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Item No. 15.1.1
Halifax Regional Council
January 23, 2024

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed

SUBMITTED BY:

Cathie O'Toole, Chief Administrative Officer

DATE: November 10, 2023

SUBJECT: **Dartmouth Heritage Museum Society Management Agreement**

ORIGIN

This report originates with a request from the Dartmouth Heritage Museum Society (DHMS) to enter into a new Management and Operating Agreement with Halifax Regional Municipality (HRM) to manage the Dartmouth Collection and two historic houses, Evergreen House and Quaker House, on behalf of HRM, as the current Management Agreement will conclude on March 31, 2024.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, SNS 2008, c 39:

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.

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

79A(1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if

(a) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality;

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Chief Administrative Officer to execute the five-year Management and Operating Agreement with the Dartmouth Heritage Museum Society substantially in the same form as set out in Attachment 1, subject to budgetary approval of annual funding of \$200,000.

BACKGROUND

Prior to amalgamation, the Dartmouth Heritage Museum was owned and operated by the City of Dartmouth in a museum located at 100 Wyse Road. At amalgamation, the assets, including more than 40,000 artifacts (the “Dartmouth Collection”) and two historic houses (Quaker and Evergreen House) were passed to HRM. In 1999, a non-profit society, Dartmouth Heritage Museum Society (DHMS), was established to manage the “Dartmouth collection” and operate the two cultural facilities. HRM and DHMS entered into a management agreement in 2000 and renewed this agreement in 2005. Through the terms of the agreement, HRM provided DHMS \$50,000 annually for the operation of the historic houses and preservation of the collection.

The agreement remained in effect while the Municipality started working on developing a scope for its Culture and Heritage Priorities Plan and several other heritage initiatives related to defining HRM’s role and responsibilities to museums, both at a community and regional level. Phase One of HRM’s Artifact Inventory and Conservation Project was completed in 2015 and recommended the management of artifacts be placed under the direct care and control of the Municipality.

In March 2016, Regional Council approved a three-year agreement with revised responsibilities. This included specific requirements to support Phase Two of the Artifact Inventory and Conservation Project and increased clarity related to the relationship between HRM and DHMS. The annual funding was increased to \$100,000 to allow additional resources to ensure: sustained and directed collection work; the effective operation of the two facilities; and timely collaboration with HRM.

In May 2019, Regional Council approved a five-year extension of the agreement with the annual funding and key terms unchanged.

The current Management Agreement will conclude on March 31, 2024 and the DHMS has confirmed they wish to enter into a new management agreement with HRM.

DISCUSSION

HRM’s collection of artifacts remain an important part of the municipality’s history. HRM continues to ensure all of its archived and cultural artifacts are managed and preserved in a manner which recognizes their importance to the community. The relationship developed with DHMS through the management agreement is a key component to ensuring this is achieved.

The former Dartmouth Heritage Museum, with its large artifact collection and three municipal buildings, was a municipally owned and staffed museum. Upon amalgamation, the collection and buildings came under the ownership, care and control of HRM. The current agreement and funding formalized the terms of managing the legacy artifact collection as well as Evergreen House and Quaker House. The co-management of the artifact collection and the stewardship and programming of the historic houses is unique to the Dartmouth Heritage Society. As a result, where DHMS does not hold legal title to the collection, it is not eligible for the Community Museums Grant Program. Rather, HRM provides funding to enable it to offer alternate service delivery on behalf of the Municipality.

In early 2023, HRM staff met with DHMS to discuss the proposed terms and conditions of a new agreement and review any changes from the previous agreement. The key change from the current agreement is the proposed annual funding of \$200,000, which if approved, would constitute a 100% increase in funding over the previous agreement. Additional funding would allow for the addition of two new positions, as well as maximize public access to the facilities: Quaker House June 1 to August 25, Wednesday through Sunday. Evergreen House year-round Tuesday through Friday and Tuesday through Sunday from June 1 to August 25: or by appointment.

