth Community Centre

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: Andy Conrad, Community Facility Service Delivery Coordinator, 490-8443
 Tara Legge, Community Facility Service Delivery Coordinator, 490-8442
 Michael Ryan, Facility Partnerships Manager, 490-1585

Report Approved by: _____
 Denise Schofield, Manager, Regional Recreation & Culture, 490-6252

Report Approved by: _____
 Diane Moulton, Manager, Facilities Management, 490-1536

Financial Approval by: _____
 Greg Keefe, Director of Finance & ICFO, 490-6308

Legal Approval by: _____
 David Greener, Solicitor - Legal Services and Risk Management, 490-3960

Report Approved by: _____
 Ken Reashor, Director Transportation & Public Works, 490-4855

Report Approved by: _____
 Brad Anguish, Director of Community & Recreation Services, 490-4933

Facility Lease Agreement

**East Dartmouth Community Centre
50 Caledonia Road
Dartmouth, Nova Scotia
B2X 1K8**



Halifax Regional Municipality
Community & Recreation Services
PO Box 1749
Halifax, Nova Scotia B3J 3A5
Tel: 902.490. 8442 Fax: 902.490.5950
www.halifax.ca

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| | |
|----------------|---------------------------|
| Attachment # 1 | Site Specific Information |
| Attachment # 2 | Tenant Responsibilities |

THIS AGREEMENT is made as of the _____ day of _____, 20 _____

BETWEEN:

Halifax Regional Municipality (Herein after referred to as “HRM” or “the Landlord”)
OF THE FIRST PART
- and -

The Boys and Girls Club of East Dartmouth
a society incorporated under the *Societies Act* of Nova Scotia
(herein after referred to as “the Tenant”)
OF THE SECOND PART

WHEREAS the Tenant is a community based, not-for-profit organization;

AND WHEREAS the Tenant aligns with the Halifax Regional Municipality Community and Recreation Services “Focus Areas” in that the services they provide, promote and encourage community recreation and cultural services and/or opportunities;

AND WHEREAS the Tenant has demonstrated a commitment to provide recreation and cultural based services on behalf of community and provide a direct service that will generate a positive community impact to the citizens of Halifax Regional Municipality;

AND WHEREAS the Tenant will collaborate and build relationships within community;

AND WHEREAS the Tenant will promote public use and general access of a municipal asset;

AND WHEREAS the Tenant will consider alternative service delivery methods in order to meet the needs of a specific target group, unique community culture and or community demographic;

AND WHEREAS the Tenant has demonstrated the organizational capacity to manage and operate a HRM facility as well as provide or facilitate direct program service delivery;

AND WHEREAS the Tenant’s day to day use of the facility and service delivery will be supported through organizational capacity, annual assessments and a sustainable plan of action and operating budget;

AND WHEREAS the Tenant will promote and support feasible economic development through collaboration with community businesses as employment opportunities.

THEREFORE WITNESSTH that in considerations of the mutual covenants and other valuable consideration contained herein, the Parties agree as follows:

Date last Revised February 12, 2013

1. Intent of the Facility Lease Agreement

The Landlord HRM is the owner of certain premises which it intends to be made available for public use. Possession and occupation of the Leased Premises is provided to the Tenant in consideration of the Tenant facilitating the availability of the Leased Premises for public use. It is the intention of the Facility Lease Agreement to provide an opportunity for community organizations to collaborate and deliver approved services through an alternative service delivery approach. The intended outcomes are:

- access, engage and mobilize community skill sets required for facility management and program delivery
- build, strengthen and sustain community capacity of volunteer organizations offering community programming and facility management
- maximize potential use of HRM facilities managed and operated by community organizations
- promote public use of HRM facilities
- safeguarding of HRM assets

This Facility Lease Agreement will provide for the use and care of the facility, and the costs of repairs and maintenance. The entering of the Facility Lease Agreement is dependent upon the Tenant successfully providing a program to the public which aligns with a HRM focus area. Tenants who lease a HRM facility and provide a HRM program service delivery are required annually to complete the Board Development Tool. The Facility Lease Agreement will normally be based on a 5 year term and reviewed annually.

See Facility Lease Agreement Resource Binder for the detailed chart of Tenant Responsibilities which are briefly mentioned in Attachment #2 of this agreement.

2. Definition of Public Use of Municipal Assets & Resources

HRM has the responsibility to hold public property in trust and to ensure public access to these properties is not compromised. HRM has chosen to lease certain HRM facilities to community organizations with clearly defined tenant use parameters. Community organizations as tenants must be careful stewards of HRM properties and must have a mandate that is a direct link to and that aligns with HRM focus areas. Program and service delivery represents community activities and events that serve to meet or exceed a defined service delivery focus areas of Halifax Regional Municipality and meet the purpose and objectives of the Tenant. Their services must provide a direct contribution resulting in a positive impact to and for HRM citizens. These services shall contain an inclusion policy. “Public Use” applies to all organizations which obtain funds raised from tax dollars or would benefit from the use of public property owned by HRM. “Public Use” is to ensure public resources are utilized to the benefit of the general public. Priority access is provided to the general public prior to special interests and/or groups or private organizations. A facility meets the public use standards if during at least 50% of the time it is operating, any member of the public may access the amenity at either no cost or a cost reasonable for the type of facility use or service availability. The reasonableness of cost will be determined through comparable facilities, program user fees, demographics and facility location. Facility Lease operational guidelines will be approved by HRM.

Monitoring Public Use Would Encompass:

- operating hours or schedules
- open memberships
- accessible memberships and user fees
- inclusive practices
- required skill level or performance ability in service delivery and facility operation
- adequate promotion of public opportunities

Date last Revised February 12, 2013

3. Non-Profit Organization

Non-Profit Organization means a not-for-profit corporation (under the Societies Act or otherwise) other than a trust, a public institution, a municipality or a government, that was organized and is operated solely for a purpose other than profit, no part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder is a club, a Society or an Association. Tenants must continue to maintain Non-Profit Organization status during the term of this Facility Lease Agreement. No compensation shall be paid to the directors and officers of the Tenant organization.

4. HRM Community and Recreation Services Focus Areas:

(Subject to change based on HRM Service Delivery and Council endorsement)

The Community and Recreation Services focus Areas are in response to the HRM Council Focus Areas. These focus areas will change from time to time depending on program requirements and the current priorities of the business unit.

5. Leased Premises

5.1 HRM Property to be subject of Facility Lease Agreement

The leased HRM property consists of the building and shared use of the surrounding lands and parking lot (as indicated in Attachment #1) located at **50 Caledonia Road, Dartmouth, Nova Scotia** known as **East Dartmouth Community Centre**, which is more particularly described outlined in Red in Schedules "A1" and "A2" attached hereto; (collectively referred to herein as the "leased facility" or "demised premises"). **Schedule "B" Site Photograph attached hereto is for a visual reference of the property.**

5.2 Permitted Facility Use

The Tenant shall use the leased premises only for the permitted uses set out in Schedule "C", and not to carry on or permit to be carried on therein any unapproved trade, business or other activity. That the Tenant will not carry on any business or activity or permit anything to be done or kept on the leased premises which shall in the opinion of the Landlord or at law be a nuisance or disturbance, or which shall be noisy or contrary to any law or statute or any by-law, rule or ordinance of any governmental authority having jurisdiction, or by reason of which the insurance on the leased premises shall be made void or voidable or increased in cost. The Tenant shall not do, suffer or permit to be done any act or anything upon the leased premises which is or constitutes a nuisance to the occupiers of any lands or premises adjoining or in the vicinity of the leased premises or to the public generally. **See Site Specific Permitted Facility Use is described in Schedule "C"**

5.3 Easements and Right-of Ways

The Landlord may grant easements, rights-of-way, licenses and similar rights to public utilities and governmental agencies for the purpose of allowing for the provision of electrical power, telephone, water and other utility and municipal services to the leased premises and for the installation of wires, metres, conduits, pipes and other equipment, apparatus and facilities in connection therewith and it is agreed that any such easements, rights-of-way, licenses and other rights as may be granted by the Landlord shall have priority to the interest of the Tenant under this Facility Lease Agreement.

