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Item No. 12.4.2
Audit & Finance Standing Committee
March 27, 2019

TO: Chair and Members of Audit & Finance Standing Committee

SUBMITTED BY: Original Signed

Jane Fraser, CFO/Director of Finance, Asset Management & ICT
Original Signed

Jacques Dubé, Chief Administrative Officer

DATE: February 27, 2019

SUBJECT: **Funding Request – Terence Bay Community Hall Association: Proposed Contribution Agreement**

SUPPLEMENTARY REPORT

ORIGIN

October 6, 2015 – Regional Council declared 80 Sandy Cove Road, Terence Bay as surplus to municipal operational requirements and approved disposal under the Community Interest category of Administrative Order 50.

October 30, 2018 – Regional Council approved the sale of 80 Sandy Cove Road, Terence Bay to the Terence Bay Community Hall Association for the less than market value price of \$1.00 and directed staff to prepare a supplementary recommendation report outlining funding options for renovation work to the Terence Bay Community Hall.

February 26, 2019 – Regional Council defeated the staff recommendation to decline capital funding and in the alternative approved the following motion moved by Councillor Adams and seconded by Councillor Streach:

“That Halifax Regional Council refer the one-time contribution to the Terence Bay Community Hall Association in the amount of \$75,000 to the Audit and Finance Standing Committee to identify a funding source and authorize the Chief Administrative Officer to negotiate and execute a Contribution Agreement between HRM and the Terence Bay Community Hall Association”.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (“HRM Charter”), S.N.S. 2008, c.39
79(1) The Council may expend money required by the Municipality for

RECOMMENDATION ON PAGE 2

(av) a grant or contribution to

...

(v) any charitable, nursing, medical, athletic, educational, cultural, community, fraternal, recreational, religious, sporting or social organization within the Province.

Audit & Finance Standing Committee Terms of Reference

8. The Audit and Finance Standing Committee shall review and make recommendations on proposals coming to the Council outside the annual budget or tender process including:

...

(d) the commitment of funds where there is insufficient approved budget.

RECOMMENDATION

It is recommended that the Audit & Finance Standing Committee recommend that Regional Council:

1. Approve the transfer of \$75,000 from Operating Account M310-8004 to the General Contingency Reserve Q421 in fiscal year 2018-19;
2. Approve provision of a one-time capital contribution in the amount of \$75,000 to the Terence Bay Community Hall Association towards capital improvements and upgrades to 80 Sandy Cove Road, Terence Bay, to be funded as a withdrawal from the General Contingency Reserve Q421 in fiscal year 2019-20; and
3. Authorize the Chief Administrative Officer, or his designate, to negotiate, enter into and execute a Contribution Agreement on behalf of the Municipality with the Terence Bay Community Hall Association substantially in the same form as the draft Contribution Agreement included as Attachment 1 of this report, and otherwise acceptable to the Chief Administrative Officer.

BACKGROUND

In their submission for the less than market value sale of the surplus property located at 80 Sandy Cove Road, Terence Bay, the Terence Bay Community Hall Association (“the Association”) requested \$125,000 in capital funding towards renovations and upgrades in addition to the donation of the property and partial cost of sale recoveries.

DISCUSSION

During debate with respect to the value of any additional funding towards capital improvements to the subject property reference was made to the itemized list submitted by the Association to Regional Council, November 21, 2018. The items totalled \$150,000 as shown below:

Septic system replacement	\$ 20,000
Driveway re-paving	\$ 10,000
Kitchen/bar renovations	\$ 50,000
Accessibility upgrades/washrooms	\$ 10,000
Heat pump purchase/installation	\$ 10,000
Window and door replacement	\$ 15,000
Roof replacement	\$ 25,000
General upgrades/updates	\$ 10,000
Total	<u>\$150,000</u>
Less District Capital Fund	(\$25,000)
Request	<u>\$125,000</u>

The motion approved by Council was for an amount of \$75,000. During debate it was suggested that an amount of \$50,000 for kitchen and bar renovations be excluded. To arrive at a value of \$75,000 staff have prioritized the following expenses:

Septic system replacement	\$20,000
Driveway re-paving	\$10,000
Roof	\$25,000 ¹
Exterior window/door replacement	\$15,000 ²
Accessibility upgrades/washrooms	\$ 5,000
Total	\$75,000³

Note:

1. The replacement of roof covering may be under-stated in the absence of quotes.
2. The building condition report noted that energy efficiency improvements could be made to the exterior windows, exterior doors, and roof insulation.
3. Excluded from the initial list are kitchen/bar renovations, the purchase and installation of a heat pump, and unspecified “general upgrades”. The amount assigned accessibility/washroom upgrades is reduced from the Association’s estimate of \$10,000 to \$5,000.

The values assigned to the itemized work have not been fully estimated and funds may be shifted between the items listed above depending on their final cost. In addition, the Association could use the \$25,000 from the District Capital Fund as a contingency for any shortfall (any difference between estimates and actual expenses). HRM’s capital contribution could also be used to leverage consideration from other funding sources, to encourage public donations if the Association were to undertake a fundraising campaign, or in support of any application to the Prospect Road Recreation Association for capital funding under the Prospect Road Area Rate.

As proposed, funds would be issued in two (2) installments. This approach is considered prudent in the absence of competing quotes and a construction schedule.

FINANCIAL IMPLICATIONS

The balance remaining in 2018-19 Community Grants Program Operating Account M311-8004 is insufficient to cover the \$75,000 proposed in the motion approved by Regional Council on February 26, 2019. In the alternative, it is proposed that \$75,000 be transferred from the balance remaining in the 2018-19 Interim Community Museums Grants Program Operating Account M310-8004 to the General Contingency Reserve Q421¹ so that funds can be issued in fiscal year 2019-20.

M310-8004 Interim Community Museums Grants Program Fiscal 2018-19	\$100,000
Less Proposed Transfer to Contingency Reserve Q421	\$(75,000)
Balance	\$ 45,000 ¹

1. This is one-time only transfer in fiscal year 2018 and does not impact the Community Museums Grants Program in fiscal 2019 (pending budget approval).

Budget Summary: General Contingency Reserve, Q421

Balance in Reserve January 31, 2019	\$11,272,067
Projected revenue to March 31, 2019	\$ 23,548
Commitments to March 31, 2019	\$ (4,499,476)

¹ Report from HRM Grants Committee to Regional Council meeting of November 13, 2018, Interim Community Museums Grant Program: Recommended Awards Fiscal Year 2018, dated November 5, 2018, Attachment 1, p.4 Financial Implications.

Per Recommendation 1	\$ 75,000
Per Recommendation 2	\$ (75,000)
Projected net available balance, March 31, 2019	\$ 6,796,139

Risk Reserve – General Contingency Reserve, Q4211 is to receive the annual operating surplus of the Municipality as prescribed by the Provincial Financial Accounting and Reporting Manual, and can be used to fund operating costs, offset deficits, or fund new operating and/or capital expenditures. This is a net \$0 affect on the reserve.

RISK CONSIDERATION

There are no significant risks associated with the funding recommendation other than reputational. The latter refers to non-profit organizations unaware of access to funding consideration outside an established municipal grant program.

The less than market value sale of 80 Sandy Cove Road, Terence Bay has a Buy-Back Agreement to protect the public interest should the Association relinquish ownership. The agreement would compensate the Association for capital improvements² less depreciation *excluding* any municipal funding. As such, the Association would not realize any net revenue from municipal funding, including any funds issued under the District Capital Fund.

COMMUNITY ENGAGEMENT

Not applicable.

ENVIRONMENTAL IMPLICATIONS

Not applicable. The Agreement of Purchase and Sale closed on January 31, 2019.

ALTERNATIVES

The Audit & Finance Standing Committee could recommend that Regional Council make amendments to the draft Contribution Agreement.

ATTACHMENTS

1. Draft Contribution Agreement.

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Peta-Jane Temple, Team Lead Grants & Contributions Finance, Asset Management & ICT 902.490.5469

² The term capital improvement is a defined term in law, real estate and finance. This type of expenditure increases or maintains the overall value of the property and extends its useful life. Typical expenditures include, for example, structural (roof, foundation, load-bearing walls and beams) exterior windows, doors and exterior wall protective barrier (siding or shingles), mechanical, electrical and water/waste water systems.