Throughout the term of the current agreement, DHMS has met the requirements, including timely provision of all required reports and all other requested facility information. They have met the ongoing requirements of the warehouse Collection Work Plan provided by HRM and are a key stakeholder in the on-going Phase 2 Regional Museum Strategy. Workplan actions include:

- Assisting in inventorying the 40,000 artifacts;
- Assisting in Artifact warehouse monitoring;
- Convening the Collection Management Committee to recommend artifacts for acquisition or de-accessioning;
- Responding to researcher requests;
- On-going digitization of the collection for increased public accessibility through NovaMuse and the DHMS website;
- Participation in on-going TRACK museum evaluation program through Association of NS Museums;
- Hosting student internships and graduate placements;
- Attracting and managing volunteers for special Collection projects;
- Refinement of artifact records and documentation in the Collective Access database; and
- Continued participation in the Central Heritage Regional Group.

In addition to the Collection work, DHMS have developed new and semi-permanent exhibits in Evergreen House including: a Helen Creighton exhibit; small recording studio for recording oral histories; rotating Dartmouth Makers' gallery; Dartmouth Girl Guides; a children's exhibit and a "Women of Evergreen" exhibit which tells the stories and contributions of the original owners of the house. In addition, DHMS has developed digital content and podcasts that support the interpretation of both historic houses and the Collection. The exterior grounds at both properties were improved, including enhanced garden beds at Quaker House, and branch trimming and new garden beds at Evergreen House. In 2022/23 and in collaboration with HRM staff, the interpretation, didactic panels and artifact exhibits at Quaker House were significantly updated.

DHMS continues to house their office in Evergreen House and hosts social gatherings, Nocturne events, teas, and temporary exhibitions. Additionally, DHMS administers the rental of Evergreen House for special events, such as TV and movie filming or weddings, and organizes various fundraisers including sale of calendars and Christmas cards. They provide the on-site stewardship of Evergreen House and Quaker House which serve as exhibition venues, with guided tours and enabling on-site research. DHMS has expanded their community outreach and have collaborated with other museums to co-develop exhibits. Both historical facilities play a role in providing local residents and tourists access to Dartmouth's rich history.

HRM staff has completed several initiatives to support and facilitate the DHMS and the cultural asset collection:

- On-going exterior envelope capital repairs to Evergreen House and minor interior work at Quaker House;
- Supplied materials for warehouse operations, supplies and equipment in support of housing, documenting and stabilizing the collection;
- Updated interpretative program and exhibits at Quaker House in 2022/23;
- Launched Phase Two of the Regional Museum Strategy in 2023;
- Appraised the fine art collection on behalf of Risk and Insurance; and
- Retrofitted all lighting to LED fixtures; heating and HVAC systems and replaced roof at artifact warehouse in 2022.

Staff are recommending a new five-year agreement which the DHMS Volunteer Board has approved. (Attachment #1). This term aligns with the artifact warehouse lease renewal, which will be renewed in 2024 and which continues to house the majority of the Municipality's artifact collection. This will also allow time for the various initiatives (Culture and Heritage Priorities Plan, Cultural Spaces Plan, Regional Museum

Strategy) to be completed and inform HRM's approach to cultural assets.

FINANCIAL IMPLICATIONS

The DHMS annual management fee of \$200,000 has been included in the draft 2024/2025 operating budget for Parks & Recreation in cost centre C705-8004.

RISK CONSIDERATION

There are no significant risks associated with the recommendation in this Report. The risks considered rate Low. To reach this conclusion, consideration was given to operational, financial, strategic and reputational risk.

COMMUNITY ENGAGEMENT

The DHMS Board of Directors is made up of members of the community.

ENVIRONMENTAL IMPLICATIONS

No environmental implications identified.

