


Item No. 11.1.1
Halifax Regional Council
December 3, 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: November 4, 2013

SUBJECT: Assignment of Lease – 60 Farrell Street, Dartmouth - Boys & Girls
Club of Dartmouth

ORIGIN

This report originates from a request from the Boys & Girls Club of Dartmouth (the tenant at 60 Farrell Street in Dartmouth), seeking HRM's consent to the assignment of the lease to the Boys & Girls Club of East Dartmouth, due to a corporate reorganization.

LEGISLATIVE AUTHORITY

Section 61(3) of the *Charter* provides that the property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council.

Section 63(1) of the *Charter* provides that the Municipality may lease property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality.

Section 63(2) of the *Charter* provides that a resolution to lease property referred to in subsection 63(1) at less than market value shall be passed by at least two thirds majority of the Council present and voting.

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Mayor and Municipal Clerk to enter into a Landlord Consent Certificate for the assignment of the sublease from the Boys and Girls Club of Dartmouth to the Boys & Girls Club of East Dartmouth, at 60 Farrell Street, Dartmouth, as per the terms and conditions as set out in this report.

BACKGROUND

In 1973, the Dartmouth Boys Club approached the City of Dartmouth to request a site upon which to operate a second boys' club in the City (the first being located on Main Street in Dartmouth). After considering several city-owned properties, it was determined that the most suitable location would be on Farrell Street on land owned by the Nova Scotia Power Corporation (NSPC).

On February 22, 1974, the NSPC agreed to lease the said lands to the City of Dartmouth (along with three other adjacent parcels of land) for \$1.00 per year for an indefinite number of successive one-year terms (the "Lease"). The Lease states that the lands are to be used for recreational purposes or as a playground area. The City of Dartmouth has the option to sublet all or part of the lands to the Dartmouth Boys Club, and the Lease expressly contemplates that the City (or its assigns) may construct a building on the demised lands, subject to removing the building upon 6 months' notice. Both parties have the option to terminate the Lease upon 6 months' notice.

On October 25, 1974, the City of Dartmouth subleased one of the four parcels of land to the Dartmouth Boys Club (the "Sublease"), and the Dartmouth Boys Club subsequently erected a building on the land. This Sublease was made on substantially the same terms as the Lease between the NSPC and the City of Dartmouth (i.e. year to year lease, \$1.00 per year, must be used for recreational purposes, and the tenant must remove the building upon 6 months' notice). The Sublease states that the Dartmouth Boys Club cannot sublet the Sublease without the consent of the City.

In March 2013, lawyers for the Boys & Girls Club of Dartmouth (which is a successor entity to the Dartmouth Boys Club) contacted HRM's Legal Services department to notify HRM that the Boys & Girls Club of Dartmouth was undergoing a corporate reorganization. As part of this reorganization, the Boys & Girls Club of Dartmouth would be transferring all of its assets and liabilities to another entity called the Boys & Girls Club of East Dartmouth. The lawyers asked that HRM (as the successor to the City of Dartmouth) therefore, consent to the assignment of the Sublease to the Boys & Girls Club of East Dartmouth.

DISCUSSION

The Lease only provides the City of Dartmouth (now HRM) with the authority to sublease the lands to the Dartmouth Boys Club. Therefore, HRM Legal Services requested that NSPI (the successor to the Nova Scotia Power Corporation) authorize HRM to sublease the lands to the Boys & Girls Club of East Dartmouth and its successors and/or affiliates. Such consent was provided by NSPI on August 9, 2013.

Now that HRM has the express authority from NSPI to sublease the lands to the Boys & Girls Club of East Dartmouth, it is free to execute a Landlord Consent Certificate consenting to the assignment of the Sublease (draft attached). HRM Legal Services and HRM Real Estate & Land Management Services, recommend that Regional Council provide such consent. The terms of the Lease and Sublease will otherwise remain unchanged.

The reason that this request is being brought to Regional Council is that HRM's current Transaction Policy is silent as to the authority of officers, directors or employees of HRM to consent to assignments of existing leases. Furthermore, even though this land is owned by NSPI and not by HRM, it is still technically a less than market value lease and, as such, any decision to sublease the lands requires a two-thirds majority vote of Council.

It should be noted that on July 23, 2013, the Boys & Girls Club of Dartmouth was dissolved and it no longer exists as a legal entity according to the Registry of Joint Stock Companies.

FINANCIAL IMPLICATIONS

None identified.

COMMUNITY ENGAGEMENT

Not required.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

Regional Council could decide not to consent to the assignment of the Sublease to the Boys & Girls Club of East Dartmouth. This alternative is not recommended for the reasons outlined in this report.

ATTACHMENTS

Landlord Consent Certificate for HRM's consideration (Draft); and Lease Agreement

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Tom Crouse, Acquisition & Disposal Manager, Real Estate, P&I, 490-5931
Colin Taylor, Solicitor, Legal Services, Risk and Insurance Services, 490-4833

Report Approved by: _____
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Report Approved by: _____
Jane Fraser, Director, Planning & Infrastructure, 490-4855

Report Approved by: _____
John Traves, Director, Legal Services, 490-4219

LANDLORD CONSENT CERTIFICATE

TO: **BOYS & GIRLS CLUB OF EAST DARTMOUTH**, and its successors and assigns (the "**Assignee**")

AND TO: **BOYS & GIRLS CLUB OF DARTMOUTH** (the "**Tenant**")

RE: Sublease between the Tenant and Halifax Regional Municipality respecting the property located at 60 Farrell Street, Dartmouth, Nova Scotia (the "**Property**")

DATE: _____, 2013

WHEREAS the Nova Scotia Power Corporation is the owner of the Property;