5.4 Emergency Measures Operations (EMO) - Designated Facility Sites

The Emergency Measures Act (By-Law E100) was enacted in 1990 by Municipal Council and led to the creation of the EMO. The goals of EMO are to promote emergency preparedness and coordinate emergency management within HRM. Several HRM Community/ Neighbourhood are designated EMO sites and may require operational guidelines and monitoring. Notwithstanding any other provisions of this Facility Lease Agreement HRM will continue to have lease facility access based on HRM emergency operational requirements. See EMO Act at www.halifax.ca/legislation/bylaws/hrm/ble100.pdf.

5.5 Visual Identity, Directional Signs & Way finding

Any visual identity or directional signs on the exterior of the building must be approved in writing by HRM. Halifax Regional Municipality reserves the right to place HRM branding signs on any municipally owned property and or building. All new interior way finding signs must comply with HRM Way finding System Guidelines. **See Facility Lease Agreement Resource Binder**

6. Lease

6.1 Lease

A Lease is an interest in real property and or personal property given by a lessor/landlord to another person/organization (usually called the lessee or tenant) for a fixed period of time and the lessee obtains exclusive possession of the property or dedicated space within a property in return for paying a fixed or determinable consideration known as rent. In this Facility Lease Agreement the Tenant is responsible to manage and operate the leased facility, make decisions and manage risk to achieve the facility and approved program delivery goals.

6.2 Annual Rent

HRM shall charge the Tenant a base rent of zero (\$0.00) dollars annually for the leased facility; this is based on taking into account the nature and location of the leased facility and restrictions in use imposed by this Facility Lease Agreement.

6.3 Net Lease

The intention of the parties and this Facility Lease Agreement is that all expenses, costs, payments and outgoings of every nature and kind relating to or in respect of the leased premises be identified and paid by the Tenant. The Tenant therefore agrees to pay; all amounts of such expenses, costs, payments and outgoings during the term except as may otherwise be expressly stipulated herein to the contrary.

7. Term of Lease - Commencement and Initial Term

7.1 Initial Term

In consideration of the covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, HRM hereby leases to the Tenant, the leased premises for the term of the lease. This Facility Lease Agreement shall be for a term of 5 years and reviewed annually. Review of the Agreement on an annual basis will provide the opportunities to evaluate the Board capacity, program delivery, facility operation and community impact. "Initial Term" means a term of **five (5) years** commencing on or about the **August 1, 2013** and terminating on **July 31, 2018**; however this agreement will be reviewed annually by HRM Staff through reports which the Tenant provides to HRM.

Date last Revised February 12, 2013

7.2 Renewal Term

Provided that the Tenant is not in default under any of the terms or conditions of this Facility Lease Agreement, HRM has not proceeded with a Call for Proposal, and that neither party has given the other notice to quit, the Tenant shall have the option, exercisable by written notice delivered to the Landlord not later than two (2) months prior to the expiry of the Initial Term to renew this Facility Lease for one (1) term of one (1) year on the same terms and conditions herein contained except as to the renewal term.

8. Taxes

8.1 Taxes

The Tenant shall pay as and when they fall due all taxes, rates and charges charged, assessed or levied in relation to its possession and occupation of the leased premises, in respect of any business or other activity carried on upon or in connection with the leased facility, or in respect of the Tenant's fixtures and equipment.

8.2 Commercial Property Taxes

Commercial property taxes apply to HRM owned facilities, not occupied by HRM for Municipal purposes, in a geographic area zoned commercial. The Tenant is required to include in any sublease agreement with a third party a provision requiring the third party sub-lessee pay any applicable commercial property taxes directly to HRM.

8.3 Collection of Fees and Applicable Taxes

The Tenant 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 the Tenant shall be deposited in the operating account in the form in which the funds are received.

8.4 HST- (Harmonized Sales Tax)

In general, leases of commercial real property are subject to HST. A sub-lease provided by the Tenant to a sub-lessee may be subject to HST depending on the Tenant's HST status and requirements under the Excise Tax Act GST Section. If HST is applicable, the Tenant is required to collect the HST and submit it to the Revenue Canada Agency under the Tenant's Business Registration Number. As per Clause 11.2, the Tenant is not acting as an Agent for the landlord in respect to any sub-leases.

Lease Inducements

Lease Inducements provided by the Tenant to third party sub-lessees can be such items as rent-free periods, reduction of rents, cash inducements etc. Rent-free periods would not be subject to HST when provided by the Tenant where there is no charge. In the case of other lease inducements where there is a charge, HST will apply.

9. Financial Reporting and Obligations

9.1 Financial Records and Reporting Practices

The Tenant is responsible for and required to maintain all books in accordance with the generally accepted accounting principles (GAAP) and all books shall be maintained at the facility and at no other premises.

HRM shall have the right, at its own expense, and with reasonable notice, to audit or examine the books of

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account and accounting records maintained by the Tenant pursuant to this Facility Lease Agreement.

Tenant Report Practices & Obligations:

- set up bank account(s) at a chartered bank or other deposit institution
- authorize signing officers to make expenditures on the bank accounts
- shall not be permitted to borrow funds on behalf of the facility without written approval from HRM
- The annual statement will include a statement of sources and uses of funds on an unaudited basis, unless HRM indicates a formal audited statement is required
- The municipality through its designated agents or employees shall be entitled at all times and from time to time during normal business hours inspect or audit the books and records of the Centre.

9.2 Special Events Account - Lotteries & Bingo

Should the Tenant operate a bingo or other lottery under license from the Province of Nova Scotia, they shall designate a separate account from the operating account or special events account, into which all monies and proceeds derived from such bingo or lotteries are to be deposited (the "Lottery Account"). These funds will be used for the operations of the bingo or the program service delivery, facility maintenance; capital improvements, capital reserve fund, or reduce debt as deemed appropriate by the Tenant and HRM. Revenues generated to support service club activities will be identified and shall be approved for the program delivery, facility operations and service club activities separate from facility operations and program delivery. Revenue co-shared with another society or special interest group will be identified.

When proceeds are co-shared with another not-for-profit organization or special interest group the monies for each group will be identified.

9.3 Interest

The rate of interest HRM charges on overdue accounts. Interest also applies to Tenants having outstanding debt with HRM predating this Facility Lease Agreement. The rate of interest on overdue accounts is as provided for in HRM Administrative Order 14.

9.4 Annual Business Plan

The Tenant shall develop an annual business plan in accordance with the HRM planning practices that will facilitate the management, promotion, development, operation and administration of the program service delivery and the facility. The annual business plan should reflect the outcomes of the annual HRM / Board Development Tool assessment.