ALTERNATIVES

1. Regional Council could choose to change the term and/or level of funding outlined in the Management and Operating Agreement.
2. Regional Council could choose not to approve the Management and Operating Agreement with the Dartmouth Heritage Museum Society.

ATTACHMENTS

Attachment 1: Management and Operating Agreement

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

Report Prepared by: Arne Buchanan, Partnership Coordinator, Community Partnerships, 902.499. 4344

Management and Operating Agreement

Between:

Dartmouth Heritage Museum Society

and

Halifax Regional Municipality

FOR

Evergreen House & Quaker House & Collection

26 Newcastle Street

57/59 Ochterloney Street

THIS AGREEMENT

BETWEEN:

Halifax Regional Municipality
(hereinafter referred to as "HRM")
OF THE FIRST PART

- and -

Dartmouth Heritage Museum Society
(hereinafter referred to as the "Society")
OF THE SECOND PART

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 HRM owns a Collection (as defined below) and associated records related to the heritage of Dartmouth and area;

AND WHEREAS HRM is responsible for the preservation, development, study and ultimate public display of the artifact collection and built heritage of Evergreen House and Quaker House.

AND WHEREAS HRM is the owner of the Evergreen House located at 26 Newcastle Street & Quaker House located at 57/59 Ochterloney Street (collectively, the "**Facilities**")

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 focuses on the operation and administration of the Facilities as a museum and support to management of the Collection as directed by HRM;

AND WHEREAS HRM has direct care and control of the management of the Collection and the Storage Facility at 191 Joseph Zatzman Drive, Unit 3 & 4 (the "**Storage Facility**").

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 **Definitions.** When used in this Agreement, the following terms shall have the following meanings:

- 1) "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 management of the Collection and the roles and responsibilities of each party under this Agreement;

- 2) "Board" means the Board of Directors of the Society;
- 3) "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;
- 4) "Commencement Date" means April 1, 2024;
- 5) "Council" means the Regional Council of HRM;
- 6) "Collection" means the body of material owned by HRM and as further defined in Appendix A;
- 7) "Collection Database" means the records that support the provenance of the Collection, regardless of format, including but not limited to ownership information, artifact history, legal documentation, digital content and photographs;
- 8) "Facilities" means those properties owned by HRM known as:
 - a) Evergreen House, located at 26 Newcastle Street, Dartmouth; and
 - b) Quaker house, located at 57/59 Ochterloney Street, Dartmouth;
- 9) "Fiscal Year" means the annual period ending on March 31st or such other period as HRM may establish upon notice to the Society;
- 10) "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 management of the Collection or this Agreement;
- 11) "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;
- 12) "HRM" means the Halifax Regional Municipality;
- 13) "HRM Liaison" means the HRM Facility Community Partnership Coordinator acting as HRM's representative and liaison with the Society, or his or her designate.
- 14) "HRM Cultural Liaison" means the HRM staff person responsible for all elements related to the treatment and handling of the cultural assets of the Collection, or his or her designate;
- 15) "Management Fee" means the management fee payable to the Society by HRM for each Fiscal Year, or part thereof, that this Agreement is in effect;
- 16) "Renewal Term" has the meaning set out in Article 3.4 of this Agreement;

- 17) “Revenue” means all monies, proceeds, funds and revenues of every nature and kind received by the Society in respect of the Facilities 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;
- 18) “Society” means the Dartmouth Heritage Museum Society, a society incorporated under the *Societies Act* of Nova Scotia;
- 19) “Storage Facility” means the warehouse located at 191 Joseph Zatzman Drive, Dartmouth, or any off- site storage facility as established by HRM for purposes of storing the Collection; and
- 20) “Term” has the meaning set out in Article 3.1 of this Agreement.

2. PURPOSE

2.1 The purpose of this Agreement is to formalize the terms and conditions by which the Society will operate the Facilities and support HRM’s management of the Collection.

2.2 HRM will maintain direct management of the Collection including, but not limited to, items located in the Facilities and Storage Facility and in HRM offices and buildings and remains the governing body responsible for the Collection’s direct care and control.