AND WHEREAS the City of Dartmouth entered into a lease with the Nova Scotia Power Corporation dated the 22nd day of February, 1974 (the "**Lease**") regarding the Property;

AND WHEREAS pursuant to Article 9 of the Lease the City of Dartmouth may sublet the Property to the Dartmouth Boys' Club;

AND WHEREAS the City of Dartmouth did sublet the Property to the Dartmouth Boys' Club pursuant to a sublease dated October 25, 1974 (the "**Sublease**");

AND WHEREAS the Tenant is a successor to the Dartmouth Boys' Club;

AND WHEREAS Halifax Regional Municipality ("**HRM**") is the successor to the City of Dartmouth;

AND WHEREAS the Tenant has assigned its rights and obligations in the Sublease to the Assignee and the Assignee has assumed all such rights and obligations in the Sublease from the Tenant pursuant to an assignment and assumption of lease between the Tenant and the Assignee dated April 1, 2013, attached hereto as Schedule A (the "**Assignment**");

AND WHEREAS HRM wishes to consent to the assignment of the Sublease as contemplated in the Assignment.

THEREFORE in consideration of the sum of \$1.00, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, HRM hereby consents to the assignment by the Tenant to the Assignee and the assumption by the Assignee from the Tenant of the Tenant's rights and obligations in the Sublease, as more particularly described in the Assignment.

[signature page follows]

IN WITNESS WHEREOF HRM has executed this Landlord Consent Certificate as of the date first written above.

HALIFAX REGIONAL MUNICIPALITY

Per: _____

Name:

Title:

SCHEDULE A – ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE made as of the 1st day of April, 2013 (the "Effective Date")

B E T W E E N:

BOYS & GIRLS CLUB OF DARTMOUTH, a society incorporated under the laws of Nova Scotia

(the "Assignor")

- and -

BOYS & GIRLS CLUB OF EAST DARTMOUTH, a society incorporated under the law of Nova Scotia

(the "Assignee")

RECITALS:

- A. The Assignor has agreed to transfer to the Assignee all of its assets and the Assignee has agreed to assume all of the liabilities and obligations of the Assignor pursuant to an asset transfer agreement dated as of March 31, 2013, (the "Transfer Agreement");
- B. Pursuant to the Transfer Agreement, the Assignor has agreed to assign to the Assignee its interest in and to and arising pursuant to any lease between the Assignor and Halifax Regional Municipality with respect to 60 Farrell Street, Dartmouth, Nova Scotia (PID: 0096255) (the "Lease"); and
- C. Capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Transfer Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration and the completions of the transactions provided for in the Transfer Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Assignment by Assignor

The Assignor hereby grants, assigns, transfers and sets over unto the Assignee, as and from the Effective Date, for the Assignee's sole use and benefit, all of the Assignor's right, title and interest in, to and under the Lease, together with any and all rights, benefits, powers and advantages to be derived therefrom and all covenants, obligations and agreements of the other parties thereto.

2. Warranties and Covenants of Assignor. The Assignor hereby represents, warrants and covenants with the Assignee as follows:

- (a) The Lease is a valid and subsisting Lease and is unamended, in good standing and in full force and effect as at the date hereof;
- (b) All of the covenants and obligations of the Landlord under the Lease have been duly observed and performed to the date hereof including, without limitation, all

covenants and obligations pertaining to the payment of rent and additional rent thereunder;

- (c) All of the covenants and obligations of the Assignor under the Lease have been duly observed and performed to the date hereof including, without limitation, all covenants and obligations pertaining to the payment of rent and additional rent thereunder; and
- (d) The Assignor has good right, full power and absolute authority to assign the Lease, according to the true intent and meaning of these presents and the Lease and the other benefits or advantages derived therefrom have been previously assigned or otherwise encumbered at the date hereof.

3. Assumption by Assignee

The Assignee hereby accepts this assignment and agrees to assume, and shall observe and perform, all of the Assignor's obligations and liabilities under the Lease which is to be observed or performed thereunder as and from the Effective Date.

4. Indemnity by the Assignee

The Assignee will at all times hereafter well and truly save, defend and keep harmless and fully indemnified the Assignor from and against all losses, costs, charges, damages and expenses which the Assignor may, at any time or times, suffer, be at or be put unto for or by any reason or on account of any claims or demands whatsoever arising under, from or out of any breach by the Assignee of its obligations under the Lease occurring on or after the Effective Date.

5. Indemnity by the Assignor

The Assignor will at all times hereafter well and truly save, defend and keep harmless and fully indemnify the Assignee from and against all losses, costs, charges, damages and expenses which the Assignee may, at any time or times, suffer, be at or be put unto for or by any reason or on account of any claims or demands whatsoever arising under, from or out of any breach by the Assignor of its obligations under the Lease which occurred prior to the Effective Date.

6. Lease Held In Trust

It is agreed that if the Lease is not assignable by its terms or in respect of which a consent to its assignment is required but is not available the Lease shall be held in trust for the Assignee by the Assignor and performed by the Assignor for and on behalf of the Assignee and all benefits derived thereunder shall be for the benefit of the Assignee.

7. Successors and Assigns

This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

8. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein and shall be treated in all respects as a Nova Scotia contract.

9. Execution by Counterparts

This Agreement may be executed in counterparts and may be executed and delivered by facsimile or PDF and each such counterpart shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

10. Further Assurances

Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this assignment and shall use its best efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

11. Severability

If any provision contained in this Agreement or its application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held to be invalid or unenforceable shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

[Signature Page Follows.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first mentioned.

BOYS & GIRLS CLUB OF DARTMOUTH

By: **Original Signed**

Name:

Title:

**BOYS & GIRLS CLUB OF EAST
DARTMOUTH**

By: **Original Signed**

Name:

Title: