

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by   
Jacques Dubé, Chief Administrative Officer

**DATE:** April 11, 2019

**SUBJECT:** Springfield Lake Recreation Centre

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## ORIGIN

This report originates with a staff review of the expired Management Agreement between HRM and the Springfield Lake Recreation Centre.

## LEGISLATIVE AUTHORITY

- *Halifax Regional Municipality Charter*  
*Section 61 (3):* "The property vested in the Municipality, absolutely, or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise."  
  
*Section 75 (1):* "The Municipality may agree with any person for the provision of a service or a capital facility that the Municipality is authorized to provide."  
*(2):* "An agreement made pursuant to subsection (1) may allow for the lease, operation or maintenance of the facility or provision of the service by a person..."  
  
*Section 79 (1):* "The Council may expend money required by the Municipality for:"  
(k) recreational programs; (x) lands and buildings required for a municipal purpose;  
(ah) playgrounds, trails, including trails developed, operated or maintained pursuant to an agreement made under clause 73(c), bicycle paths, swimming pools, ice arenas and other recreational facilities.
- *Administrative Order 2016-005-ADM*  
The recommended contract award complies with all of the pre-requisites for awarding contracts as set out in Section 34 of Administrative Order 2016-005-ADM, Procurement Administrative Order.  
  
Section 25 of the Procurement Administrative Order, provides that a Sole Source Purchase may occur: (m) for the procurement of Goods, Services, Construction or Facilities from a public body or a not-for-profit corporation."  
  
Section 36 of the Procurement Administrative Order, provides that Halifax Regional Council may approve contract awards of any amount.

## **RECOMMENDATIONS**

It is recommended that Halifax Regional Council:

1. Authorize the Chief Administrative Officer to negotiate and execute a Facility Operating Agreement with Springfield Lake Recreation Centre substantially in the same form as set out in Attachment 2 of this report;
2. Award a sole source contract to Springfield Lake Recreation Centre for field monitoring services at the Upper Sackville All-weather Field for a period of three (3) years at a cost of \$72,898.73, and direct the Chief Administrative Officer to negotiate and execute a Field Monitoring Service Agreement substantially in the same form as set out in Attachment 3 of this report;
3. Approve Springfield Lake Recreation Centre retaining the Q526 reserve contribution for the 2018/19 fiscal year; and
4. Direct staff to amend Q526 – Capital Fund Reserve to remove the Upper Sackville All-weather Field revenue contribution.

## **BACKGROUND**

The Springfield Lake Recreation Centre (SLRC) was incorporated as a non-profit society in 1962 and currently provides stewardship to several HRM assets in the Middle and Upper Sackville communities. This includes the Springfield Lake Recreation Center property at 266 Lakeview Avenue and the Upper Sackville Recreation Facility property at 2476 Sackville Drive. SLRC currently schedules, manages and operates all the facilities at both sites including two community centers, three ball diamonds and an All-weather Field.

In 1993, the Province of Nova Scotia established the Community of Sackville Landfill Compensation Fund to provide compensation to the community of Sackville for acting as host to the Landfill. The County of Halifax and eventually HRM administered the funds, in accordance to direction of Community Council, to provide substantial capital expenditure on recreation facilities in the Upper Sackville area.

The Upper Sackville Recreation Facility (USRF) was built with the Landfill funds after amalgamation to provide Upper Sackville with a multi-purpose community space and support future outdoor facilities. At the same time, the Weir baseball diamond was constructed as a AA baseball diamond. It is one of three AA baseball fields in HRM; the others are Beazley Field in Dartmouth and Mainland Common in Halifax.

The Landfill Compensation funds were also used to build the Upper Sackville All-weather Field which opened in the Spring of 2000. It was HRM's and Atlantic Canada's first All-weather Field.

The revenue generated from the use of the All-weather Field was governed by the Capital Reserve Business Case Q124, approved by Regional Council in June of 2003. The purpose of the Capital Reserve Fund was to provide a financial vehicle for future repairs and/or replacement of the All-weather Field. This Capital Reserve was funded by using three quarters (3/4) of the user fees. The remaining one quarter (1/4) of funds went to SLRC to pay for the operation and maintenance of the field. In 2008, the business case for Capital Reserve Fund Q124 was amended to allocate 50% of the funding to the Capital Reserve and 50% to the operations and maintenance. The field was resurfaced by HRM in the 2013/14 fiscal year and the Capital Reserve Fund Q124 was merged into a new larger Capital Reserve Fund Q526 in 2016.

HRM approached SLRC to operate the new Upper Sackville facilities in the late 1990's. The community of Upper Sackville had a group of volunteers championing the construction of the facilities but they had never incorporated formally.

In April 2002, a three-year Property Management and Operation Agreement (PM&O) was executed to put all the facilities at both locations under the same agreement. No renewal term was identified for this

agreement and, after the three years, no new agreement was executed. However, it was noted in the agreement that both parties had a responsibility to ensure the relationship continued. In 2013, HRM provided written correspondence to SLRC to consider the agreement in holdover until replaced with a new agreement.

HRM Parks and SLRC also have an annual Parks Partnership agreement that provides funding to SLRC for the mowing and maintenance of the three ball diamonds. The terms and funding requirements are evaluated and agreed upon annually.

This report addresses how to restructure the operating responsibilities in new agreements between SLRC and HRM for these facilities and improve service delivery to citizens. HRM and SLRC are working together during this transition period to ensure there is no negative impact to user groups and service delivery.

## **DISCUSSION**

HRM and SLRC have a common interest in providing the best experience and value to the users of both the indoor and outdoor facilities.

The Upper Sackville All-weather Field is one of seven All-weather facilities in HRM. Currently scheduling, maintenance and operation of the Upper Sackville All-weather Field is managed by SLRC, while the other six are scheduled, operated and maintained directly by HRM.

Under a proposed new agreement, the Upper Sackville All-weather Field would become HRM managed to ensure a consistent approach and experience for clients for operation of all-weather fields. The new agreement would also transfer all scheduling and maintenance responsibilities of the Weir baseball diamond to HRM for the 2019 season. The operation of the Upper Sackville Recreation Facility (community centre) shall remain with SLRC.

Centralized scheduling of HRM assets has become a priority with the recent launch of the Legend Recreation software. The Weir baseball diamond, an AA field, and the Upper Sackville All-weather Field are the only locations in their facilities classifications that are not scheduled and managed by HRM. Having HRM assume operations of these facilities provides clients access to all available inventory at a single point of contact. This should ensure maximum use of all the facilities. Inclusion in the Legend scheduling software will improve the usage data, and standardization of rules and fees.

With HRM assuming operational control of the Upper Sackville All-weather Field there would no longer be an annual contribution to the Q526 - Capital Fund Reserve and the business case would be updated by Finance accordingly. All revenue generated from use of the field will be collected by HRM as part of operations and used to offset annual repairs and maintenance costs of the facility. Recapitalization would be managed through HRM's regular capital budget process. It is proposed (Recommendation #3) for SLRC to retain the 2018-19 fiscal year Q526 reserve contribution as compensation for years of service, and in recognition of the lost revenue SLRC will incur without managing the Weir Baseball diamond and Upper Sackville All-weather Field. This is projected to be approximately \$20,000 and, as outlined in the Financial Implications section, there would be no HRM operating budget impact as these funds were intended for the Capital Fund Reserve.

There are no proposed changes to the operating model of the Springfield Lake Recreation Centre or the ball diamonds at that location. The SLRC will be able to focus on providing excellent service to the community through the operation of the two community centers, the Springfield Lake ball diamonds, and the annual Parks Partnership.

### **Facility Operating Agreement**

The Facility Lease Agreement (FLA) template has been updated to a Facility Operating Agreement. The term "lease" in the FLA document did not accurately reflect the operating governance model. Further, the

agreement terms have been updated and modernized. This is the first agreement to be updated with the new template. Future agreements brought forward to Regional Council for approval will be called Facility Operating Agreements.

The Facility Operating Agreement has been agreed to by SLRC Board and is included as Attachment #2. An overview of the key terms and conditions is outlined in Table 1:

Table 1: Facility Operating Agreement Key Terms and Conditions

<b>Properties</b>	Springfield Lake Recreation Center 266 Lakeview Avenue <i>Including the two ball diamonds.</i>  Upper Sackville Recreation Facility 2476 Sackville Drive <i>Excluding Upper Sackville All-weather Field, Weir ball diamond</i>
<b>Commencement Date</b>	Date agreement is executed by CAO
<b>Notice</b>	Either party shall have the option to terminate the agreement upon providing six (6) months written notice to the other party at any time or for any reason.
<b>Term</b>	Initial nine (9) year term with a One (1) year renewal term
<b>Operating Subsidy</b>	HRM shall pay SLRC an annual Operating Subsidy. The amount of the Operating Subsidy will be evaluated annually and shall be included in the Annual Operating Budget approved by Halifax Regional Council.
<b>Key Conditions</b>	<ul style="list-style-type: none"> <li>- All revenues and expenses from the operation of the facilities are the responsibility of SLRC</li> <li>- All personnel are employed by the SLRC. The employees shall under no circumstances or at any time be considered employees of HRM</li> <li>- Any surplus realized in any fiscal year shall be set aside to underwrite the continued operation of the Facility or any Operating Reserve Funds</li> <li>- HRM will insure all real and personal property owned by HRM or for which HRM is responsible for.</li> <li>- SLRC is required to provide general liability insurance coverage outlined in the agreement</li> <li>- HRM shall continue to provide payroll services for SLRC (1 FTE and 3 to 5 students) on a fee for service basis consistent with HRM Payroll Policies. Invoices to SLRC will be quarterly with payment required within 30 days.</li> </ul>

Monitoring Service Agreement

Historically, SLRC has relied on user groups to look after their own field usage. However, the six All-weather turf fields managed by HRM are serviced by monitors. Under HRM management, the Upper Sackville All-weather Field will now have monitors in place to improve customer service and increase its overall safety. Monitors open and close gates, handle scheduling discrepancies, efficiently operate the lights, supply first aid equipment, enforce facility rules, and safely move nets around the field. This is a new service to the users of the Upper Sackville All-weather Field, consistent with the other fields where HRM is responsible for the operation and overall management.