3. TERM and TERMINATION

3.1 **Term.** This Agreement shall begin on the Commencement Date and shall continue in force, unless earlier terminated as set out in sections 3.2 or 3.3, for a period of five years (the “Term”).

3.2 **Termination for Any Reason.** This Agreement may be terminated by either party for any reason whatsoever upon six (6) months’ written notice to the other party. Termination of this Agreement does not release either of the Parties from any obligations which accrued while the Agreement was in force.

3.3 **Termination for Breach.** In the event of a default by the Society, HRM shall give written notice of the default to the Society, and the Society shall remedy the default to the satisfaction of HRM within fourteen days of receipt of the notice. Should the Society not remedy the default to the satisfaction of HRM within fourteen days, HRM may terminate this Agreement. Termination of this Agreement does not release either of the Parties from any obligations which accrued while the Agreement was in force.

3.4 **Renewal.** This Agreement may be renewed by HRM on the same terms for two additional one-year terms (each a “Renewal Term”) by HRM advising the Society in writing of its intent to exercise the renewal option no later than three months prior to the end of the then current Term. The Society must notify HRM within 30 days of receipt of the renewal notice if it does not wish to accept the renewal, in which instance this Agreement will terminate at the end of the then current Term.

3.5 **Dissolution.** In the event the Society is dissolved, there will be no further payments made by HRM in relation to this Agreement, and control of the Facilities will immediately return to HRM. The Collection is and remains the sole property of HRM.

4. AUTHORITY

4.1 HRM hereby appoints the Society, as an independent non-profit association, to develop, manage, promote, operate and administer the Facilities as a museum and to support HRM in the management of the Collection for the Term and on the terms and conditions set out in this Agreement, and the Society hereby accepts such appointment and agrees to exercise the powers and authority set out in this Agreement in a competent, efficient and economical manner.

4.2 The Society shall have full responsibility for the development, management, promotion, operation and administration of the Facilities as a museum in accordance with and subject to the terms and conditions of this Agreement except and to the extent otherwise determined by HRM and as communicated in writing to the Society. The Society shall support HRM in the management of the Collection through the implementation of HRM's policies, practices, and work plan. The Society shall perform its duties and exercise the powers and authorities set out in this Agreement in a competent, efficient and economical manner subject to the directions from time to time of HRM, which directions shall not be in contradiction with the terms of this Agreement.

4.3 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.

4.4 The Society shall operate the Facilities in compliance with all applicable laws and policies to ensure the safety of all persons 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.

4.5 **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:

- 1) Obtain loans for the Facilities or HRM, whether secured or unsecured, or give 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;
- 2) 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;
- 3) Cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation.
- 4) Cause HRM to enter into any contracts with respect to the Facilities;
- 5) Sell, exchange or convey the Facilities or the Collection or any portion thereof.

- 6) Release, compromise, assign or transfer any claim, right, or benefit of the HRM, except with the written authorization of HRM;
- 7) Allow a default judgement to be entered against the Facilities or any assets associated with the Facilities;
- 8) Modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facilities;
- 9) Grant easements or other property rights in the Facilities;
- 10) Purchase, exchange, or sell any real property, including the Facilities or any part thereof, on behalf of HRM;
- 11) Damage, destroy, or alter any part of the Collection or the Collection Database;
- 12) Install or modify closed circuit television without consulting with HRM Corporate Security.

5. MANAGEMENT FEE

5.1 **Management Fee.** HRM shall pay to the Society an annual management fee in consideration of the services provided to HRM by the Society.

5.2 **Management Fee Amount.** Subject to the terms and conditions of this Agreement HRM shall pay the management fee to Dartmouth Heritage Museum Society an annual amount of \$200,000 (the "**Management Fee**") each fiscal year of this Agreement within 30 days of receipt of an invoice from Dartmouth Heritage Museum Society, provided that all required reports have been received and HRM's approval processes have occurred.

5.3 Installments.

1) Subject to Council's approval of HRM's Annual Operating Budget, the Management Fee will be disbursed by HRM to the Society in two payments. The first payment will be 80% of the Management Fee, payable by HRM upon receipt of an invoice from the Society. The second payment will be the remaining 20% of the Management Fee, payable by HRM upon receipt of an invoice from the Society. Invoices shall be provided by the Society to HRM by May 31st and by November 30th of each Fiscal Year. Disbursement of the Management Fee payments is contingent on all required reports in accordance with Section 10 being received and approved by HRM. HRM may adjust the Management Fee payment installment percentages or payment schedule from time to time with written notice to the Society.

2) The disbursements of the Management Fee 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.

3) Invoices shall be provided by the Society to HRM by May 31st and by November 30th of each Fiscal Year. Payment is contingent on all required reports being received and approved by HRM.

4) HRM may adjust the percentage of installment and payment schedule from time to time with notice to the Society.

5.4 Termination. Upon termination of the Agreement, no further payments shall be made by HRM to the Society.

5.5 Use of Management Fee. The Society shall use the Management Fee to develop, manage, promote, operate and administer the Facilities as a museum and to support HRM in the management of the Collection. The Management Fee shall be used in accordance with the operating budget for the Facilities as provided to HRM by the Society annually.

6. ROLES AND RESPONSIBILITIES

6.1 HRM Liaison. HRM shall designate the HRM Liaison to be HRM's contact with the Society with respect to the operation of the Facilities. The HRM Liaison is accountable to ensure that the Society and HRM are operating the Facilities in accordance with this Agreement. The HRM Liaison is entitled to attend all meetings of the Society Board, and to receive meeting minutes of the Society's Board and committees.

6.2 Duties of the HRM Liaison. To ensure the Society is able to fulfill its mandate of operating the Facilities, the HRM Liaison shall:

- a. review annual and bi-annual reports and provide financial feedback to the Society and follow-up concerning financial variances;
- b. review and respond to issues related to the Facilities or Society operation which require the approval of Council;
- c. inform the Society before policies (including operational opening and closures) or capital projects specifically impacting the operation of the Facilities are implemented;
- d. meet with the Society at minimum once every three (3) months, either in person, via conference call or other means of electronic communication to share information and discuss issues related to the operation of the Facilities; and
- e. respond to requests from the Society in a timely manner and develop a plan of action to allow for effective operation of the Facilities by the Society Board and staff.

6.3 HRM Cultural Liaison. The HRM Cultural Liaison has the primary responsibility for the care and control of the Collection. The HRM Cultural Liaison will direct the Society to ensure the appropriate treatment of the Collection is upheld, and its rationale is consistent to provide public access and display. The HRM Cultural Liaison or designate is entitled to attend all meetings of the Society Board, Collection meetings, and to receive meeting minutes of the Society's Board and committees.

6.4 Duties of the HRM Cultural Liaison. As the owner and manager of the Collection, the Collection Database, and associated records, HRM, through its Cultural Liaison, is responsible to:

- a. lead development and rationale of the Collection;
- b. oversee the operation of the warehouse and control access thereto;

- c. develop, update, and supervise the implementation of policies, including: the collections policy; accessioning, deaccessioning and loan policies; and art loan policy;
- d. develop preservation standards and procedures for the Collection;
- e. fund and lead the migration and reconciliation of the Collection Database;
- f. oversee the operation of the Collection Database;
- g. sit as a member of the DHMS Collection Management Committee;
- h. approve all acquisitions for, and deaccessions from, the Collection, in accordance with the Collections Policy as amended from time to time;
- i. develop a work plan for the Collection that includes tasks and a schedule for implementation by the Society;
- j. direct the Society on the implementation of the work plan;
- k. identify opportunities for public display of the Collection;
- f. meet with the Society at minimum once every three (3) months, either in person, via conference call or other means of electronic communication to share information and discuss issues associated with the Collection; and
- l. review and respond to issues in a timely manner related to the Collection, associated work plan tasks, and programming.