9.5 Municipal Parameters/Policy for Area Rates/General Rate

Many community facilities are categorized as recreational facilities and in many cases are eligible for receipt of funds administered by a Resident Rate Payers or Athletic Association. Policies and procedures provide guidance for members of Regional Council and staff on types of eligible expenses and appropriate record keeping and reporting.

- area rates can only be used for the provision of services within HRM's focus areas and service traditionally provided by HRM
- area rates are not to be used to provide different levels of a Municipal service within urban and suburban areas where said services are covered by the general tax rate
- proposals for new area rates must be advertised publically, clearly identifying affected areas, the purpose for the rate, rate information and the duration the rate is expected to be charged
- a public meeting will be held and those attending the meeting will be informed of the rationale for the rate

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and consulted on its appropriateness - community vote will determine approval and implementation of rate

9.6 Area Rate Policy

The Provincial Legislation that governs the expenditures of Area Rate accounts is the Halifax Regional Municipality Charter passed November 24, 2008 which lists allowable expenditures and Area Rates. This Provincial Legislation has amended the Municipal Government Act (MGA). HRM has expenditure principles whereby all expenditures;

- must meet the spending guidelines of the Halifax Regional Municipality Charter, Section 79
- must have supporting documentation for payment, no advances issued
- should be made in accordance with the HRM Conflict of Interest Policy
- must comply with the spirit and objectives of the procurement policy approved by HRM Council, and, must be made in accordance with Provincial and Federal Legislation

Specifically with regard to area rate expenditures, the expenditure must also benefit the community on whose behalf the Area Rate has been collected. See the Halifax Regional Municipality Charter at www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b179.htm

9.7 Budgets - Operating & Capital

Budgets shall be prepared by the Tenant in accordance with methodologies, frameworks, policies, guidelines, directives, and instructions from HRM from time to time relating to HRM annual budgets. HRM will provide assistance when required or requested in the preparation of the annual operating and capital budgets.

The budgets should specifically identify costs for program service delivery and overall operations including costs for facility renovations, upgrades and maintenance. HRM will establish parameters and guidelines for the HRM funds targeted for the program service delivery.

HRM shall advise the Tenant in writing of any changes required by HRM to the proposed budget and the Tenant shall submit to HRM a revised budget reflecting the changes within 30 days. The revised budget, upon written approval by HRM, shall constitute an approved operating and capital budget.

This shall not be considered authorization for the Tenant to undertake any capital expenditures, all of which must be specifically approved in writing by HRM. Each annual capital budget shall include a description with projected costs of proposed capital improvements or alterations to the facility, consistent with the Facility Condition Assessment or a “Facility Life Cycle Plan”. Additional considerations will be required with Facilities with registered Heritage Status or significance.

9.8 Fiscal Year

The Tenant will be required to date their business operations and budgets to the HRM fiscal year - April 1st to March 31st.

9.9 Reporting

Quarterly financial statements are required to be submitted to HRM on August 1, November 1, February 1, and May 15th (annual financial statements). Reports must capture actual expenses (year to date), projected expenses, and prior year actual. Annual statements must include a statement of sources of funds and uses of funds as well as a statement of assets and liabilities and bank reconciliation. HRM reserves the right to

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request a formal audited statement.

9.10 Bill Payment

HRM will only process bill payments for the Tenant that are approved and set up on an area rate. HRM will forward invoice notification to the Tenant.

Based on the terms of this Facility Lease Agreement, the Tenant is authorized to contract services for facility maintenance and repairs. **In the case of community requesting HRM to do work that is the responsibility of the group, HRM will invoice the Tenant for the work completed.**

9.11 Operating /Capital Deficits & Surpluses

The parties agree that the program service delivery and the facility operation shall be managed in a prudent and fiscal manner. HRM agrees that any surplus generated from the program service delivery and or the operation of the facility, may be held in reserve accounts and accessed for a dedicated and intended purpose.

- to subsidize or underwrite the continued program service delivery and operation of the facility
- to be allocated to pay down or service capital debt related to the facility
- to fund the Equipment Reserve Fund or Capital Reserve Fund or such other Reserve Funds as may be approved by the Municipality.

In the event the Tenant sustains, in any fiscal year or quarterly report, a deficit from its operating or capital budget, the Tenant shall prepare a report for HRM. The report shall set out the magnitude of the operating or capital deficit, the reason for the deficit and recommendations for addressing the deficit.

HRM will review financial status and determine if the facility or program delivery is at risk or in jeopardy and determine a resolution strategy, alternative service delivery method or required intervention.

HRM accounting principles prohibits HRM from using Municipal tax dollars to pay out debt which is the responsibility of the Tenant.

The Tenant will not qualify for the HRM Fund Program until the deficit had been addressed to the satisfaction of HRM.

9.12 Emergency Recapitalization Funding

It is understood that unbudgeted emergency facility repairs may be required when the sudden malfunction or distress of a facility infrastructure item results in placing undue risk to either the facility or its users. All details plus supporting documentation (including written cost estimates) will be forwarded to HRM in a timely manner. The Tenant shall be eligible to access emergency funding in times of facility crisis, based on the capital and operational areas of responsibility identified in this Agreement.

9.13 Emergency Operational Funding

The HRM Contributions Fund for Category one Community / Neighbourhood facilities provides service enhancement subsidies that support 4 areas: Service Quality, Priority Program, Public Safety and Emergency Assistance. The Tenant can apply to the Emergency Assistance category of the Fund throughout the year. Funding is subject to change based on HRM budget approval.

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The criteria for this funding are as follows:

- insolvency of a debt to a business that is a supplier to program delivery
- bridge financing pending insurance settlement or legal claim that impacts service delivery (in consultation with HRM Legal Services)
- severe vandalism or under-insured destruction of property
- interim HRM staffing in the event of contractual termination by either party

9.14 Revenues -Assets

All monies, proceeds, funds and revenues of every nature and in kind received by the Tenant in respect to the facility, whether by fees paid for services provided in, for the use of the facility, of any part thereof or by way of grants, gifts, sponsorships, bequests, donations, fund raising or otherwise (savings or any monies of proceeds) derived by the Tenant are for the benefit of the Tenant.

All fixed equipment located in or purchased for the facility at any time relating to operation of the facility, shall be the property of HRM (subject to negotiation) upon the expiration or termination of this Facility Lease Agreement. I.e. security system, sound systems, kitchen upgrades, score clocks, gym back boards etc. Prior written approval by HRM must be obtained before any branding or naming of the facility for revenue purposes or otherwise.

9.15 Reserve Accounts

In the proposed annual budget, the Tenant shall make provision for the following guidelines:

- a program reserve and equipment reserve fund for the purpose of funding program service delivery requirements
- a capital alterations and expansion reserve fund for the facility, responsive to the HRM facility condition assessment or facility upgrade/renovation specifications approved by HRM

Such reserve funds shall be maintained by the Tenant in accordance by the terms set out in this Facility Lease Agreement and shall be reported on annually as part of the annual financial statements.

Areas of responsibility for facility alterations, improvements and /or expansions regarding HRM facilities, will be identified and categorized for budgeting reserve purposes. The categories will be established when the Tenant or HRM is responsible for the expenditure and reserve funds.