Normally HRM would procure field monitor services through a competitive process. In this case, staff recommend a sole source to SLRC, to leverage SLRC's 18 years of knowledge and experience with the field, surrounding amenities, clients and the community. SLRC staff will have access to the Upper Sackville Recreation Facility and are uniquely positioned to provide a high service level to the users through field monitoring. A sole sourced Field Monitoring Service Agreement between HRM and SLRC is proposed.

SLRC is qualified under HRM's Procurement Policy to be a sole sourced vendor as a non-profit organization. The Monitoring Service Agreement would begin in April 2019 with an initial three (3) year term and options to renew for three (3) year intervals. SLRC would be compensated \$23,712 for the monitoring service in the first year based on up to 1200 hours of field usage. The annual fee for monitoring services would increase by 2% each year for a total of \$72,568 for the first three years.

This approach of having adjacent non-profit groups provide the service is consistent with the recent Regional Council approval of the Monitoring Service Agreement with Soccer Nova Scotia for the Mainland Common All-weather Field.

The Monitoring Service Agreement has been agreed to by SLRC and is included as Attachment #3. An overview of the key terms and conditions are outlined in Table 2:

Table 2 - Summary of Key Terms and Conditions Monitoring Service Agreement

<b>Property</b>	Portion of PID 00478073
<b>Civic Address</b>	2476 Sackville Drive, Upper Sackville, NS
<b>Supplier</b>	Springfield Lake Recreation Centre
<b>Purchaser</b>	Halifax Regional Municipality
<b>Term</b>	Three (3) Years with a three (3) year renewal option
<b>Commencement Date</b>	April 1, 2019
<b>Key Conditions</b>	<ul style="list-style-type: none"> <li>• Monitoring Services are for up to 1200 hours (April through December)</li> <li>• SLRC shall be compensated \$23,712 in year one for Monitoring Services with a 2% increase annually, for a three-year period</li> <li>• HRM and SLRC have agreed on Field Monitor duties which can be amended if agreed upon by both parties.</li> <li>• SLRC agrees to financial penalty fee structure for various incidents where agreed upon service levels and standards are not achieved.</li> <li>• SLRC shall be responsible for all monitoring staff/equipment costs.</li> <li>• HRM and SLRC agree to meet regularly to evaluate the agreement, address issues and seek improvement opportunities.</li> <li>• HRM may terminate the agreement with 30 days notice.</li> </ul>

**FINANCIAL IMPLICATIONS**

The proposed 2019/20 operating budget includes a grant of \$32,000 (C705) to the Springfield Lake Recreation Centre.

Additionally, the annual cost, \$23,712, of the Monitoring Service Agreement is included in the 2019/20 Parks operating budget (W187).

The annual contribution to Q526 – Capital Fund Reserve from SLRC for the 2018/19 fiscal year is budgeted at \$20,000. The projection for the reserves for Q526 has been updated by HRM Finance to reflect the contribution not being realized for 2018/19. This revenue will also be removed as a contribution to the reserve in future years, if approved by Council.

**Obligation Reserve, Q526 Capital Fund Reserve**

Balance in reserve, February 28, 2019	\$ 14,860,136
Projected revenue to March 31, 2019	\$ 1,489,186

Commitments to March 31, 2019	<u>\$(13,457,608)</u>
Projected net available balance, March 31, 2019	\$ 2,891,714

The anticipated costs for maintenance and upkeep for the Upper Sackville All-weather Field are \$52,000 annually. These costs are included in the 2019/20 Parks budget (W187) and will be partially offset by the revenue collected through Facility Scheduling (W702).

The additional resources required for HRM to maintain the Weir ball diamond and to continue the Parks Partnership for the Springfield Lake ball diamonds can be absorbed into existing budgets as there is already partial work being done by HRM staff at those facilities which is enhanced by SLRC.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations in this report. The risks considered rate Low. To reach this conclusion, consideration was given to operational and financial risks for both HRM and the SLRC.

### **COMMUNITY ENGAGEMENT**

The Board of Directors for the Springfield Lake Recreation Centre is made up of members of the community.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications.

### **ALTERNATIVES**

- Alternative 1: Regional Council could direct staff to assume operation and management of all HRM assets under agreement with SLRC and no Facility Operating Agreement or Field Monitoring Agreement would be executed.
- Alternative 2: Regional Council could direct staff to enter into a new Facility Operating Agreement with the SLRC to include all facilities and fields currently under SLRC management.
- Alternative 3: Regional Council could direct staff to retain the Q526 – Capital Reserve Fund amount from the Upper Sackville All-weather Field for 2018/19 and not provide it to SLRC.
- Alternative 4: Regional Council could direct staff to use existing Procurement strategies for an open competition for the Field Monitoring Services at the Upper Sackville All-weather Field.

### **ATTACHMENTS**

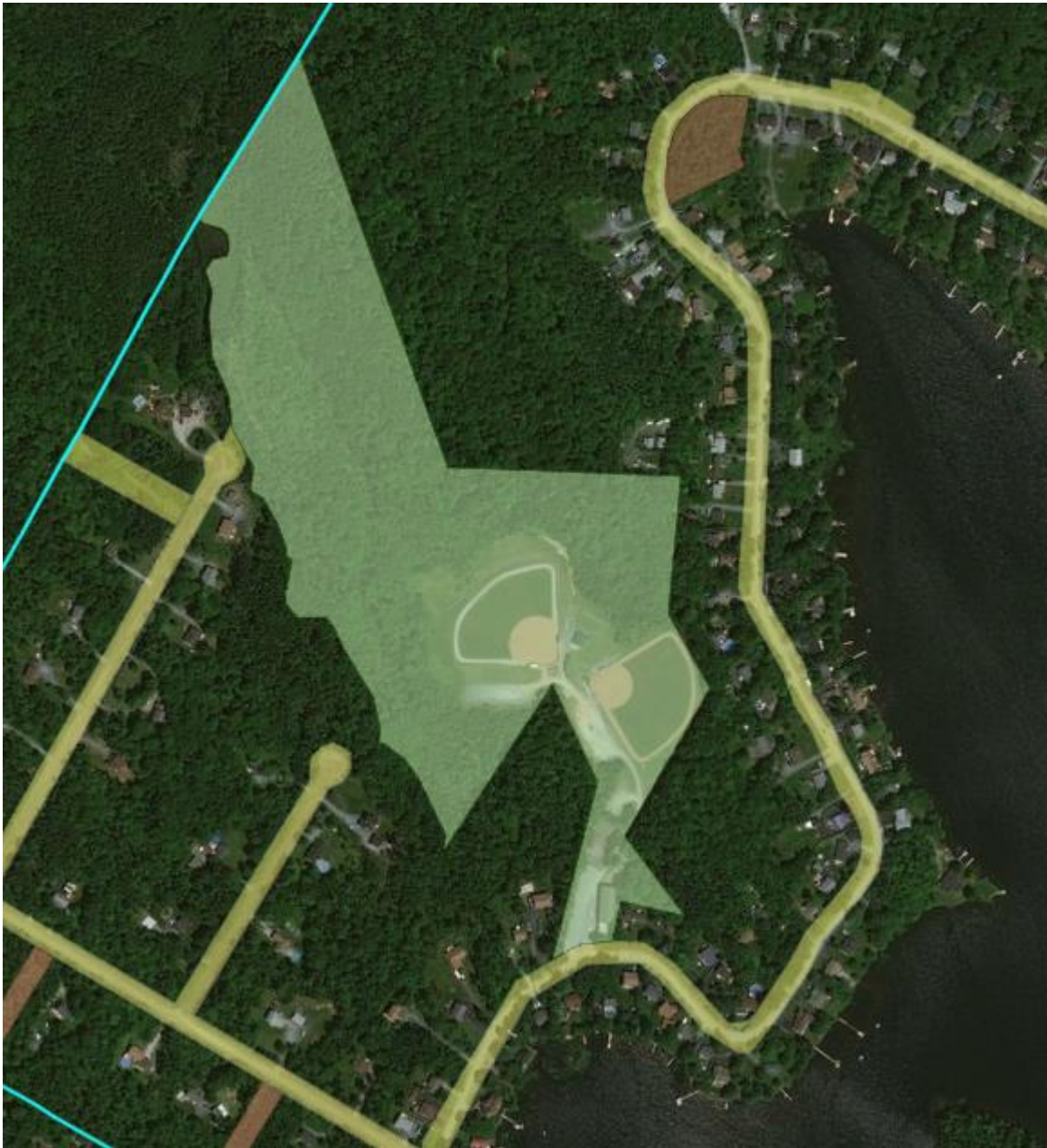
- Attachment 1: Site Plan of Property (including Buildings & Land)
- Attachment 2: Facility Operating Agreement
- Attachment 3: All-Weather Field Monitoring Agreement

A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Scott Ingram, Facility Service Delivery Coordinator, Parks and Recreation, 902.221.1319

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**ATTACHMENT 1**  
**Site Plan of Property (including Buildings & Land)**  
266 Lakeview Drive (PID 40707788 ) – green highlight





**ATTACHMENT 1**  
**Site Plan of Property (including Buildings & Land)**  
2476 Sackville Drive (PID 00478073 ) – green highlight



Attachment 2

# Facility Operating Agreement

**Between:**

**Springfield Lake Recreation Centre**

**and**

**Halifax Regional Municipality**

**FOR**

**266 Lakeview Avenue**

**and**

**2476 Sackville Drive**

**Prepared by:**

Halifax Regional Municipality

Parks & Recreation

Program Support Services

PO Box 1749

Halifax, Nova Scotia, B3J 3A5

[www.halifax.ca](http://www.halifax.ca)

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**BETWEEN:**

**Halifax Regional Municipality** (hereinafter referred to as “HRM”)  
**OF THE FIRST PART**

**- and -**

**Springfield Lake Recreation Centre** (hereinafter referred to as the “Society”)  
**OF THE SECOND PART**

**WHEREAS** HRM is the owner of the Springfield Lake Recreation Center located at 266 Lakeview Avenue, and the Upper Sackville Recreation Facility at 2476 Sackville Drive (the “Facilities”);

**AND WHEREAS** HRM wishes to encourage and facilitate a community-based delivery of service to the public, while maximizing efficiencies and opportunities for economies of scale;

**AND WHEREAS** the Society is a community based non-profit organization incorporated under the *Societies Act* of Nova Scotia, whose members and directors receive no financial benefit from their participation;

**AND WHEREAS** the Society has demonstrated the organizational capacity to operate the Facilities, including the delivery of programming;

**AND WHEREAS** the Society wishes to oversee the operation of the Facilities and to promote public use and general access to the Facilities;

**AND WHEREAS** HRM wishes for the Society to oversee the operation of the Facilities and to promote public use and general access to the Facilities;

**AND WHEREAS** this Agreement replaces the parties’ previous agreement dated 1st of April, 2002 and this Agreement reflects the current working relationship of the parties;

**IN CONSIDERATION of the mutual conditions and covenants contained herein and the provision of other valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:**

## 1. DEFINITIONS

1.1 When used in this Agreement, the following terms shall have the following meanings:

**“Agreement”** means this agreement and all instruments in writing executed by the Parties that by their terms expressly amend, waive or vary the provisions of this agreement and the Schedules;

**“Applicable Laws”** means all laws, regulations and governmental policies of any Governmental Authority, including all by-laws, policies, procedures, guidelines and rules of HRM, as they may be amended or replaced from time to time, and which are applicable to the Services and the roles and responsibilities of each party under this Agreement;

**“Board”** means the Board of Directors of the Society;

**“Capital Work”** means work done on the Facilities as directed by HRM’s department of Facility Design and Construction and approved in the HRM capital budget;

**“Claims”** means any and all claims, liabilities, demands, losses, damages, actions and causes of action of any kind or nature including, without limitation, expenses, costs and legal fees;

**“Commencement Date”** means the date this Agreement is executed by the Chief Administrative Officer of HRM, which is the date that this Agreement comes into effect;

**“Council”** means the Regional Council of HRM;

**“Expiry Date”** means the date nine (9) years after the Commencement Date;

**“Facilities”** means the property owned by HRM known as 266 Lakeview Avenue PID 40707788 and 2476 Sackville Drive PID 00478073, excluding the Upper Sackville All-weather Field and Weir ball diamond.

**“Fiscal Year”** means the annual (12 month) period ending on March 31<sup>st</sup>, or such other period as HRM may establish upon notice to the Society;

**“Governmental Authority”** means any federal, provincial or local government or any governmental, quasi-governmental, judicial, public or statutory administrative agency, authority, body or entity, including any such authority that has jurisdiction in relation to any aspect of the Services or this Agreement;

**“Hazardous Substances”** means any chemicals, biological substance, pollutant, contaminant, toxic substance, hazardous material or substance, radioactive material, waste, oil or petroleum product as such term or any similar terms are used under any Applicable Law or any other substance which may cause an adverse effect respecting the health of humans or the reasonable enjoyment of life or property, and includes any soil containing such substance in amounts exceeding permissible limits for such substance in such location by any Applicable Law;

**“HRM”** means the Halifax Regional Municipality;

**“HRM Representative”** means the HRM Manager of Community Partnerships, or his or her designate, acting as HRM’s representative with the Society;

**“HRM Property”** means all property, including, but not limited to, real property, equipment and infrastructure, that is owned by HRM and used by the Society to deliver the Services, and includes the Facilities and the property set out in Schedule ‘A’;

**“Operating Subsidy”** means the operating subsidy payable to the Society by HRM for each Fiscal Year, or part thereof, that this Agreement is in effect;

**“Operations Contract”** means an agreement, contract or purchase order entered into between the Society and a Supplier to furnish services, equipment, supplies or other things required to deliver the Services, and includes sponsorship contracts as set out in Article 7.6 of this Agreement;

**“Permits”** means all permits, permissions, licenses and approvals required, or as the context requires, granted by Governmental Authorities for the delivery of the Services;

**“Renewal Term”** has the meaning set out in Article 4.1 of this Agreement;

**“Rental Contract”** means a contract entered into between the Society and a person for the short-term (i.e. hourly) use of the Facilities, or any part thereof;

**“Revenue”** means all monies, proceeds, funds and revenues of every nature and kind received by the Society in delivering the Services, whether by way of fees paid for services provided in or from the Facilities, or any part thereof, or by way of grants, gifts, sponsorships, bequests, donations; or any monies or proceeds derived by the Society under any valid license of the Society to operate any form of lottery scheme; or from any fund raising program or through any third party fee-for-service agreements;

**“Schedules”** means the schedules attached hereto which form part of this Agreement;

**“Services”** has the meaning set out in Article 5.1;

**“Society”** means the Springfield Lake Recreation Centre, a society incorporated under the Societies Act;

**“Societies Act”** means the Societies Act, RSNS 1989, c. 435, as may be amended and replaced from time to time;

**“Society Programming”** means the programs, events, activities and fundraisers that the Society plans and delivers to the community at the Facilities, including those set out in Article 8.1 of this Agreement;

**“Society Property”** means all property owned by the Society, including all property owned by the Society that is used by the Society to deliver the Services. Society Property excludes HRM Property;

**“Supplier”** means any person, other than the Society and employees of the Society, entering into an Operations Contract to furnish services, equipment, supplies or other things in connection with the Services;

**“Term”** has the meaning set out in Article 3.1 of this Agreement; and

**“Termination Date”** means the Expiry Date, or the date on which this Agreement otherwise terminates in accordance with the terms and conditions herein.

## **2. PURPOSE**

**2.1** The purpose of this Agreement is to formalize the terms and conditions by which the Society will deliver the Services to the Community

## **3. TERM**

**3.1** Subject to earlier termination of this Agreement in accordance with the terms herein, the term of this Agreement shall commence on the Commencement Date and end on the Expiry Date. The term of this Agreement may be terminated earlier in accordance with Article 22 of this Agreement.

## **4. RENEWAL TERM**

**4.1** This Agreement may be renewed by HRM on the same terms for one (1) additional one-year Renewal Term by HRM advising the Society in writing of its intent to exercise the renewal option no later than ninety (90) days prior to the Expiry Date. The Society must notify HRM within thirty (30) days of receipt of the renewal notice whether it wishes to accept the Renewal Term. If the Society declines the Renewal Term, this Agreement will terminate on the Expiry Date.

## **5. SERVICES**

**5.1** From and after the Commencement Date, the Society agrees to deliver the Services. Services means:

- a) the provision of all labour and materials required to operate the Facilities;
- b) the employment of all personnel and coordination of all volunteers at the Facilities;
- c) the furnishing of all equipment, supplies, tools, storage, transportation and other things and services of every kind whatsoever necessary for the proper, safe, effective and cost-efficient operation of the Facilities;
- d) the delivery of Society Programming;
- e) all administrative, accounting, record-keeping, and similar responsibilities of every kind whatsoever incidental to the Services; and
- f) any other obligation, responsibility or requirement of the Society under this Agreement.

A reference to "Services" shall mean "any part and all of the Services" unless the context otherwise requires.

**5.2** The Society shall ensure that the Services are performed in a good and workmanlike manner to the full satisfaction of HRM in compliance with the terms and conditions of this Agreement and all Applicable Laws.

## **6. OPERATING SUBSIDY**

**6.1 Operating Subsidy.** HRM shall pay to the Society an annual Operating Subsidy in consideration of the Services provided by the Society.

**6.2 Operating Subsidy Amount.** The amount of the Operating Subsidy shall be the amount approved by Council annually as part of HRM's Annual Operating Budget.

**6.3 Installments.** Subject to Council's approval of HRM's Annual Operating Budget, the Operating Subsidy will be disbursed by HRM to the Society in two payments. The first payment

will be 80% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Society. The second payment will be the remaining 20% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Society. Invoices shall be provided by the Society to HRM by May 31<sup>st</sup> and by November 30<sup>th</sup> of each Fiscal Year. Disbursement of the Operating Subsidy payments is contingent on all required reports in accordance with Section 14 being received and approved by HRM. HRM may adjust the Operating Subsidy payment installment percentages or payment schedule from time to time with written notice to the Society.

**6.4 Pro-rated Operating Subsidy.** The disbursements of the Operating Subsidy payable by HRM to the Society during the final year of the Term or during the Renewal Term, as applicable, shall be pro-rated to align with the expiration of this Agreement.

## **7. AUTHORITY TO CONTRACT**

**7.1 Operations Contracts.** The Society may enter into Operations Contracts; provided, however, that the Society shall not be thereby relieved of any of its obligations to HRM as set forth in this Agreement. All Operations Contracts shall be in writing and include terms and conditions consistent with the reasonably prudent operation of the facility of a similar nature to the Facilities. If the Operations Contract is for an expenditure, it shall be for an expenditure that is within the limits of the Annual Budget and Business Plan of the Society. The parties hereby agree that the Society is not acting as an agent of HRM when it enters into a Operations Contract.

**7.2 Rental Contracts.** The Society may enter into Rental Contracts. All Rental Contracts shall be in writing and include terms and conditions consistent with the reasonably prudent operation of a facility of a similar nature to the Facilities. Without limiting the generality of the foregoing, all Rental Contracts must include a clause which provides that (i) the Rental Contract shall automatically terminate in the event that the Society is dissolved; and (ii) the Society may terminate the Rental Contract, without notice, in the event that this Agreement is terminated. The parties hereby agree that the Society is not acting as an agent of HRM when it enters into a Rental Contract.

**7.3 Limitation of Authority.** Unless expressly authorized by prior written direction or approval of HRM, the Society shall not have the authority to do any of the following:

- a) Obtain loans for the Facilities or HRM, whether secured or unsecured, or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facilities or any portion thereof or any interest of the HRM therein, or obtain replacements of any mortgage or mortgages;
- b) Prepay in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facilities or any portion thereof, except to the extent contemplated and approved in writing by HRM;
- c) Cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person;
- d) Cause HRM to enter into any contracts with respect to the Facilities;
- e) Release, compromise, assign or transfer any claim, right, or benefit of the HRM, except with the written authorization of HRM;
- f) Allow a default judgement to be entered against the Facilities or any assets associated with the Facilities;
- g) Modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facilities;
- h) Grant easements or other property rights in the Facilities;
- i) Purchase, exchange, convey or sell any HRM Property or any part thereof, on behalf of HRM;

- j) Install or modify closed circuit television without consulting with HRM Corporate Security; or
- k) Initiate litigation of any kind against a third party without the prior written consent of HRM.

**7.4 Confirmation of Authority.** HRM shall execute and provide to the Society any document or other evidence which may be reasonably required by the Society to demonstrate to third parties the authority of the Society as set out in this Agreement.

**7.5 Naming Rights Agreements.** The Society is not permitted to enter into an agreement, or otherwise provide, naming rights at the Facilities. Any proposed naming of the Facilities or any part thereof must be approved by HRM in compliance with applicable HRM policies, including Administrative Order 56, the HRM Sale of Naming Rights Administrative Order.

**7.6 Sponsorship Agreements.** The Society may seek sponsorship for Society Programming, and enter into sponsorship agreements for this purpose. No sponsorship opportunity shall be considered by the Society that seeks to promote or enhance the image of an illegal activity (in the determination of HRM), that is designed to promote a specific political or social perspective or agenda (outside of the accepted municipal values or norms, solely as communicated by HRM) or is otherwise determined by HRM to be inappropriate or not suitable for the Facilities or its users.

**7.7 Other Agreements (Including Leases).** With respect to any lease, license or other agreements related to the Facilities, HRM and the Society hereby agree:

- a) The Society is not authorized to enter into any lease, license or other agreement related to the Facilities, except for Rental Contracts and Operations Contracts in accordance with this Agreement;
- b) Any lease, license or other agreement related to the Facilities (excluding Rental Contracts and Operations Contracts) shall be reviewed, approved and executed by HRM, in its sole discretion;
- c) In delivering the Services under this Agreement, the Society shall, when requested by HRM, provide tenant and/or contractor support services to HRM for lease, license or other agreements entered into by HRM and related to the Facilities, including, but not limited to, day to day management and administration of lease, license or other agreements entered into by HRM and related to the Facilities; and
- d) The Society shall immediately notify the HRM Representative in the event of any issues, concerns or breaches related to any lease, license or other agreements entered into by HRM and related to the Facilities.

## **8. SOCIETY PROGRAMMING**

**8.1 Society Programming.** Society Programming is the responsibility of the Society, including scheduling, fees, quality control and evaluation. The Society may use HRM Property for the purposes of Society Programming. The Society's responsibilities for Society Programming include, without limitation:

- a) development of the Society Programming list and schedule;
- b) production and circulation of promotional materials;
- c) management of registration process and records for Society Programming;
- d) hiring and contracting with instructors/contractors to deliver Society Programming
- e) oversight and management of instructors/contractors who are delivering Society Programming;
- f) providing and being responsible for adequate supplies to operate Society Programming;



- g) oversight, screening and management of any volunteers involved with delivery of Society Programming;
- h) assessment of credentials and compliance with Applicable Laws when recruiting instructors, contractors or volunteers;
- i) ensuring Society Programming is offered safely with proper risk-management and in a safe, inclusive environment;
- j) management of programming-related risks and issues; and
- k) the purchase, maintenance, repair and replacement of any Society Property used or required for Society Programming

**8.2 Community Facility Master Plan (CFMP).** The Society agrees to work cooperatively with HRM to implement any policies, initiatives, directives or other requirements resulting from the current CFMP version 2, and any future versions of the CFMP, that are applicable to the Facilities and/or Services.

### **8.3 Recreation Software**

The Society acknowledges and agrees that Legend Recreation System Software Inc., a common recreation and registration management system that is used by HRM, or any other alternative software solution supplied by HRM, will be exclusively used by the Society at such time that the system is provided to the Society by HRM. The implementation costs for the software will be subject to future HRM Budget approval.

## **9. FACILITY USE BY HRM**

**9.1 HRM Recreation Programming.** In the event that the Society requests HRM recreation programming in the Facilities, the parties agree that HRM will not be charged a user fee for the use of the Facilities required to deliver the requested HRM recreation programming.

**9.2 Emergency Management Operations.** The Society hereby acknowledges and agrees that, in the event of an emergency, including a national emergency, a local emergency or a Facility-specific emergency (i.e. flood, fire, or other emergency in the Facilities), HRM retains the right, which it may exercise at any time without notice to the Society, to assume operational control of the Facilities. HRM shall be responsible for any extraordinary costs and expenses incurred by the facilities or the Society during an emergency.

**9.3 HRM Operation of Facilities.** If at any time HRM wishes to resume operating a portion of the Facilities that is operated by the Society, the parties agree to enter into good faith negotiations to amend this Agreement accordingly.

## **10. HRM REPRESENTATIVE**

**10.1 HRM Representative.** HRM shall designate the HRM Representative to be HRM's contact with the Society with respect to this Agreement. The Society hereby agrees that the HRM Representative shall be entitled to attend all meetings of the Board, and to receive meeting minutes of the Board and committee meetings.

**10.2 HRM Representative Responsibilities.** The HRM Representative shall:

- a) review annual and bi-annual reports, provide recommendations and financial feedback to the Society and follow-up with the Society concerning financial variances;
- b) review the business plans and all other reports submitted by the Society;
- c) review and respond to issues related to the Services and Facilities which require the approval of HRM;

- d) consult with the Society before Capital Work is commenced;
- e) consult with the Society before policies specifically impacting the Services are implemented;
- f) meet with the Society, or designate, at minimum at least two (2) times per year, either in person, via conference call or other means of electronic communication to share information and discuss issues related to the Services and this Agreement; and
- g) respond to requests from the Society in a timely manner.

## 11. RESPONSIBILITY FOR COSTS

**11.1 Society.** Except where otherwise stated in this Agreement, the Society shall own, be responsible for and agrees to pay all costs associated with the delivery of the Services in accordance with and subject to the terms and conditions of this Agreement, including, but not limited to, the following costs:

- a) staffing (employees and volunteers);
- b) programming costs (in accordance with Article 8);
- c) on site supplies;
- d) utilities;
- e) Permits;
- f) general maintenance of the Facilities (snow removal, garbage removal, cleaning, etc.); and
- g) Society Property required to deliver the Services.

**11.2 Municipality.** The Municipality shall own, be responsible for and agrees to pay all costs associated with:

- a) Capital Work;
- b) fire safety systems (alarms systems, emergency lighting, extinguishers, etc.);
- c) lift devices (inspections, servicing, licensing);
- d) heating and cooling systems (Inspections, servicing, replacements, oil tanks);
- e) water testing, treatment;
- f) major facility repairs; and
- g) HRM Property.

## 12. FINANCES

**12.1 Revenues.** Any Revenues derived from the activities of the Society are the property of the Society, and shall be used exclusively by the Society to deliver the Services.

**12.2 Expenses.** Any expenses incurred from the activities of the Society are the property of the Society and shall be paid exclusively by the Society.

**12.3 Surplus.** HRM and the Society agree that the Services shall be delivered in a prudent and fiscally responsible manner. The Society agrees that any surplus realized in delivering the Services, which shall be defined as the excess of actual Revenues over actual expenses, shall be set aside to subsidize or underwrite the continued delivery of the Services, or to fund operating reserve accounts.

**12.4 Deficit.** If, in any Fiscal Year, a deficit is realized from the operating budget, the Society shall prepare and submit a written report (the deficit report) at the time it submits its operating budget to the HRM Representative for the Fiscal Year, outlining the magnitude of the deficit, the reasons for the deficit, and the recommendation to rectify the deficit in the next Fiscal Year.

## **13. GOVERNANCE**

**13.1 Governance Covenants.** The Society covenants and agrees that:

- a) it will conduct itself at all times in accordance with its constitution and by-laws and the requirements of the Societies Act; and
- b) the Society will adopt and adhere to appropriate good governance policies.

**13.2 Governance Defaults.** To ensure that the delivery of the Services under this Agreement continue to be carried out in the best interests of the public, the parties agree that, if:

- a) the purpose of the Society is amended so that, at any time, it includes the carrying on of a business for profit or gain;
- b) the purpose of the Society is amended so that it is no longer consistent with benefiting the local and municipal community and members of the public through the provision of programming and other recreation services within the Facilities; or
- c) the Society adopts bylaws and governance procedures that conflict with the terms of this Agreement or do not permit the Society to carry out its roles and responsibilities under this Agreement,

then it shall be considered a default of the Society under this Agreement and the Dispute Resolution Process set out in Article 23 of this Agreement shall apply.

## **14. REPORTING AND INSPECTIONS**

**14.1 Annual Reports.** The Society shall provide an annual report to the HRM Representative no later than 45 days after Fiscal Year end, which report shall include the following components:

- a) Financial Reporting
  - i. Endorsed financial statements
    1. Income statement
    2. Balance sheet
  - ii. Bank reconciliation report
- b) Management Reporting
  - i. Discussion and analysis of Fiscal Year-end results highlighting significant variances and, if applicable, a report explaining any deficit realized.
  - ii. Current list of Board and Society staff, including contact information
  - iii. Other reports as HRM may reasonably require

### **14.2 Annual Budget and Business Plan**

**14.2.1** The Society shall prepare and furnish to the HRM Representative a draft Facility Annual Budget and Business Plan each Fiscal Year (date is subject to change in response to HRM's budget and business planning process).

**14.2.2** The Annual Budget will include anticipated operating Revenues and expenses.

**14.2.3** The Business Plan shall include the following components:

- a) Vision and Mission Statements;
- b) Strategic Priorities;
- c) Goals; and
- d) Annual Budget.

This plan is to be submitted as per timelines set out in this Agreement or as otherwise determined by the HRM Representative.

**14.3 Bi-Annual Reports.** The Society shall provide a Bi-Annual Report to the HRM Representative no later than 45 days following the mid-point of the Fiscal Year, which report shall include the following components:

- a) Financial Reporting
  - i. Income statement compared to Proposed Annual Budget
- b) Management Reporting
  - i. Monthly facility inspection sheets
  - ii. Program and Facility usage reports
  - iii. Other reports as HRM may reasonably require

**14.4 Complaint Reporting and Action.** The Society shall report to HRM and immediately investigate all written complaints upon receipt and shall take appropriate action it deems reasonably necessary.

**14.5 Other Reports.** The Society shall, when requested from time to time by HRM, prepare and furnish to HRM, such other reports or statements as HRM may reasonably require including, without limitation, status reports on any material aspects of the Services.

## **15. PURCHASING POLICY**

**15.1 Procurement.** The Society shall follow the purchasing policy adopted by its Board for the purchase of all goods, services, construction or facilities it requires to deliver the Services. The parties hereby acknowledge and agree that the Society is not an agent of HRM for the purposes of procurement. The Society's purchases are its own and the Society shall not purchase goods, services, construction or facilities on behalf of HRM.

## **16. FACILITY ALTERATIONS**

**16.1** HRM shall be solely responsible for any Capital Work required in the Facilities.

**16.2** Notwithstanding Article 16.1, the Society shall be permitted to carry out minor alterations, enhancements and improvements to the Facilities at their sole cost, provided that HRM has granted written approval prior to the work commencing. HRM may, in its sole and absolute discretion, refuse to approve any minor alterations, enhancements or improvements to the Facilities proposed by the Society.

**16.3** All work undertaken by the Society in accordance with Article 16.2 herein shall conform to Applicable Laws, including applicable building and fire codes. Before commencing the work the Society shall obtain all necessary Permits required for the approved scope of work. The Society is responsible to ensure all required inspections are completed for the work.

## **17. HEALTH, SAFETY AND ENVIRONMENT**

**17.1 Compliance with Occupational Health and Safety Laws and Environmental Laws.** With respect to Applicable Laws respecting health and safety of the workplace, the environment and Hazardous Substances or any Applicable Law related thereto:

- a) The Society covenants to operate the Facilities (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facilities), in compliance with all Applicable Laws, related to the protection of the environment, health and safety.

The Society warrants and represents that no Hazardous Substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere on, under or about the Facilities, other than in accordance with Applicable Law. Without limiting the generality of the foregoing, the Society warrants and represents that it shall comply with all Applicable Laws regulating the use, generation, storage, transportation and disposal of Hazardous Substances on, under or about the Facilities;

- b) The Society acknowledges that (i) it will be the occupier of and employer at the Facilities and will have far greater control over the Facilities than HRM on a day-by-day basis, (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facilities, and (iii) as part of the provision of Services, the Society shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facilities, including but not limited to the following:
  - (i) its obligations under Article 17.2 of this Agreement;
  - (ii) take every precaution that is reasonable in the circumstances to operate and maintain the Facilities and deliver the Services in a manner that ensures the health and safety of persons thereupon;
  - (iii) exercise the precautions and duties of an “occupier of lands or premises used as a workplace” and “employer”, as those terms are used in the Occupational Health and Safety Act and the regulations;
  - (iv) adopt internal policies and programs relative to workplace health and safety that are substantially similar to HRM’s policies and programs, but which may differ to the extent required to adapt the Society’s policies and programs to operate the Facilities in accordance with the Occupational Health and Safety Act and the regulations;
  - (v) produce such reports from time to time as HRM may reasonably require to audit and verify the Society’s efforts in respect of health and safety and the Facilities;
  - (vi) comply with the Occupational Health and Safety Act and the regulations; and
  - (vii) immediately disclose to the relevant Governmental Authority and to HRM the occurrence of an event whereby the Society failed to comply with the Occupational Health and Safety Act or the regulations.
- c) All of the Society’s obligations set out in this Article 17.1 of this Agreement shall survive the expiration or other termination of this Agreement.

**17.2 Hazardous Substances.** The Society shall not allow any Hazardous Substances to be brought upon, placed or stored in or on the Facilities except in accordance with the requirements of Article 17. If the Society:

- a) encounters Hazardous Substances at the Facilities; or
- b) has reasonable grounds to believe that Hazardous Substances are present at the Facilities the Society shall:
  - (i) take all reasonable steps including if necessary cessation of operations in the Facilities, to ensure that no individual suffers an injury, sickness or death and that no property is injured or destroyed as a result of exposure to the presence of the Hazardous Substances;
  - (ii) immediately report the circumstances to HRM in writing; and
  - (iii) comply with any provisions of this Agreement.

## **18. FACILITY INSPECTIONS.**

HRM or HRM’s Contractor, shall have access to the Facilities at all reasonable times by providing not less than twenty-four (24) hour written notice to the Society for the purpose of

completing an independent facility inspection report. These inspections will provide valuable information for recapitalization planning, insurance compliance issues, and operational planning. HRM may enter the Premises immediately and without prior written notice if, in HRM's sole but reasonable discretion, an emergency event or potential emergency event is occurring.

## **19. PERMITS**

**19.1** The Society shall obtain and renew as necessary all Permits which may be required in connection with the delivery of the Services. The Society shall at all times comply with the conditions of such Permits and shall comply with and observe all Applicable Laws in delivering the Services.

## **20. EMPLOYEES**

**20.1 Personnel of the Society.** All personnel employed by the Society in delivering the Services are selected for employment by, and will be employees of, the Society, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. The Society shall be solely responsible for the hire, dismissal, control, direction, supervision, instruction, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of the Society and shall be paid directly by the Society. The entirety of the foregoing shall be a term of employment for anyone employed by the Society.

**20.2** The Society shall continue to be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory payroll deductions and remittance to appropriate taxing authorities.

**20.3** The Society shall be responsible for all volunteers engaged to support the Society, and will be responsible for all related liabilities and obligations, including appropriate oversight and screening.

**20.4** The Society shall ensure that fidelity bonds, criminal records checks and sex-abuse registry records have been obtained and are in place in respect of all its employees and volunteers where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations.

**20.5** The Society will take all measures required to remain in compliance with the *Occupational Health and Safety Act* and ensure the safety of employees, volunteers and contractors.

**20.6 Meetings and Access to Personnel.** Employee or Board representatives of the Society shall agree to meet with HRM's Representative upon HRM's request, to discuss and review the delivery of the Services, provided the Society is given two (2) weeks' notice except in the event that the requirement for a meeting is time sensitive in which the meeting may be immediate. The Society Board and/or employees shall inform the HRM Representative in a timely manner of all emergencies, the occurrence of all uncontrollable events, and any other significant information as would be expected under customary and prudent business practices.

## **21. BOOKS AND RECORDS**

**21.1 Books and Records.** The Society shall maintain or cause to be maintained complete and accurate books and records about the Facilities and Services in accordance with generally accepted accounting principles. HRM shall have the right at its own expense and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies

and take extracts from the books of account and records maintained by the Society pursuant to this Agreement. Such right may be exercised through any agent or employee designated by HRM.

**21.2** Upon termination or expiration of this Agreement, all records related to the Facilities and Services shall be turned over forthwith to HRM at no cost to ensure the orderly continuance of the operation of the Facilities. All other books and records of the Society will thereafter be available to HRM, at all reasonable times, for inspection, audit, examination and copying.

## **22. TERMINATION**

**22.1 Termination for Any Reason.** This Agreement may be terminated by either party for any reason whatsoever upon six months (6) written notice to the other party.

**22.2 Termination for Material Breach.** This Agreement may be terminated in writing by either party for a material breach of any of its terms, provided that the party that is in material breach is first given written notice of the breach. The party alleging breach shall give a written notice of the breach to the party in breach, and that party shall remedy the default to the satisfaction the other party within ten (10) business days of receipt of such written notice, or if such default cannot reasonably be remedied within such ten (10) business day period, the party shall promptly begin to remedy the default within the ten (10) business day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, then such default shall be deemed to be remedied.

If the Society fails to remedy a default in accordance with this Article 22, HRM shall have the right, at its election, to exercise any or all of the following remedies:

- a) terminate in whole or in part, the rights or obligations of the Society under this Agreement;
- b) take possession of the Facilities; and
- c) remedy or cause to be remedied the default and the Society shall reimburse HRM for any costs or expenses associated with HRM's remediation of the default.

**22.3 Right to Dispute Breach Notice.** In the event that either party delivers written notice of a material breach to the other party pursuant to Article 22.2, the receiving party may within seven (7) days of such notice being delivered to it, deliver a dispute notice to the delivering party and the matter shall be referred for resolution pursuant to the Dispute Resolution Procedures.

**22.4 Termination Notice on Failure of Board to Remedy.** On the occurrence of a default which HRM in its sole discretion considers may cause irreparable harm to any person or to the Facilities then HRM shall have the right to terminate this Agreement and exercise all of the other rights and remedies described in Article 22.2 and if HRM elects to terminate this Agreement, the Board shall have no right to dispute the matter.

**22.5 Remedies are Cumulative.** This Agreement shall not be construed as limiting HRM's rights or remedies at law or in equity and any such rights or remedies of HRM whether at law or in equity or under this Agreement:

- a) may be exercised individually or together with any one or more of its other rights or remedies and as often or in such order as HRM deems expedient; and
- b) are cumulative and are in addition to and not in substitution for any other rights and remedies.

**22.6 Emergencies.** Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of HRM there is a real or apprehended emergency or imminent

damage or danger to persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to this Agreement, as a result of a breach by the Society of this Agreement, HRM may, without notice and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, or condition.

**22.7 Obligations of the Society on Termination.** Where HRM or the Society has terminated this Agreement in accordance with the terms hereof, the Society shall on the effective date of the termination:

- a) stop the performance of all Services hereunder;
- b) terminate all Rental Contracts and Operations Contracts as HRM may specify in writing;
- c) provide to HRM a detailed list of all licensed users and customers of the Facilities;
- d) be deemed to have licensed to HRM a royalty and license to use any and all patented and proprietary information, designs or processes contemplated to be used by HRM in the operation, management and maintenance of the Facilities, and shall forthwith execute and deliver to HRM a paid-up royalty and license, in form and substance satisfactory to HRM, to use any and all such patented and proprietary information, designs or processes contemplated to be used in the operation of the Facilities;
- e) assign and transfer to HRM the Society's right, title and interest in and to all liquor and other licenses and permits, if any, used by the Board in the operation of the Facilities;
- f) deliver all applicable records in accordance with section 21;
- g) remove from the Facilities all Society Property, debris and any other materials that are designated in writing by HRM to be so removed;
- h) do all such acts, execute and deliver to HRM all such documents, conveyances, deeds, assignments, transfers, bills of sale, assurances and certificates and take all actions as may be required by HRM to exercise its rights hereunder;
- i) indemnify HRM with respect to any and all liabilities relating to the Facilities and/or Services and arising out of anything done or omitted by the Society contrary to this Agreement, including an indemnification for any outstanding actions, suits or proceedings; and
- j) take any other action towards termination of the Services which HRM acting reasonably shall request in writing.

**22.8 Further Assurances.** The Society agrees that, upon the reasonable request of HRM, it will do all such acts and execute all such further documents, assurances, certificates and the like as may be necessary or desirable in HRM's opinion, acting reasonably, to effect the purpose of Article 22.7, whether before or after this Agreement is terminated.

**22.9** Termination of this Agreement does not release either of the Parties from any obligations that accrued while the Agreement was in force.

## **23. DISPUTE RESOLUTION**

**23.1 Commencement of Process.** If HRM and the Society are unable to agree on any aspect of the Agreement that is subject to arbitration, either the Society or HRM may give notice of a dispute to the other, which is to contain the particulars of the matter in dispute and the relevant provisions of this Agreement. The other party shall reply in writing within 10 business days after receiving it, setting out in such reply the details of its response and any other relevant provisions of this Agreement.



**23.2 Amicable Negotiations.** HRM and the Society shall use best efforts to resolve any dispute. If the dispute is not resolved within 15 business days following receipt of the reply, the dispute shall be resolved in accordance with Article 23.3.

**23.3 Arbitration Proceedings.** All differences between the parties arising out of this Agreement that cannot be resolved through amicable negotiations and are subject to arbitration shall be submitted to arbitration as follows:

- a) If the parties are unable to agree, either HRM or the Society (the initiating party) may appoint an arbitrator by notice in writing to the second party. The second party will have 10 business days after receipt of the notice to appoint its arbitrator, or to agree to have the matter heard by the arbitrator named by the initiating party, written notice of which will be given to the initiating party. Where two arbitrators are chosen, they shall, within 10 business days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the sole determiner of the matter.
- b) The single arbitrator shall provide a decision in writing within ten (10) business days of his or her appointment.
- c) The parties shall each be responsible for their own costs of arbitration and shall be jointly and equally responsible for the cost of the single arbitrator who determines the matter.
- d) The decision of the single arbitrator shall be final and binding. No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

**23.4 Governance of Arbitration.** The following provisions shall govern the arbitration: each of HRM and the Society shall be treated fairly and shall be given full opportunity to present a case; arbitration hearings shall be held in the Halifax Regional Municipality; all arbitration hearings shall be in private unless the parties otherwise agree; and any party may be represented at any arbitration hearing by legal counsel.

**23.5 Matters not Subject to Arbitration.** The following matters are not subject to arbitration: policies and standards established by HRM, provided that such policies and standards do not directly contradict the express terms of this Agreement; allocation of HRM budget and resources; compliance with Applicable Laws and corporate policies; and the ownership of the Facilities.

**23.6 Applicable Law.** The Parties agree that any arbitration pursuant to this Agreement shall be governed by the terms of this Article 23 and to the extent not inconsistent therewith, the Commercial Arbitration Act (Nova Scotia).

**23.7 Continuation of Work During Dispute.** Notwithstanding that a matter or matters have been referred to the Dispute Resolution Procedures set forth in this Article 23, each of the Society and HRM shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay.

## **24. INSURANCE**

**24.1 HRM Insurance.** HRM shall obtain and maintain during the Term, and any Renewal Term, of this Agreement the following insurances:

- a) Property Insurance on a broad form basis, for direct physical loss or damage to HRM Property, or other property for which HRM is legally responsible.
- b) Commercial General Liability Insurance coverage relating to legal liability imposed by law 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 in the Facilities,

any products sold by HRM or other HRM operations at the Facilities, including programs.

- c) Boiler & Machinery insurance coverage against the sudden and accidental damage of pressure vessels, mechanical and electrical equipment owned and maintained by HRM.

**24.2 Society Insurance.** The Society shall obtain and maintain at their sole expense during the Term, and any Renewal Term, of this Agreement, as a minimum, the following insurances:

- a) Commercial General Liability insurance, including Tenants Legal Liability coverage in such amounts and coverages as may be required however, in any event, in an amount of not less than Two Million Dollars (\$2,000,000.) inclusive or, in the event alcohol is served or provided at the Facilities, in an amount of not less than Five Million Dollars (\$5,000,000.) and with liquor liability not excluded. Such coverage shall be for and against all claims arising for personal injury, death, property damage, contractual liability or incidents and including solicitor fees (and costs) occurring in, on or about the Facilities (including any liquor-licensed area). The policies will carry all standard endorsements. The Society shall ensure that such insurance coverage remains in effect and that nothing is done by the Society, their employees, volunteers, agents, licensees or invitees to affect the validity of that insurance. The insurance coverage will also extend to all improvements made to or installed at the Facilities, by or on behalf of the Society including all contents, equipment and property of every description of the Facilities whether owned by the Society or for which the Society is responsible or contractually responsible, in an amount equal to the full replacement value.
- b) Director's and Officer's Insurance. The Society is required to insure against claims related to the wrongful acts or omissions committed or omitted by its Directors and Board members.

**24.3** The Society shall be responsible for all risks, liabilities, exposures including costs, related to their operation of the Facilities and provision of the Services during the Term, and any Renewal Term.

**24.4** Insurance coverages required to be provided by the Society shall meet or exceed the requirements set forth in this section. While the Society is not required to maintain property insurance or business interruption insurance, HRM nonetheless recommends that the Society investigate such insurance coverages for its own protection.

**24.5** In the event that the Society fails to obtain or allows the required insurance coverage to lapse, then HRM may, at its sole discretion, obtain the required insurance coverage with such costs being charged back to the Society.

**24.6** The Society shall be responsible for any deductible amounts under any policies purchased with respect to this Agreement to the extent the Society's act or omission is responsible for the covered loss.

**24.7** All insurance policies obtained by the Society shall:

- a) be issued by insurers licensed to carry on business in Nova Scotia;
- b) contain a cross liability clause and include a waiver of subrogation rights which the Society's insurer may have against HRM and those for whom HRM is at law responsible. It shall be non-contributing and apply only as primary and not as excess to any other insurance available to HRM; and
- c) contain a clause or endorsement stating that the insurer(s) shall provide HRM with at least 30 days' notice of cancellation or termination.

**24.8** HRM shall have the right, but not the obligation to review required insurance policies. However, any such review by or on behalf of HRM shall in no way relieve the Society of its obligations to provide the insurance required by this Agreement, nor shall it imply that HRM agrees that the Society has fulfilled the obligations imposed under this Agreement

**24.9** At the time of signing this Agreement on an annual basis, and as requested by HRM from time to time, a Certificate of Insurance shall be provided evidencing proof of coverages and with the **Halifax Regional Municipality** named as Additional Named Insured on the policy.

## **25. INDEMNIFICATION, LIMITATION OF LIABILITY AND CLAIMS**

**25.1 Indemnification.** The Society agrees to indemnify and save harmless HRM, its Mayor, Council members, authorized officials, employees, officers, agents and volunteers from and against any and all Claims for which HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall or may become liable or suffer by reason of any breach, violation or non-performance by the Society of any covenant, term or provision hereof or by reason of any death or injury of any person or any damage or destruction of any property resulting from any act, neglect or default on the part of the Society, or any of its volunteers, employees, agents, licensees or invitees whatsoever occurring in, on or around the Facilities, including any liquor-licensed areas.

**25.2 Limitation of Liability.** The Society agrees that neither HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall be liable for any injury or damage to persons or property, including damage resulting from steam, gas, fire, electricity, water, rain or snow, or from any other cause whatsoever, other than for such injury or damage which shall result from the wilful action or negligence of HRM. In no event will HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers be liable for any consequential, indirect damages or economic loss suffered by the Society, their employees, volunteers or agents.

### **25.3 Claims.**

- a) The Society shall notify HRM in writing as soon as possible after the Society becomes aware of any Claim or possible Claim against the Society and/or HRM that involves the Services and/or Facilities.
- b) The Society shall notify HRM in writing as soon as possible after it becomes aware of any injury occurring in, on or about the Facilities, which could reasonably be expected to result in a Claim being made against HRM or the Society.
- c) The Society shall take no steps (such as the admission of liability) that 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 defense in any legal proceeding involving HRM or the Facilities, or otherwise prevent HRM from protecting itself against any such Claim.
- d) The Society shall cooperate fully with HRM in the defense of any Claim.
- e) The handling, denial or settlement of any Claim by the Society or their insurer must be reported to the HRM Manager of Risk and Insurance Services.
- f) If HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers are, without fault on their part, made a party to any litigation commenced by or against the Society, then the Society shall promptly indemnify and hold free and harmless HRM and shall pay HRM all costs and expenses, including, without limitation, all expenses and legal fees (on a solicitor and his own client basis) that may be incurred or paid by or on behalf of HRM or such other parties in connection with the litigation.

- g) HRM may at its option, and Society's expense, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing or any other matter for which the Society is required to indemnify HRM under this Agreement. Alternatively, Society agrees that HRM may require Society at Society's expense to assume carriage of and responsibility for all or any part of such litigation of discussions, subject to Society at all times keeping HRM up to date in writing as to the status thereof.

**25.4** This Article shall survive the expiration or earlier termination of this Agreement.

## **26. COVENANTS, REPRESENTATIONS AND WARRANTIES**

26.1 Without limiting any other terms or conditions contained herein, the Society hereby covenants, represents and warrants:

- a) that the Facilities will only be used throughout the Term or Renewal Term for activities and events that are appropriate and desirable for municipal purposes and the Society covenants and agrees that it will only use, and permit the use by others of, the Facilities as contemplated by this Agreement or as otherwise permitted in writing by HRM from time to time;
- b) the Society shall operate the Facilities in compliance with all Applicable Laws to ensure the safety of all individuals present in the Facilities and to preserve the Facilities, ensuring its value does not diminish, and take all reasonable steps to safeguard the Facilities and any assets associated with the Facilities;
- c) the Society is and shall remain during the Term of this Agreement and during any Renewal Term, organized and operated solely for a purpose other than profit, with no compensation to be paid to the directors and officers of the Society; and
- d) employees, contractors, or any other person acting on behalf of the Society shall comply with and meet the requirements of this Agreement at all times.

## **27. TAXES**

**27.1 Taxes.** The Society agrees to remit when due all taxes, rates and charges that are charged, assessed or levied in respect of the Services provided at, and the operation of, the Facilities under this Agreement, including any GST/HST obligations of the Society as stipulated under the Government of Canada's Excise Tax Act. The Society agrees to indemnify and reimburse HRM upon demand for any such taxes, rate or charges which may be assessed to HRM.

## **28. PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS**

**28.1 PCI Compliance.** The Society shall maintain best practices with respect to Payment Card Industry Data Security Standards, and recognizes that HRM has resources to assist and provide guidance with respect to Payment Card Industry Compliance.

## **29. ADDITIONAL TERMS AND CONDITIONS**

**29.1** The parties hereby agree to the additional terms and conditions set out in Schedule B.

## **30. GENERAL TERMS AND CONDITIONS**

**30.1 Amendment.** No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the parties, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date

specified in the amendment, variation or waiver or, if not so specified, on the date on which the last party executes and delivers the amendment, variation or waiver.

**30.2 Notice.** 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 Electronic Mail or Registered Mail to:

Halifax Regional Municipality

Attention: Manager of Community Partnerships  
P.O. Box 1749  
Halifax, NS B3J 3A5

Or in person to:

Manager of Community Partnerships  
88 Alderney Drive, 3<sup>rd</sup> floor  
Dartmouth, NS

Society

Attention:  
Chairperson of Springfield Lake Recreation Centre  
266 Lakeview Avenue  
Middle Sackville, NS  
B4E 3B6

Or in person to:

Chairperson, Springfield Lake Recreation Centre  
266 Lakeview Avenue  
Middle Sackville, NS

**30.3 Force Majeure.** Notwithstanding anything to the contrary in this Agreement, if HRM or the Society is bona fide delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled, without being in breach of this Agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.

**30.4 Waiver.**

- a) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.
- b) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other

- party from insisting upon performance of such provision.
- c) The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
  - d) The acceptance by any party of payment or performance of any obligation after the breach or non-fulfillment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

**30.5 Assignment and Enurement.** Neither party may assign their rights or obligations under this Agreement without the prior written consent of the other party. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

**30.6 Severability.** If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Applicable Laws.

**30.7 Governing Law.** This Agreement is made in the Province of Nova Scotia and shall be governed by and construed in accordance with the laws in force in the Province of Nova Scotia. The parties submit to the jurisdiction of the Supreme Court of Nova Scotia, subject to any restrictions relating to access to such court under Applicable Laws, with respect to all claims and proceedings arising out of or related to this Agreement.

**30.8 Schedule.** The following Schedules are attached to and form part of this Agreement:  
Schedule "A" – HRM Property  
Schedule "B" – Additional Terms and Conditions

**30.9 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties, and understandings, whether written or verbal.

**30.10 Further Assurances.** Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary to give effect to the provisions and intent of this Agreement.

**30.11 Parties.** References in this Agreement to the "Parties" shall mean the parties to this Agreement and a reference to a "Party" shall mean one (1) of the parties to this Agreement.

**30.12 Accounting Terms and Principles.** Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with generally accepted accounting principles which are in effect in Canada, including those published in the handbook of the Canadian Institute of Chartered Accountants, or any successor, as at the date on which such calculation is made or is required to be made;

**30.13 Legal Relationship.** HRM and the Society are independent contracting bodies, not legal partners nor joint employers, nor are they in an agent-principal relationship or a landlord-tenant relationship.

**30.14 Time of Essence.** For every provision of this Agreement, time is of the essence.

**30.15 Headings.** Headings and recitals are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**30.16 References.** Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, subsection, clause, sub clause or other subdivision is a reference to such Schedule, Article, Section, subsection, clause, sub clause or other subdivision of this Agreement. The terms "hereof", "hereto", "herein", "hereby" and "hereunder", and similar expressions mean and refer to this Agreement and, unless the context otherwise requires, not to any particular Article.

**30.17 Number and Gender.** Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and references to persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations. Any capitalized word which is a derivative of any word defined in Article 1 shall have a meaning corresponding to the defined word.

**30.18 Statutes and Regulations.** Any reference in this Agreement to all or any part of any statute, regulation, by-law or other legislative enactment shall, unless otherwise expressly stated, be a reference to that statute, regulation, by-law or legislative enactment or relevant part thereof as amended, substituted, replaced or re-enacted from time to time.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement on the day and year first above written.

**SIGNED AND DELIVERED:**

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
I/we have authority to bind the Municipality

**SPRINGFIELD LAKE RECREATION CENTRE**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
I/we have authority to bind the Society



## **Schedule "A" – HRM PROPERTY**

HRM Property shall also include any property, or improvements to property, purchased, installed or otherwise provided by HRM for the Facilities during the Term, or any Renewal Term, of this Agreement.

### **266 Lakeview Avenue**

- **Heating system**
- **Water treatment system**
- **Septic System**
- **Life Safety Systems**
- **Building fixtures**
- **Basketball court**
- **Baseball fields**
  - i. **Fencing**
  - ii. **Lights**
  - iii. **Fence top covers**
- **Fieldhouse**
- **Horseshoe Pits**
- **Playground**

### **2476 Sackville Drive**

- **Heating system**
- **Water treatment system**
- **Septic System (Lift station)**
- **Life Safety Systems**

## **Schedule "B" – ADDITIONAL TERMS AND CONDITIONS**

- 1. Springfield Lake Recreation Centre will schedule and collect revenue from the two baseball fields at 266 Lakeview Avenue.**
- 2. HRM and Springfield Lake Recreation Centre will continue the Parks Partnership for maintaining HRM fields and infrastructure. Terms and payment are negotiated on an annual basis. In the event of a conflict between the Parks Partnership and the Facility Operating Agreement, the Facility Operating Agreement shall prevail.**
- 3. Weir Rockin'**
  - SLRC will notify HRM by December 31<sup>st</sup> of each year whether the Weir Rockin' concert will be taking place and proposed dates.**
  - SLRC will have use of the Weir ball diamond for 5 days at no cost to prepare, have and tear down the concert requirements.**
  - SLRC will be responsible for any field damages arising from the concert.**
  - The Upper Sackville All-weather field will be closed for the day of the concert only.**
- 4. Springfield Lake Recreation Centre can use the Upper Sackville All-weather field during the summer season for recreation programming at no cost provided the field is available. The scheduling of that time is required through HRM Facility Scheduling.**
- 5. SLRC will leave the existing storage containers in place at the Upper Sackville location. The storage containers will be insured, maintained and removed by SLRC should the need arise.**
- 6. HRM shall continue to provide payroll services for SLRC on a fee for service basis consistent with HRM Payroll Policies. Invoices to SLRC will be quarterly with Net 30 terms.**
- 7. HRM will continue to be responsible for the operation and maintenance for the septic lift station at the Upper Sackville Recreation Facility.**

THIS MONITORING SERVICES AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2019

BETWEEN:

**HALIFAX REGIONAL MUNICIPALITY**

a municipal body corporate incorporated under the laws of the Province of Nova Scotia

(hereinafter referred to as “**HRM**”)

- and -

**SPRINGFIELD LAKE RECREATION CENTRE**

a society incorporated under the *Societies Act* of Nova Scotia,

(hereinafter referred to as “**SLRC**”)

**WHEREAS:**

1. HRM is the registered owner of lands located at 2476 Sackville Drive, Upper Sackville, Nova Scotia, identified as PID 00478073;
2. HRM has entered a Facility Operating Agreement with SLRC for the community centre on the property, dated as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019 (the “FOA”);
3. HRM manages and operates the All-Weather Field on site, for outdoor soccer and other sports; and
4. HRM wishes to have SLRC perform monitoring services and related responsibilities (as further described in this Agreement) at the All-Weather Field and SLRC wishes to provide these monitoring and related services.

Now therefore, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, HRM and SLRC (hereafter individually referred to as a “**Party**” and collectively referred to as “**Parties**”) covenant and agree as follows:

**1.0 Term**

- 1.1 This Agreement shall become effective on April 1, 2019 and, subject to its terms and conditions, continue for a term of three (3) years (the “**Term**”).

1.2 HRM may, but shall not be required to, renew this Agreement, for one or more additional terms of three (3) years each, subject to such terms and conditions as the Parties may agree in writing and on such schedules as HRM requires.

## **2.0 Monitoring Services**

2.1 Each year of the Term, between April 1<sup>st</sup> and November 30<sup>th</sup>, SLRC agrees to provide up to twelve hundred (1200) hours of monitoring services at the All-Weather Field (the “**Monitoring Services**”). Should there be a need for additional hours, SLRC shall inform HRM and HRM shall provide written approval for SLRC to provide the Monitoring Services for the additional hours.

2.2 Each day, the Monitoring Services will be performed in accordance with schedules which shall be provided to SLRC by HRM within a reasonable period of time prior to the commencement of the Monitoring Services.

2.3 SLRC shall ensure the Monitoring Services are performed as described in Schedule A and maintain the service standards as identified in Schedule B.

2.4 SLRC agrees to bring all customer service complaints received from All Weather Field users to the attention of HRM promptly upon receipt.

2.5 SLRC agrees to perform the Monitoring Services to the satisfaction of HRM, and to perform all such services in a professional, good and workmanlike manner and in compliance with all applicable provincial and federal laws and regulations, including, but not limited to the Occupational Health and Safety Act, Workers Compensation and all by-laws, policies, procedures, guidelines and rules of HRM.

2.6 SLRC shall supply and maintain equipment used by All-Weather Field monitoring staff, including first aid and safety equipment;

2.7 Any alterations or amendments to the Monitoring Services, including but not limited to the scope of duties set forth in Schedule A, the service standards in Schedule B or the timing for performance as set forth in any schedules provided by HRM, must be agreed to by SLRC and HRM in writing.

## **3.0 Payment**

3.1 In consideration of the Monitoring Services provided to HRM by SLRC for the April 2019 to November 2019 season, HRM agrees to provide payments to SLRC totaling Twenty-Three Thousand, Eight Hundred and Twenty Dollars (\$23,820.00) (the “**Fee**”). For each subsequent season SLRC provides the Monitoring Services, the payment will increase by two per cent (2%) each year.

3.2 Each season, SLRC will provide HRM with four (4) invoices for the Monitoring Services in an amount equal to one quarter (1/4) of the Fee, according to the following schedule:

Invoice 1 - May 31 (covering Monitoring Services provided in April and May)  
Invoice 2 - July 31 (covering Monitoring Services provided in June and July)  
Invoice 3 - September 30 (covering Monitoring Services provided in August and September)  
Invoice 4 - November 30 (covering Monitoring Services provided in October and November)

- 3.3 HRM shall advise SLRC of the procedure for providing invoices to HRM. HRM shall pay all properly rendered invoices with thirty (30) days of their receipt from SLRC.
- 3.4 Should SLRC fail to provide the following, specific Monitoring Services to the standards set forth in this Agreement, as determined by HRM in its sole but reasonable discretion, SLRC agrees to compensate HRM as follows:
- (a) SLRC field monitors late for field opening - \$100.00 each occurrence
  - (b) Three documented incidents of failure to provide service or meet standards within a two-month period - \$200.00
  - (c) Field monitors are absent for shift – two and a half (2.5) times the rental fees paid by the users of the All-Weather Field for that time of the shift.
- 3.5 Any compensation due to HRM as set forth in Section 3.4, will be deducted from the next invoice payment to be made by HRM to SLRC as set forth in Sections 3.2 and 3.3.