6.5 Duties of the Society. As the operator of the Facilities and a partner in the preservation of the Collection, the Society is responsible to:

- a. operate the Facilities on a day-to-day basis;
- b. provide heritage programming, community outreach and exhibits in the Facilities;
- c. implement the work plan for the Collection, whether at the Facilities or the Storage Facility, under the direction of the HRM Cultural Liaison and provide monthly updates on implementation progress;
- d. implement all polices developed or approved by HRM with respect to the Collection and the Facilities;
- e. develop and maintain the Dartmouth Heritage Museum Society website;
- f. submit reports to HRM Liaison and Cultural Liaison, in accordance with this Agreement, and in addition to any other reporting periods determined by HRM from time to time;
- g. follow seasonal opening and closing processes as directed by HRM;
- h. obtain written approval from HRM before accession/deaccession, repatriation, loan or conservation treatment of any items of the Collection;
- i. provide staff and volunteers to ensure oversight and effective operation of the Facilities;
- j. provide all digital and hard copy Collection records for migration and reconciliation of database;
- k. develop and deliver a research plan to ensure research requests are met in timely manner;
- l. respond to requests from HRM related to the Collection or Facilities. Requests shall be responded to within two weeks and a plan of action developed;
- m. provide timely notice to HRM Liaison on any issues which affect the operation of the facilities and HRM Cultural Liaison on any issues which affect the Collection; and

- n. provide monthly updates to the HRM Cultural Liaison or designate on work plan tasks.

6.6 Regional Museum Strategy. HRM, under the leadership of the HRM Cultural Liaison, is developing a Regional Museum Strategy, seeking input from a variety of stakeholders. The Society will be invited to provide feedback on the proposed strategy as a stakeholder in the family of municipal community museums.

7. FINANCES

7.1 Revenues. Any and all revenues derived from any and all activities within or under the auspices of the Society are the property of the Society, and shall be used exclusively for the operation, promotion, development, administration, and management of the Facilities as a museum, including any federal or provincial government funding received by the Society for the operation of a museum.

7.2 Reserves. In each of its annual budgets for the operation of the Facilities, the Society shall make provision for setting aside funds for the purpose of funding operating expenditures, over and above those budgeted for in connection with the operation of the Facilities (the "Operating Reserve Fund"). Such reserve shall be maintained by the Society in accordance with the policies and procedures established from time to time by HRM.

7.3 Surplus. HRM and the Society agree that the Facilities shall be operated in a prudent and fiscally responsible manner and meet the needs of the community at large. HRM agrees that any surplus, which shall be defined as the excess of actual revenues over actual expenses, shall be set aside to subsidize or underwrite the continued operation of the Facilities, to fund the Operating Reserve Fund, or such other reserve funds as may be approved by HRM relating to the general operations of the Museum.

8. RESPONSIBILITY FOR COSTS

8.1 Society. Except where otherwise stated in this Agreement, the Society shall be responsible for and agrees to pay all costs associated with the management, operation, and administration of the Facilities 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;
- c. on site supplies;
- d. permits and licenses; and
- e. general maintenance.

8.2 HRM. HRM shall be responsible for and agrees to pay all costs associated with:

- a. capital repairs to the Facilities;
- b. utilities for the Facilities;
- c. rental of the Storage Facility and associated costs;
- d. annual Advisory fee to Association of Nova Scotia Museums; and

- e. agreed-upon costs associated with preservation of the collection.

9. ASSETS

9.1 **Property of HRM.** All buildings, equipment, and infrastructure managed and administered by the Society on behalf of HRM, and all of the items in the Collection, including the Collection Database and all associated records of the Collection, shall continue to be the property of the HRM, except those items that are on deposit, consignment or loan to the Museum. Upon termination of this Agreement by expiration or otherwise, the Society shall return or turn over possession of the same to HRM.