9.16. Donations

HRM may, if requested by the Tenant issue tax receipts for donations made to the facility or its operations. Donation cheques need to be made payable to HRM and clearly indicate purpose of the donation and who will be the recipient. Revenues generated to support service club activities will be identified and shall be approved for the program delivery, facility operations and service club activities separate from facility operations and program delivery.

9.17. Approvals

Agreements entered into by the Tenants, termination of such agreements and debt repayment plans will

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require the written approval of HRM.

10. Facility Alterations & Fire Safety

10.1 Approval for Facility Alterations

The Tenant shall request permission from HRM to make any structural changes, alterations, additions or improvements to the facility and premises thereof. All structural changes, alterations, additions, improvements, and signage shall require written consent from the HRM Business Unit responsible for the administration of the FLA prior to the start of any work. All work must conform to applicable building codes and the tenant is responsible to carry out all applicable inspections. The tenant shall obtain all necessary permits required for the approved scope of work and is responsible to ensure all necessary inspections are carried out. Any changes, alterations, additions or improvements shall be the responsibility of and be carried out at the cost of the community group. Exterior branding, signs and /or advertising requires prior written approval from Halifax Regional Municipality.

10.2 Licenses and Permits

Tenants shall obtain and renew as necessary all licenses and permits, inspections, and approvals/authorizations which may be required in connection with the operation and maintenance of the facility. The Tenant 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, i.e. certificates, consents, licenses, third party leases, permits and qualifications and the Health & Safety Act or orders of any Governmental Authority by applicable laws.

10.3 Building Code

Work that requires a HRM municipal building inspection and approval qualifies as “Code”. Subject to the other provisions of this Facility Lease Agreement, Tenants conducting facility work which is not considered “Code” can do the work without HRM approval. If the work does require “Code”, HRM must be notified in writing.

Construction work not provided or performed by HRM requires a certified/license professional, proof of Workers Compensation coverage and insurance prior to working on HRM property. i.e electrician, plumber, roofer, etc.

10.4 HRM Fire Services

The Tenant is responsible to follow the Fire Safety Code and Guidelines as outlined on the HRM Fire Services website (www.halifax.ca/fire). Under Section 2.8 of the National Fire Code of Canada (in 1995), any building required by the National Fire Code to have a fire alarm system, must also have an approved Fire Safety Plan. The Fire Safety Plan shall be prepared and consolidated prior to submission and should deal with layout, use, and location pertaining to a particular building. For leased premises containing more than one building, a Fire Safety Plan shall be prepared for each individual building.

10.5 Fire Safety Plan Guidelines

The purpose of a Fire Safety Plan is to ensure the effective utilization of life safety features in a building to protect persons from fire, and to provide for the efficient and safe evacuation of building occupants in the event of fire or other emergency. The Tenant is required to develop and prepare a Fire Safety Plan in conformity with Fire Safety Code guidelines. These guidelines are intended to assist HRM and the Tenant in the preparation of a Fire Safety Plan for a particular building. It should be noted that the Fire Safety Plan should be designed to suit the needs and resources of each individual building.

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Note: This document is intended to serve as a guideline only. It is the responsibility of the Tenant to ensure that all requirements of the Fire Safety Plan are met. See the HRM Fire Safety Plan Guidelines at www.halifax.ca/fire/documents/FireSafetyPlanGuidelines.pdf.

10.6 Fire and Life Safety Equipment Maintenance Procedures and Reports

The Landlord is responsible to ensure regular maintenance is performed on all fire and life safety equipment in the building in accordance with the Fire Code. The tenant shall keep a written record for all tests and corrective measures performed by contractors. All records must be kept for a period of two years and the records shall be made available upon request to the Fire Prevention Officer.

HRM Fire Services requires that the leased facility's maintenance summaries be recorded and filed on a prescribed regular basis. The Tenant is responsible to file the summaries with HRM and ensure the records are maintained and accessible at the leased facility. HRM Fire Services will conduct a Fire Safety Inspection of the leased facility at least every 3 years. Tenants or occupants that hold Gaming and Alcohol licenses require inspections annually and provide a written report. Tenants/Landlords are required to address all recommendations as noted in the inspection report or Order to Take Action. Fire Services will follow-up with a second site visit to determine compliance. Failure to comply with an Order to Take Action made under the authority of the Fire Safety Act may result in further legal action to be taken, including prosecution and/or fines for violating the Act.

11. Assignment of Facility Lease Agreement and Sub-Lease

11.1 Assignment of Facility Lease Agreement

The Tenant shall not assign or sublet the leased premises or any part thereof without the expressed written consent of HRM, consent may be withheld by HRM in its sole discretion. The Tenant will not permit, nor cause anything to be done to the leased premises which would allow any lien, judgement or certificate of any court or any mortgage, charge or encumbrance of any nature whatsoever to be imposed upon or to remain upon the leased premises or the Landlord's building. In the event of the registration of any such lien or encumbrance the Tenant shall at its own expense immediately cause the same to be discharged. If the lien or encumbrance is not discharged within three days after notice is given by HRM, HRM may take such action or recourse as it in its sole discretion determines appropriate including discharging such lien or encumbrance and recover from the Tenant all amounts expended (including legal costs on a solicitor and client basis) by the Landlord in obtaining such discharge.

11.2 Third Party Leases (sub-lease)

The Tenant may sub-lease portions of the space within the said premises to other individuals, groups or organizations, provided that their activity is within the mandate of the organization and they receive prior written consent from HRM. The Sub-lessee will complement the services provided within the community through direct service delivery and the Tenant will assume full responsibility of the negotiations and administration. For greater certainty it is specified that the Tenant is not an agent for the Landlord in respect of third party leases and accordingly the Landlord is not in any respect a party to these leases. Commercial tax is paid when applicable and permitted under zoning for the said premises.

The term of the Sub-Lease will not exceed the term of the Facility Lease Agreement and will end before or at the same time as the Facility Lease Agreement. The Tenant shall follow the lease regulations and procedures as per the Halifax Regional Municipality Charter, any HRM Transaction Policy and the Not for Profit

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Guidelines. See Facility Lease Agreement Resource Binder

The Tenant shall ensure that all their sub-leases who have exclusive space within said premises, carry a minimum of \$2,000,000 inclusive commercial general liability including tenant legal liability coverage insurance with HRM and the Tenant added as additional named insured.

A sub-lease will expire or default to HRM upon termination or expiration of the Facility Lease Agreement.

12. Request / Call for Proposals

12.1 Call for Proposals

In order to provide broad based community services that align with HRM focus areas, HRM will review facility operation, management and program delivery on an annual basis. In the case where a community group or HRM terminates the Facility Lease Agreement, HRM will call for proposals as required. The community groups submitting proposals will obtain input from the community on programming and facility needs and be representative of the community geography and demographic. The community organization holding the current Facility Lease Agreement will be given first consideration if the proposal is of equal or greater quality, providing they meet the terms and conditions of the existing Facility Lease Agreement.

Call for Proposals will be required when:

- the existing management group can no longer maintain service delivery, facility or carry out the terms of the Agreement
- when a HRM owned facility is determined surplus
- when more than one community organization has capacity to manage and operate from a facility

13. Terminations, Defaults and Notices

13.1 Termination by Either Party

Either party may terminate this Facility Lease Agreement at any time by providing written notice to the other party 60 days prior to the date of termination.