#### **4.0 Termination**

- 4.1 Either Party may terminate this Agreement, for any reason whatsoever, upon thirty (30) days notification in writing to the other Party.
- 4.2 Should the Agreement terminate as set forth in Section 4.1, HRM shall pay SLRC the portion of the Fee up to the date of the termination only.

#### **5.0 Insurance**

- 5.1 SLRC shall obtain and maintain at their sole expense during the Term, and any renewal term, of this Agreement, as a minimum, Commercial General Liability insurance coverage in such amounts and coverages as may be required however, in any event, in an amount not less than Two Million Dollars (\$2,000,000) inclusive. Such coverage shall be for and against all claims arising for personal injury, death, property damage, contractual liability or incidents and including solicitor fees (and costs) occurring in, on or about the All-weather Field. The policies will carry all standard endorsements. The Society shall ensure that such insurance coverage remains in effect and that nothing is done by the Society, their employees, volunteers, agents, licensees or invitees to affect the validity of that insurance. At the time of signing this Agreement on an annual basis, and as requested by HRM from time to time, a Certificate of Insurance shall be provided evidencing proof of coverages and with the **Halifax Regional Municipality** named as Additional Named Insured on the policy.

5.2 Upon execution of this Agreement, SLRC shall provide a current clearance letter from the Workers Compensation Board and agrees to maintain this coverage during the whole term of the contract. SLRC shall ensure that coverage is in place for their employees and/or their sub-contractors.

## **6.0 Indemnification and Liability**

6.1 SLRC agrees to indemnify and save harmless HRM, its Mayor, Council members, authorized officials, employees, officers, agents and volunteers from and against any and all claims for which HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall or may become liable or suffer by reason of any negligence, or breach, violation or non-performance by the SLRC or any of its volunteers, employees, agents, licensees or invitees, of any covenant, term or provision of this Agreement.

6.2 In no event will HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers be liable for any consequential, indirect damages or economic loss suffered by SLRC, its employees, volunteers or agents.

6.3 HRM shall not be obligated, required or responsible to provide compensation of any means to SLRC, in the event of a closure of the All-Weather Field no matter the cause, including but not limited to, emergencies, damages, destruction, power loss, utility disruption, weather, or repairs and whether the closure is due to foreseen or unforeseen circumstances and whether the closure of the All-Weather Field results from an HRM decision or a SLRC decision.

## **7.0 Miscellaneous**

7.1 SLRC shall maintain active status as a non-profit organization incorporated under the Societies Act, whose members and directors receive no financial benefit from their participation and shall conduct itself at all times in accordance with its constitution and by-laws and the requirements of the *Societies Act*.

7.2 Either Party may, upon providing the other Party with seven (7) days written notice, initiate a special meeting to discuss any immediate concerns arising from this Agreement.

7.3 HRM and SLRC are contractors independent of one another, and neither Party has the authority to bind the other to any third party or to act in any way as a representative of the other, except as expressly set forth in this Agreement. This Agreement does not create, and shall not be construed as creating, a partnership or joint venture relationship between HRM and SLRC.

7.4 All notices or other communications regarding substantial changes to or disputes arising out of the administration of this Agreement shall be in writing and delivered by hand, email, fax or registered mail to the other Party as follows:

To SLRC:  
Springfield Lake Recreation Centre  
c/o General Manager  
266 Lakeview Avenue  
Middle Sackville, NS B3S 1K3  
Email:

To HRM:  
HRM Parks & Recreation  
c/o Superintendent Sport-fields  
P.O. Box 1749  
Halifax, NS B3J 3A5  
Email:

- 7.5 No amendment or variation of this Agreement shall operate to change or vary the terms, obligations, or conditions hereof except upon agreement of the parties, signed by an authorized representative of each Party, which in the case of HRM shall be at least a senior manager of HRM Parks and Recreation, or its successor department.
- 7.6 No waiver shall be inferred or implied by anything done or omitted by the Parties save only an express waiver in writing, signed by an authorized representative of the waiving Party.
- 7.7 If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement or the application of such provisions to persons or circumstances other than those to which it is deemed invalid or unenforceable shall not be affected thereby, and each such provision of this Agreement shall be valid and enforceable to the extent granted by law.
- 7.8 SLRC is not permitted to assign this Agreement, or delegate or assign the Monitoring Services, without the prior written consent of HRM, which consent may be withheld in the sole discretion of HRM.
- 7.9 SLRC hereby acknowledges that this Agreement is a public document and that any information, document or record, in any form, provided to HRM by SLRC pursuant to this Agreement may be subject to disclosure in accordance with Part XX of the *Municipal Government Act* (Nova Scotia) regarding Freedom of Information and Protection of Privacy.
- 7.10 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada. Any disputes regarding this Agreement shall be adjudicated in Halifax, Nova Scotia.
- 7.11 SLRC covenants that it has the full power and authority to enter into this Agreement and to authorize its execution by its signing officers on its behalf.

**[signature page follows]**

**IN WITNESS WHEREOF** the parties hereto have executed these presents as of the day and year first above written.

\_\_\_\_\_ ) **SPRINGFIELD LAKE RECREATION CENTRE**  
Witness )  
 )  
 )  
 )  
 )  
 ) \_\_\_\_\_  
 ) Signature  
 ) Print Name:  
 )  
 )  
 ) \_\_\_\_\_  
Witness )  
 ) Signature  
 ) Print Name:  
 )  
 )  
 ) I have the authority to bind SLRC

\_\_\_\_\_ ) **HALIFAX REGIONAL MUNICIPALITY**  
Witness )  
 )  
 )  
 )  
 )  
 ) \_\_\_\_\_  
 ) Chief Administrative Officer  
 )  
 )



## Schedule A –Monitoring Services and Responsibilities

SLRC shall provide individuals who shall be Facility Monitors. The Facility Monitor is responsible for the effective and efficient operation of the All-Weather Field. The Facility Monitor's responsibilities include regulation enforcement, facility monitoring, courteous customer service, as well as general facility maintenance, more specifically detailed herein.

The Facility Monitor shall:

1. Provide high quality, friendly, courteous service to all persons accessing the All-Weather Field.
2. Keep provided office space clean and organized. Answer office phone and take messages as required. Ensure that the office is restricted to staff only.
3. Provide access to All-Weather Field for scheduled clients and notify clients of applicable closure policy. Adhere to facility schedule, ensuring clients start and finish on time.
4. Ensure All Weather Field are available, as per schedule, for each client and set up in accordance with approved client requirements, including all amenities, as applicable, relating to the sport (i.e. goals, lights and scoreboard controllers with directions).
5. Ensure all clients accurately complete and sign the HRM Confirmation of Field Use Report Form for every time slot of use. If other forms are required to be completed and signed by the client (i.e. Accident/Incident form), ensure these forms are accurately completed and signed by the client.
6. Maintain clear and accurate records including daily use forms and daily log books. Update the daily log book on tasks completed during shift, record any concerns with appropriate details such as names/phone numbers/description of issue, and record any other issues relevant to the operation of the facilities. Update the daily log book to record information about clients regularly taking too long to leave the All-Weather Field at the end of the booking.
7. Provide facility request forms to clients upon request, however Facility Monitors shall decline to process any bookings or payments associated with the use of the All-Weather Field and shall direct bookings and payments enquiries to the Halifax Regional Municipality Outdoor Facility Scheduler (490-4003).
8. Ensure that clients, including all players, coaches, team affiliates, and spectators, are adhering to any Codes of Conduct (Regulations) or terms of a rental agreement.
9. If applicable, prior to issuing the scoreboard remote control to a client, ensure that an authorized person representing the approved client signs for the remote control and immediately returns the remote control after use.

10. Ensure any items left behind by clients are recorded in designated lost and found book and stored for 30 days.
11. Wear a proper identification uniform.
12. Operate All-Weather Field equipment in accordance with training and instructions provided.
13. Routinely check the parking lot adjacent to All-Weather Field and ensure that all access and exit points to the All-Weather Field are kept clear at all times, with a special emphasis on any gates that are used for emergency purposes.
14. Check washrooms hourly to ensure adequate supplies and general cleanliness.
15. Provide first aid and AED response when required.
16. Report any accidents/incidents by completing Accident/Incident Report Form. Complete on day of accident and submit to the HRM Superintendent.
17. Provide onsite security during All-Weather Field scheduled hours of operation, including: locking/unlocking gates, verification of clients, turning field light systems on and off as required, and enforcement of Code of Conduct. Notify HRM Call Centre 311 of any security issues that cannot be handled through normal procedures or contact Police (911 or non-emergency line) if incident requires that level of response. HRM Superintendent to be advised whenever a security issue requires a call to 311 and/or police.
18. Report any lost or stolen locks/keys immediately. Do not leave All-Weather Field site unless site is secured. If cannot reach the successful service provider or HRM Superintendent, take appropriate measures to secure All-Weather Field site such as using chain and another lock.
19. At the end of each day:
  - Secure any staff trailers and or washrooms as applicable
  - Ensure all equipment is put away and storage sheds locked
  - Ensure field lights are off and indoor lights are off
  - Adjust heat controls to lower levels.
20. Perform other duties as assigned and agreed upon.

**Schedule B – Service Levels and Standards**

<b>Responsibility</b>	<b>Service Level</b>	<b>Quality Standard</b>
Litter pick up	Pick up of all litter and other foreign objects left on or around the playing facility.	Site clean and free of litter.
Garbage removal	Remove garbage bags from garbage receptacles when they are 50% full. Place garbage bags in garbage dumpster. Replace garbage bags	Garbage removal from receptacles so that garbage is never overflowing or creating an odor.
Recyclables	Remove from bins when bins are 50% full.	Prevent overflowing and store as directed by HRM.
Customer Service	Main on site contact for the client. Provide quality customer service, negotiate conflicts, address issues, and enforce the Code of Conduct.	Provide accurate information in a friendly manner