DRAFT CONTRIBUTION AGREEMENT

Between

Halifax Regional Municipality

A municipal corporation in the Province of Nova Scotia (“**HRM**”)

-and-

Terence Bay Community Hall Association

A society incorporated in Nova Scotia (the “**Association**”)

WHEREAS:

- A. On October 30, 2018, Halifax Regional Council approved the conveyance of the former Terence Bay Fire Station located at 80 Sandy Cove Road, Terence Bay (the “**Facility**”) to the Association;
- B. The Association intends to renovate the Facility for use as a community centre. In general, a community centre is a facility that facilitates social interaction through leisure and recreational activities and opportunities for communal gatherings;
- C. The Association requested that HRM provide it with a grant to be used towards its renovation costs;
- D. Section 79(1)(av)(v) of the *Halifax Regional Municipality Charter* permits HRM to provide a grant or contribution to a number of different organizations within the Province of Nova Scotia, including “community organizations”; and
- E. On February 26, 2019, HRM Regional Council passed a resolution to provide a grant in the amount of \$75,000 to the Association for the purpose of making capital improvements and upgrades to the Facility, subject to certain conditions and the execution of a formal contribution agreement.

THEREFORE the parties hereto covenant and agree as follows:

SECTION ONE CONTRIBUTION OF FUNDS

Section 1.01 Amount of Contribution

- a) HRM shall make a one-time contribution to the Community Association in the amount of \$75,000.00 (the “**Contribution Amount**”) to be used by the Association towards capital improvements and upgrades to the Facility.
- b) The Contribution Amount is a firm-fixed amount and HRM will not be liable for any losses incurred by the Association in relation to the renovation, construction or operation of the Facility.
- c) The Contribution Amount represents HRM’s complete financial commitment to the Association under this Contribution Agreement, and HRM will not be obligated to provide any supplemental or incremental funding to the Association.

Section 1.02 Approvals

- a) Prior to commencing the capital improvements work funded under this Contribution Agreement, the Association shall obtain all required approvals and permits from any government authority having jurisdiction over the work, including Halifax Regional Municipality, the Nova Scotia Department of the Environment, and the Halifax Water Commission as applicable.
- b) The Contractor retained by the Association shall contact the Municipality upon completion of any significant stage of the work (including completion) and this work shall be inspected and approved as applicable prior to the commencement of any subsequent stage(s) and prior to the fulfillment of the Contractor’s obligations.

Section 1.03 Payment Schedule

- a) Subject to the terms and conditions of this agreement, HRM shall pay the Contribution Amount to the Association in two installments as follows:
 - (i) an amount of \$30,000.00 to be paid upon the execution of this Agreement. This amount is to be used for septic system upgrade or replacement, and re-paving of the driveway/parking area; and
 - (ii) an amount of \$45,000.00 to be paid upon written confirmation to HRM Finance & Asset Management that the scope of work identified in Section 1.03 (a)(i) has been completed, with proof of payment. This amount is to be used for roof replacement, exterior window and door replacement, and washroom accessibility upgrades.

- b) Payments issued under Section 1.03(a) shall be inclusive of HST and permit fees.
- c) Any unexpended funds remaining from the initial payment issued under sub-clause 1.03(a)(i) may be carried forward and applied to the cost of work to be undertaken with funding from the second and final instalment as outlined in sub-clause 1.03(a)(ii).

Section 1.04 Scope of Work

The capital improvements funded under this Contribution Agreement referenced in Section 1.03(a) include the following:

- (i) a replacement septic system, the installation of an additional septic tank equipped with a new pump system including electrical connection, French drain, or similar design of the Association's choosing working with a qualified contractor;
- (ii) re-paving of the driveway/parking area including painted markings;
- (iii) roof repairs inclusive of materials and labour as applicable;
- (iv) replacement of exterior windows and doors to enhance energy efficiency; and
- (v) washroom accessibility upgrades.

For clarity, the Contribution Amount shall not be used for kitchen and bar renovations, purchase and installation of a heat pump, and unspecified general upgrades.

Section 1.05 Reporting

The Association shall submit written confirmation to HRM Finance & Asset Management that the scope of work identified in Section 1.03 (a) (i) has been completed with proof of payment to enable issuance of the second and final installment. The scope of work identified in Section 1.03(a)(ii) must be completed within twelve (12) months of receipt of the second and final payment from HRM.

Section 1.06 Restrictions

- a) The Contribution Amount is to be used by the Association solely towards capital improvement costs of the Facility.
- b) No portion of the Contribution Amount is to be used for the payment of goods or services that are unrelated to the Facility.
- c) No portion of the Contribution Amount shall be paid to employees, volunteers, officers or directors of the Community Association (i.e., salary, wage, stipend, honorarium, gift, or commission).

- d) Any unused portion of the Contribution Amount shall be returned by the Association to HRM.

SECTION TWO FINANCES, RECORDS AND INFORMATION SERVICES

Section 2.01 Registry of Joint Stocks

The Association shall maintain active status as a Society pursuant to the Societies Act during the term of this agreement.

Section 2.02 Accounting Records

The Association shall maintain a complete and proper set of accounting records regarding its operations.

Section 2.03 Municipal Audit

HRM shall have the right, at its own expense, and with reasonable notice, to audit or examine the books of account and records maintained by the Association pursuant to this agreement and the right to make copies thereof and take extracts therefrom.

SECTION THREE LIABILITY AND INDEMNITY

Section 3.01 Risk

The Association agrees that its activities shall be at its sole risk and expense.

Section 3.02 Limitation of Liability

HRM is not a guarantor of the Association or the Facility and in no event will HRM be liable for any direct, indirect, consequential, exemplary or punitive damages in relation to the renovation or construction work undertaken by the Community Association, regardless of the form of action, whether in contract, tort or otherwise.

Section 3.03 Indemnification

The Association will at all times indemnify and save harmless HRM, its officers, servants, employees or agents, from and against all actions, claims and demands whatsoever which may be brought against or made upon HRM and against all loss, liability, judgments, claims, costs, demands or expenses which HRM may sustain or suffer, resulting from or arising out of the Community Association's operations or out of HRM's contribution of the Contribution Amount to the Community Association.

**SECTION FOUR
GENERAL PROVISIONS**

Section 4.01 Notices

- a) All notices, demands, requests, approvals or other communication of any kind which the parties may be required or may desire to serve on each other in connection with this agreement shall be delivered by registered mail to:

Halifax Regional Municipality

Attention: Chief Administrative Officer
Halifax Regional Municipality
P.O. Box 1749
Halifax, NS B3J 3A5

Herring Cove Community Association

Attention: Chair
Terence Bay Community Hall Association
c/o Ms. Carol Anne Smith
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

- b) 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 registered 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 demand are thereafter to be addressed.

Section 4.02 Confidentiality

The Association acknowledges that this agreement is a public document and that any information, document, or record, in any form, provided to HRM by the Community Association pursuant to this agreement may be subject to disclosure in accordance with Part XX of the *Municipal Government Act* ("Freedom of Information and Protection of Privacy").

Section 4.03 Governing Law

- a) This agreement shall be governed by and interpreted in accordance with the laws of Nova Scotia.

- b) The parties hereby attorn to the exclusive jurisdiction of the courts of Nova Scotia to resolve any disputes arising out of this agreement.

Section 4.04 Effective Date

This agreement will become effective when both parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

Section 4.05 Representations and Warranties

- a) The Association represents and warrants that:
 - (i) All information submitted to HRM, including design plans and cost estimates, is true, accurate, and prepared in good faith to the best of the Association's ability, skill, and judgment; and
 - (ii) It has full power and authority to enter into, and has taken all necessary measures to authorize the execution of, this agreement.

Section 4.06 Entire Agreement

This agreement comprises the entire agreement between the parties in relation to the subject of the agreement. No prior documentation, negotiation, provision, undertaking or agreement has legal effect, unless incorporated by reference into this agreement. No representation or warranty express, implied or otherwise, is made by HRM to the Association except as expressly set out in this agreement.

[Remainder of this page intentionally left blank. Signature page to follow]

The parties have executed this agreement through authorized representatives on the date stated opposite each party's signature.

**TERENCE BAY COMMUNITY HALL
ASSOCIATION**

Witness

Name:
Title:

Witness

Name:
Title:

Date Signed

HALIFAX REGIONAL MUNICIPALITY

Witness

Jacques Dubé, CAO

Date Signed