13.2 Default of Tenant

This Agreement may be terminated at any time by HRM on criteria for default of Tenant. The Landlord shall have the right at any time to remedy or attempt to remedy any default of the Tenant hereunder, and in so doing to make any payments due or alleged to be due by the Tenant to a third party and may enter upon the leased premises to do any work or repairs for which the Tenant is responsible under this Facility Lease Agreement and in such event all expenses of the Landlord in remedying or attempting to remedy such default shall be recoverable by the Landlord from the Tenant. Payment in full or through payment plan will be arranged with HRM. Interest will be factored into the outstanding debt based on determination of HRM.

The Landlord may decide to terminate and re-enter upon the leased premises for reasons which include but are not limited to the following:

- the Tenant is incapable of day to day program or facility operation
- facility needs to be protected against vandalism, theft, pipes freezing, activity contrary to public safety
- the Tenant became in danger of bankruptcy or foreclosure actions
- facility being used contrary to the terms of the Agreement to the detriment of HRM
- facility use and programming creates hardship to the immediate residents
- the Tenant cannot successfully obtain legal Registered Non Profit Society Status (may also include Federal

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Charitable Status)

- the Tenant does not maintain current General Liability Insurance
- any unauthorized assignment of subletting of this lease by the Tenant
- unauthorized facility change that effects the Landlords building insurance
- the Tenant shall not observe, perform and keep all and every one of the covenants, agreements, provisions, stipulations and conditions herein contained to be observed, performed and kept by the Tenant
- if the leased premises shall become vacant

* **Note** - Upon termination of this Facility Lease Agreement the owner will take responsibility and control of the facility.

In the event of a claim for debt, damages or indemnity by the Landlord against the Tenant, the Landlord shall have the right to seize and take possession of any equipment, furniture or other property of any nature whatsoever situated on the leased premises and to sell the same at public or private sale without notice and to apply the proceeds thereof upon the account of Tenant. The Tenant shall continue to be liable to the Landlord for the deficiency if any and the Tenant hereby waives and renounces the benefit of any present or future Act in force in Canada or in the Province of Nova Scotia which takes away or limits the Landlord's rights, and that the Landlord may seize and sell the Tenant's goods and chattels as fully as the Landlord might have done if such Act had not been enacted or passed.

13.3. Notices

All notices, demands, requests, approvals or other communication of any kind which a party hereto may be required or may desire to serve on the other party in connection with this Facility Lease Agreement shall be served personally or sent by registered mail. Any such notice or demand so served by registered mail shall be deposited in the mail with postage thereon fully prepaid, registered and addressed to the party so to be served as follows

| A. If to the Municipality: | B. If to the Organization: |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"> Halifax Regional Municipality P.O. Box 1749 Halifax, NS B3J 3A5 Attention: Community Facility Service Delivery Coordinator, Alderney 2nd </p> | <p style="text-align: center;"> Boys and Girls Club of East Dartmouth PO Box 3074, DEPS Dartmouth, NS B2W 4Y3 </p> |

Except in the event of a postal service strike or lockout (in which event the parties hereto agree to temporarily utilize other reasonable methods of communicating any notices), service of any notice or demand so made by mail shall be deemed complete on the date of actual delivery as shown by the registry receipt or at the expiration of the seventh business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing served upon the other party as aforesaid, designate a different mailing address or different or additional persons to which all such notices or demands are thereafter to be addressed.

14. Tenant's Personnel and Employment Policies

14.1 Personnel

All personnel involved in the management, administration and operations of the leased facility, including the Manager or Executive Director and any other staff, will be employees of the Tenant. The wages, salaries and benefits of such employees shall be paid directly by the Tenant. The Tenant shall be responsible for the supervision, instruction, and training of such employees subject to best practices (or recommendations provided from time to time by HRM). If the Tenant requires assistance in the instruction and training of such employees it may request and, if it is appropriate to do so, HRM may provide such assistance. The Tenant is reminded that the eventual termination of this agreement may have an effect on employee's length of employment and entitlement of notice of termination and accordingly it is suggested the Tenant take this into account in its hiring / employment practices.

14.2 Staffing Requirements

The Tenant shall insure that the leased facility is adequately staffed at all times as is appropriate to properly maintain and operate the facility and ensure public safety. The staff requirements will be determined and based on the scope of program delivery, the square footage of a facility and the amount dedicated to recreation service delivery. A facility dedicating 15,000 to 20,000 sq feet or more to recreation service delivery will generally require at least a full or part time support staff at the facility and an operations manager.

14.3 Payroll Deductions

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

14.4 Employment Policies

The Tenant agrees to follow fair and equitable employment practices and observe all applicable laws when recruiting, hiring, compensating, training and terminating the employment of employees of the Tenant. The Tenant further agrees to develop its own comprehensive written staffing and personnel policies. If the Tenant requires assistance in developing best practices and guidelines in staffing policies it may request and, if it is appropriate to do so, HRM may provide such assistance.

14.5 General Manager / Executive Director

When required, the Tenant shall select and hire a competent General Manager/Executive Director to supervise and manage the day-to-day operations of the facility on behalf of the Tenant.

This General Manager/Executive Director is an employee of the Tenant.

14.6 Employee Training Opportunities

The Tenants providing alternative service delivery in the Community / Neighbourhood facilities can make a request to HRM for assistance from the HRM Contributions Fund Discretionary Allowance Category - Priority Program Initiative to support employee training opportunities for both full time and part time staff. Training will be directly related to staff roles as they pertain to the management and operation of the facility and program service delivery. This will be part of the Tenant's HRM/Board Development Tool Evaluation, Annual Plan, Budget and HRM Contributions Fund submission.

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15. Community Advisory Committees & HRM Staff Liaison

15.1 Community Advisory Committees:

Each geographic area within HRM has one or more HRM owned facilities operated by a community volunteer group. It is important for HRM to facilitate opportunities for representatives from each facility, including HRM staff to meet on a biannual basis. The benefits of networking, sharing of resources, and looking at a global community service, in regards to recreation program delivery, facility management and cost recovery of day to day operations will help address the challenges faced by many community groups. Collaboration of efforts can reduce duplication of fund-raising initiatives, assist in the coordination of special events, serve as a collective voice for a geographic area and speak to the overall needs and support required from HRM to better serve the overall recreation interests of citizens.

15.2 HRM Staff Liaison Person for Community Groups

HRM will appoint one of its staff members to be responsible for administration of this Facility Lease Agreement. The role of the HRM Staff Liaison Person includes working with and assisting Tenants leasing HRM facilities. Through the role of advisor they will offer recommendations on best practices regarding program delivery and facility operation.

15.3 Board Development Tool

The HRM Board Development Tool is the mechanism used to assess both HRM's supporting performance and the Tenants management board's organizational performance in four key areas:

1. Board Structure and Governance
2. Community Service delivery
3. Financial management
4. Facility management

The completion of this document is a required annual benchmark. This exercise will clearly indicate the strengths of both parties and identify areas for improvement.

Based on the outcome, the parties will develop goals, planning strategies, determine resources, time lines and proposed budgets. This will provide information to assess the HRM investment/community impact.

16. Miscellaneous Licenses & Fees

16.1 SOCAN License Fees

SOCAN is an organization that administers the communication and performing rights of virtually the world's entire repertoire of copyright - protected music, when it is used in Canada. They collect license fees, then distribute the fees as royalties to their members and affiliated performing rights organizations (PROs) worldwide. They ensure that music creators and publishers get paid for the communication and public performances of their music in Canada. To do this, they collect fees from individuals, businesses and organizations that play music in public, broadcasted, or communicated by telecommunication. The Tenant shall comply with its payment obligations in respect of the use of copyrighted materials. For application to Community Organization - see guidelines WWW.socan.ca

16.2 Re: Sound License Fees

Re: Sound is an organization that administers the communication and performing rights of music creators, including artists, background musicians, and record companies, when it is used in Canada. They collect license fees then distribute the fees as royalties to their members. They ensure that music creators get paid for the communication and public performance of their music in Canada. To do this, they collect fees from individuals, businesses and organizations that play music in public, broadcast it, or communicate it by telecommunication. The tenant shall comply with its payment obligations in respect of the use of copyrighted materials. See guideline at www.resound.ca.

17. HRM Insurance Responsibility

17.1 Property Insurance - HRM will insure all real and personal property that are owned by HRM or for which HRM is legally responsible. This coverage insures for all risks of direct physical loss or damage including but not limited to fire plus many other hazards including windstorm and lightning. HRM does not provide property insurance coverage for any real or personal property (including contents) owned by the Tenant or their sub-lessee or invitee.

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

17.3 Boiler & Machinery (Accident to an Object) - HRM will provide insurance coverage against the sudden and accidental damage of pressure vessels, mechanical and electrical equipment owned and maintained by the HRM. Coverage can extend to certain damage to air conditioning and refrigeration equipment, electrical panels, transformers, pumps, motors, compressors and generators also owned and maintained by HRM. Coverage also includes explosion and other accidental damage to boilers, hot water tanks of all types and resulting damage to other property.

18. Tenant's Insurance Responsibility

18.1 Tenant's Insurance Responsibility - The Tenant is required to provide certain insurance coverage with a Certificate of Insurance provided to the HRM at the time of signing the Facility Lease Agreement as well as at the Tenant's yearly renewal. Other insurance coverages listed are policies Tenants may wish to consider based upon their scope of activities. An insurance broker can advise on the appropriate coverages and limits required based upon your individual circumstances. Halifax Regional Municipality is to be named on the Insurance Certificate as an additional name insured.

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

18.3 Property (Content) - Tenant is required to obtain insurance coverage in respect of all personal property owned by the Tenant or for which the Tenant is legally responsible. Coverage must include leasehold improvements. This coverage insures for all risks of direct physical loss or damage including but not limited to Fire and Earthquake plus many other hazards including Windstorm and Lightning. HRM does not provide Property insurance coverage for any real or personal property (including contents) owned by the Tenant or their invitee.

18.4 Commercial General Liability (CGL) - The Tenant is required to obtain insurance coverage in respect of legal liability imposed upon the Tenant for its negligent act that causes bodily injury and/or property damage to a Third Party arising from entering onto, leaving or while on the Tenant's premises, any products sold or other Tenant operations, including programs policy shall include Tenant legal liability coverage. If alcohol is to be served on site by the Tenant then liquor liability must be included in coverage. HRM does not provide Commercial General Liability insurance coverage for the negligence arising out of the Tenant's programs or the activities thereof. Insurance coverage must be satisfactory to HRM. HRM generally requires a minimum coverage limit of 2 million dollars for small recreation centres (25,000 sq ft and less) unless alcohol is regularly served onsite. For large facilities or if alcohol is served on site additional coverage may be required.

Note - Often Property and Commercial General Liability policies can be purchased within the terms and conditions of a Tenant's Insurance Package.

19. Limitation of Authority

19.1. Limitation of Authority

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

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

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HRM _____

Tenant _____

20. Indemnification & Legal Action

20.1 Indemnification of the Tenant

HRM shall indemnify, defend, and hold harmless the Tenant and each officer and director thereof, against any loss expense, damage, claim, obligation, judgement or injury suffered or sustained by reason of any act, omission or alleged act or omission arising out of the negligence of HRM.

20.2 Indemnification of HRM

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

20.3 Suits and Claims

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

21. Facility Operation and Management

21.1 Facility Operation and Management

The Tenant shall have the responsibility for the costs of management, operation, repairs, maintenance and administration of the leased facility in accordance with and subject to the terms and conditions during the term of the Agreement and unless and except to the extent otherwise determined by the HRM in writing to the Tenant. The Tenant shall perform its duties and exercise the powers and authority set out in this Agreement in a competent, efficient and economical manner and in accordance with the terms of this Agreement, subject to the directions from time to time from HRM. The leased facility shall be maintained in a clean and safe condition subject to inspection by HRM. **See Site Specific information in Attachment 1.**

21.2 Shared Costs:

The Tenant is responsible to perform infrastructure repairs and maintenance required to protect the physical asset, including structural repairs and to report same to HRM. HRM is financially responsible for capital upgrades. Ensuring the health and safety of the general public is the responsibility of both HRM and the Tenant.

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HRM owned facilities that have specialized equipment may be considered structural infrastructure assets of the leased facility. This will be the case where the equipment is required to provide the function of the facility. i.e., Arena ice surface plants, ice resurfacing machine, pool liners. In this case HRM will determine full or cost shared responsibility with the Tenant. HRM monetary contributions will take into account the financial capacity of the Tenant.

Capital Improvements:

The Tenant shall, as soon as practicable, after the execution of this Agreement, prepare and present to HRM for consideration, a long term plan for financing capital improvements and alterations to the Facility as a planning guide for future required capital improvements or alterations to the Facility. The Tenant shall update such plan annually. With respect to any proposed improvements and/or alterations to the Facility, the Tenant shall follow guidelines set by HRM with respect to capital projects. No such improvement or alteration shall be undertaken unless and until it has been approved by HRM. In furtherance of same, the Tenant shall have the right, subject to the terms of this Agreement and to the limits of the budget approved by HRM pursuant to this Agreement, to contract on behalf of the Municipality as “Agent” for such capital improvements when requested to do so by the HRM.

21.3 Heating:

The Tenant shall at all times during the term of this Facility Lease Agreement, at its sole cost and expense keep the building on the leased premises heated in its entirety to a reasonable degree and to such a temperature as to prevent damage to any part of the Landlord's building ("Landlord's building" as referred to in this Facility Lease Agreement shall expressly include all mains, pipes, wires and conduits forming part thereof or appertaining thereto). In the event that damage is caused to the Landlord's building as a result of the Tenant's breach of this covenant, the Tenant shall, at its own expense, cause the same to be repaired within 15 days of the occurrence of such damage (except such repairs which, with all due diligence, would require a longer period, then within such longer period) and, if the Tenant should fail or neglect to repair such damage within the time specified, the Landlord, its servants and agents, may affect the same at the Tenant's expense, and the Landlord in so doing shall not be liable for any inconvenience, disturbance, loss of business or other damage resulting therefrom, and all payments and costs incurred by the Landlord thereby shall be recoverable by the Landlord.

The Tenant shall at all times maintain and monitor working condition of the furnace or heating system and heating fuel tank gauge or level indicator, including monitoring the amount of heating fuel to heat the facility to a required temperature that will minimize risk to the facility is the responsibility of the Tenant.

21.4 Contaminants:

The Tenant shall not discharge, cause or permit to be discharged or howsoever to pass in to the sewer systems or surface facilities any deleterious material, toxic, noxious, contaminated or poisonous substances, and in the event of the escape or discharge of such material or substances, the cost incurred and the clean up to the satisfaction to the Landlord, shall be at the Tenants expense.

21.5 Waste Management

The Tenant shall comply with HRM By-Law S-600. The Tenant shall provide receptacles to accommodate proper source-separation of waste both interior and exterior. All containers (interior and exterior) shall be properly signed to indicate the material contained within. HRM will provide the Tenant with the guidelines on the different types of separation and the acceptable materials for each. All Sub-Tenants shall be

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responsible to source separate their waste within their exclusive space.

21.6 Procurement Process

Capital or Operating expenses approved by the Tenant and/or HRM: Community groups planning and funding work for HRM facilities are required to follow sound procurement practices, principles and policy consistent to those adopted by HRM.

With respect to any proposed improvement and or alterations to the facility, the Tenant shall be responsible for developing and preparing all necessary plans, specifications and tender packages (HRM process) and in the selection of consultants and contractors. No such improvement or alteration shall be undertaken unless and until it has been approved in writing by HRM staff / Council in the final Capital budget or by special dispensation of Council or HRM approves in writing the Tenant's Budgets. Upon HRM written approval all such improvements and alternations can be administered by the Tenant.

HRM will make available any assistance requested to help develop and prepare necessary plans, specifications and tender packages and select the contractors and consultants along with monitoring the work to be completed.

*** Note** - For monies approved in the Tenants budget and allocated to proposed facility improvement or alterations, the Tenant shall require all invoice payments made payable to the Tenant.

21.7 Purchasing Policies The Tenant shall operate from comprehensive written procurement guidelines and best practices and for use by the board and/or facility manager/executive director at all times in the purchase of all goods, supplies and services of a non-capital nature for the facility as approved by HRM. With respect to the purchase of goods, supplies and services which, by their nature, are purchases which are or ought to be included in the facility's capital budget. The Tenant shall, in making such purchases, ensure that there is compliance in all respects with the Municipality's standard procurement guidelines and procedures.

21.8 HRM Purchase Agreements

HRM has Standing Purchase Agreements with qualified businesses and will provide access to the information that the Tenants can utilize when purchasing a service or supply.

22. Condition Assessments, Facility Inspections & Lock Systems

22.1 Annual Facility Condition Assessments: Prior to and time of termination of lease inspection of facility

The landlord will conduct an annual facility condition assessment and it will be reviewed with the Tenant. Should the landlord find that the leased premises are not in good condition and repair, in any respect, the Tenant agrees that upon receipt of written notice of the same, the Tenant will make such repairs and replacements as the Landlord may reasonably require within thirty (30) days thereafter. When work requirement reviewed, (with all due diligence), would require a longer period, and, if the Tenant should fail or neglect to repair or make replacements as reasonably required by the Landlord within the time specified, the Landlord, its servants and agents, may enter the leased premises and at the Tenant's expense, perform and carry out such repairs and replacements, and the Landlord in so doing shall not be liable for any inconvenience, disturbance, loss of business or other damage resulting therefrom, and all payments and costs incurred by the Landlord thereby shall be recoverable by the Landlord.

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22.2 Monthly Facility Inspections/Reports

The tenant shall complete a Monthly Facility Inspection Sheet for each quarter of the year, and submit a copy of the report to HRM in the prescribed format. These reports will be kept on file to document risk management practices but are not considered requests for work to be completed. Any safety concern requiring HRM's involvement should be brought to the attention of your HRM liaison immediately and followed up with written correspondence.

22.3 Facility Inspections

The Tenant hereby declares it has inspected the leased premises before executing this Facility Lease Agreement and has satisfied itself as to their condition and the taking of possession by the Tenant shall be deemed conclusive evidence that the Tenant received the leased premises in good order, condition and repair.

22.4. HRM Facility Lock System

Many HRM owned facilities are fitted with a facility lock system. The keys are numbered and assigned and tracked. When an assigned key is no longer required it is turned into HRM and reassigned. The individuals assigned keys are required to sign a key agreement stating key holders are not permitted to transfer, to loan, give possession of, misuse, modify or alter the keys or lock system. They will be required to agree not to cause, allow or contribute to the making of any unauthorized copies of the above keys. Tenants will be responsible for cost associated with new keys. When HRM owned facilities that are not fitted with the facility lock system the Tenant will be required to establish a facility key system that assigns, monitors and tracks assigned keys and access to a facility. Tenants are to provide security access information and board contacts information to HRM staff. HRM staff will require access for facility condition assessments and response to service or maintenance calls. Tenants with a security system are responsible for call response and any facility fines or fees charges resulting from a false alarm. Facilities that are designated EMO sites are required to assure accessibility to the facility in the case of an emergency and community access is required.

23. Additional Clauses

23.1 Validity of Provisions

In the event any one or more of the provisions contained in this Facility Lease Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceable shall not affect any other provisions of this Facility Lease Agreement and this Facility Lease Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and this Facility Lease Agreement shall be enforceable to the fullest extent permitted by law. This Facility Lease Agreement shall be interpreted in accordance with the laws of the Province of Nova Scotia.

23.2. Consent or Waiver

Time shall, in all respects, be of the essence of this Facility Lease Agreement. No consent or waiver, expressed or implied, by a party of any breach or default by the other party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver of any other breach or default hereunder. Failure on the part of a party to complain of any act, or failure to act, on the part of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its right there under. Neither this Facility Lease Agreement nor any provision hereof may be amended, waived, modified or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver, modification or discharge is

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sought.

23.3 Successors

The provisions of this Facility Lease Agreement shall, subject to the terms and conditions hereof, be binding upon and ensure to the benefit of the successors and assigns of each of the parties hereto, provided, however, this Agreement shall at all times remain personal to the Tenant and may not be assigned by the Tenant without the prior written consent of HRM.

23.4 Remedies

Both parties shall, in addition to all rights provided herein or as may be provided by law, be entitled to the remedies of specific performance and arbitration if necessary, to enforce their rights hereunder.

23.5 Contractual Approval

Based on the terms of the Facility Lease Agreement, HRM will require verification of:

- Program alignment with HRM focus areas
- Tenant's current Board status (with The Registry of Joint Stocks Companies - Nova Scotia)
- A financial account with a recognized financial institution
- No outstanding debt of the Tenant to HRM
- Proof of General Liability Insurance and Directors and Officer Insurance

24. Agreement- Entire Agreement

This Facility Lease Agreement, together with any written agreements executed in connection herewith or modifications or amendments to this Agreement entered into by the parties hereto shall constitute the entire Agreement between the parties hereto relative to the subject matter hereof and shall supersede any prior agreement or understanding, if any, whether written or oral, which either party may have had relating to the subject matter hereof. The Agreement will indicate the Commencement Date and Expiration Date.

IN WITNESS HEREOF the parties hereto have properly executed this Indenture as of the day and year first above written.