9.2 All equipment, supplies, facilities and materials located in or purchased for the Facilities, the Collection or the Storage Facility by the Society at any time, and all records, reports, books of account and other documents and materials relating to the operation and maintenance of the Facilities, the Collection or the Storage Facility shall be and remain the property of HRM and will be made available to HRM for inspection at during regular business hours or otherwise, upon reasonable request.

10. REPORTING

10.1 **Annual Reports.** The Society shall provide an annual report to the HRM Liaison no later than 60 days after Fiscal Year end, including the following components:

- a) Financial Reporting:
 - i. Independent, third party, audited Financial Statements:
 - 1. Income statement;
 - 2. Balance Sheet;
 - ii. Bank Reconciliation Report;
 - iii. Discussion and analysis of Fiscal Year-end results highlighting significant variances and, if applicable, a report explaining any deficit realized;
 - iv. The Annual Budget will include: i) an operating component consisting of operating expenses and anticipated revenues.
- b) Management Reporting:
 - i. Current list of Board of directors and facility staff contact information;
 - ii. Monthly facility inspection sheets;
 - iii. Program and Facility Usage Reports (October-March); and
 - iv. Other reports as HRM may reasonably require.

10.2 **Bi-Annual Reports.** The Society shall provide a bi-annual report to the HRM Liaison no later than thirty days following the mid-point of the Fiscal Year, including the following components:

- a) Financial Reporting:
 - i. Budget update, including sources of funding.
- b) Management Reporting:
 - ii. Current list of Board of directors and facility contact information;
 - iii. Monthly facility inspection sheets;
 - iv. Program and Facility usage reports (April- September); and
 - v. Other reports as HRM may reasonably require.

10.3 Monthly Operational Updates. The Society shall provide monthly work plan updates to the HRM Cultural Liaison or his or her designate pursuant to the Society's responsibilities as outlined in Section 6, in the format determined by the HRM Cultural Liaison or his or her designate. Monthly updates will include but are not limited to:

- a) work plan status updates;
- b) HOBO environmental reports for Facilities and Storage Facility;
- c) Facility Inspection Sheets (inclusive of seasonal Facilities closures); and
- d) additional reports as HRM may reasonably require.

11. PURCHASING POLICY

11.1 Procurement. The Society shall follow the purchasing policy adopted by the Board of Directors for the purchase of all goods, supplies and services of a non-capital nature for the Facilities. 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.

12. FACILITY ALTERATIONS

12.1 The Facilities are registered as municipal heritage properties under the *Heritage Property Act*, R.S.N.S. 1989, c. 199. The Society shall not make any alterations (including interior or exterior painting), structural changes, additions or improvements to the Facilities and premises thereof, including the placement of exterior branding, signs and /or advertising, unless HRM has granted written approval prior to the start of the work, which approval may be denied in the sole discretion of HRM.

12.2 The Society shall prepare and present to the HRM Liaison for his or her consideration an annual list of proposed capital improvements and other capital expenditures relating to the Facilities. No substantial alterations to the Facilities shall be undertaken by the Society. HRM shall be responsible for any capital work required for the Facilities.

13. LEASES AND AGREEMENTS

13.1 The Society shall not enter into any rental agreement, lease or contract affecting the Facilities unless HRM has provided prior written approval of such agreement.

13.2 Leases or short-term rentals of space, and sponsorship agreements will only be with groups and organizations that do not conflict with HRM's corporate policies.

14. INSURANCE

14.1 HRM Insurance Responsibilities

14.2 **Property Insurance** - HRM will insure all real and personal property that are owned by HRM or for which HRM is legally responsible. This coverage insures for all risks of direct physical loss or damage including but not limited to fire plus many other hazards including windstorm and lightning. HRM does not provide property insurance coverage for any real or

personal property (including contents) owned by the Society or their invitee.