SIGNED, SEALED and DELIVERED

Boys and Girls Club of East Dartmouth

Date Signed

Witness

Witness

Tenant

Tenant

Halifax Regional Municipality

Date Signed

Witness

Witness

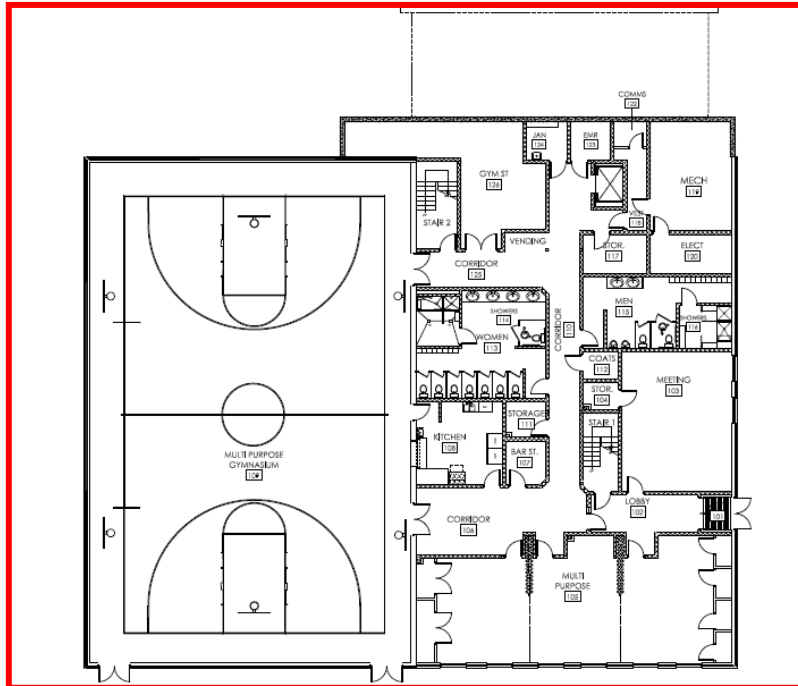
Mike Savage, Mayor

Cathy Mellett, Municipal Clerk

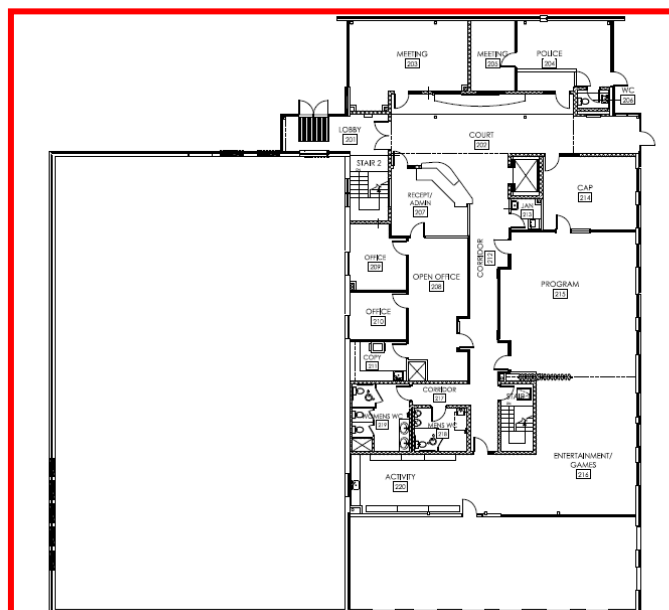
Schedule “A1”
Site Layout



**Schedule “A2”
Building Floor Plans**



First Floor



Second Floor

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HRM _____

Tenant _____

**Schedule “B”
Site Photograph**



Date last Revised February 12, 2013

HRM _____

Tenant _____

Schedule “C”
Permitted Facility Use - Site Specific Permitted Facility Use

The Tenant shall use the leased premises only for the permitted uses that are a direct link to and that align with HRM focus areas. Program and service delivery represents community activities and events that serve to meet or exceed a defined service delivery focus areas of Halifax Regional Municipality and meet the purpose and objectives of the Tenant. Their services must provide a direct contribution resulting in a positive impact to and for HRM citizens. Priority access is provided to the general public prior to special interests and/or groups or private organizations. A facility meets the public use standards if during at least 50% of the time it is operating, any member of the public may access the amenity at either no cost or a cost reasonable for the type of facility use or service availability.

The tenant shall not carry on or permit to be carried on therein any unapproved trade, business or other activity.

That the Tenant will not carry on any business or activity or permit anything to be done or kept on the leased premises which shall in the opinion of the Landlord or at law be a nuisance or disturbance, or which shall be noisy or contrary to any law or statute or any by-law, rule or ordinance of any governmental authority having jurisdiction, or by reason of which the insurance on the leased premises shall be made void or voidable or increased in cost.

The Tenant shall not do, suffer or permit to be done any act or anything upon the leased premises which is or constitutes a nuisance to the occupiers of any lands or premises adjoining or in the vicinity of the leased premises or to the public generally.

The tenant shall obtain prior written permission for any exclusive leasing within the building. Any alcohol on the premise or service must be done in accordance with the Alcohol and Gaming Authority.

The Tenant shall not allow any of the following to take place on the premises:

- pawn shops;
- drugstore or health and beauty aids store;
- no stored items which are not used at the facility;
- no banks, loan companies, trust companies or finance companies;
- no catalogue or mail order business;
- VLTs;
- adult stores;
- any other business which due to the merchandise to be sold or pricing methods used would downgrade the character of the Centre or cause community apprehension/concern.

Attachment # 1

Site Specific Information

Facility

- Constructed in 2007-08 by Maxim Construction. Occupancy in November 2008.
- The facility is 23,770 square feet, with a 6048 square foot gymnasium.
- Rubber floor in gym requires floor covering for many events.
- Facility is certified LEED Silver. Green roof on site.
- Facility operational hours are as needed, 7 days per week, 7 am to 11 pm.
- Public access through programs, rentals and special events.
- Facility Accessible washrooms, door push buttons, ramps
- No Emergency generator on site.
- EMO classified as potential emergency facility/ shelter.
- The Facility is located on the Beazley sports complex property, therefore, the parking lot is shared with joint responsibility as outlined below in the Service Agreement section.
- Exterior Bus pen on site, used by HRP as well.

Building Systems

- HRM – TPW will be responsible to monitor and maintain all HVAC systems, mechanical systems and life safety systems such as fire panels, extinguishers and suppression systems.
- HRM currently maintains elevator license, permit and inspections.
- B&G Club of East Dartmouth is responsible for security systems including cameras, monitoring and facility keys. HRM Best key lock system.
- Alarm monitoring by AEL/Stanley (468-3372)
- Security cameras on site and signage with HRM contact number 490-2555.

Service Agreements

- Snow Plowing completed by TPW with direction from -B&G Club of East Dartmouth and paid by HRM Recreation.
- Lawn Care services provided by Municipal operations in exchange for meeting space.
- Calendonia Jr. High uses the centre as an Evacuation site.
- B&G Club of East Dartmouth maintains and pays power of parking lot lights and pylon sign for entire complex.

Attachment # 2

Tenant Responsibilities

The Tenant shall manage, promote, develop, operate, maintain and improve the Facility.

The facility responsibilities for the community group and HRM are outlined in the Facility Lease Agreement Resource Binder Section 6.3 Guidelines – Facility Maintenance Responsibilities.

The list dated 2012 covers the majority of regular maintenance items, however, if the group has a question regarding a particular item or responsibility they can contact their HRM staff liaison to get clarification.