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

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

14.5 The Society's Insurance Responsibilities

14.6 Society's Insurance Responsibility - The Society is required to provide certain insurance coverage with a Certificate of Insurance provided to the HRM at the time of signing this Agreement as well as at the Society's yearly renewal. Other insurance coverages listed are insurance policies the Society may wish to consider based upon their scope of activities. An insurance broker can advise on the appropriate coverages and limits required based upon individual circumstances. Halifax Regional Municipality is to be named on the Insurance Certificate as an Additional Named Insured.

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

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

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

Commercial General Liability limits are increased to Five Million Dollars (\$5,000,000.).

15. LICENSES AND PERMITS

15.1 The Society shall obtain and renew as necessary all licenses, permits and approvals which may be required in connection with the operation and maintenance of the Facilities. The Society shall at all times comply with the conditions of such licenses, permits and approvals and shall comply with and observe all laws, by-laws and regulations applicable to the Facilities and the operation thereof (i.e., certificates, consents, licenses, third party leases, permits and qualifications and the Health & Safety Act or orders of any Governmental Authority by applicable laws).

16. EMPLOYEES

16.1 **Executive Director and Collections Manager.** The Society shall select and employ:

- a. an Executive Director
- b. a Collections' Manager
- c. Such other permanent and temporary employees as the Society may determine are required to ensure effective Facility operation and provision of Collection management support. Roles for these employees potentially include museum assistant, collection assistant and/or programming/events duties.

Relative to staff identified at a. through c. above, permanent full-time employees shall have professional qualifications commensurate with their duties and responsibilities, generally held to be university or post-secondary accreditation or equivalent experience with application to museum operation and collection management.

16.2 **Personnel of the Society.** All personnel employed by the Society in the administration and operations of the Facilities, including, without limitation to the foregoing, the Executive Director 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.

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. 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 employees and volunteers at the Facilities where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations. The Society will take all measures required in compliance with the Occupational Health and Safety Act to ensure the safety of employees and onsite contract workers.

17. NON-COMPLIANCE

17.1 Non-compliance with this Agreement by the Society may result, at HRM's sole discretion, in any or all of the following:

- a) removal of the Society as manager of the Facilities;
- b) removal of the Society's access to the Collection;
- c) direct HRM management of the Facilities;
- d) reduction or elimination of management fee to the Society;
- e) termination of the agreement in accordance with section 3.3; and
- f) other restrictions deemed appropriate to the non-compliance.

18. MANDATE and STATUS

18.1 During the term of this Agreement, the Society shall carry on no business other than that of developing, managing, promoting, operating and administering the Facilities as a museum and supporting HRM in the management of the Collection.

18.2 The Society is and shall remain during the Term of this Agreement and during any period of renewal thereof, organized and operated solely for a purpose other than profit, with no compensation to be paid to the directors and officers.

19. INDEMNIFICATION, LIMITATION OF LIABILITY AND CLAIMS

19.1 **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 Facility, including any liquor-licensed areas.

19.2 **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.

19.3 **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 Facility.
- 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 Facility, 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 Facility, 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 or discussions, subject to Society at all times keeping HRM up to date in writing as to the status thereof.

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

20. DISPUTE RESOLUTION

20.1 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.

20.2 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 20.3.

20.3 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.

20.4 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.

20.5 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 Facility.

20.6 Applicable Law. The Parties agree that any arbitration pursuant to this Agreement shall be governed by the terms of this Article 20 and to the extent not inconsistent therewith, the Commercial Arbitration Act (Nova Scotia).

20.7 Continuation of Work During Dispute. Notwithstanding that a matter or matters have been referred to the Dispute Resolution Procedures set forth in this Article 20, each of the Society and HRM shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay.

21. HEALTH, SAFETY AND ENVIRONMENT

21.1 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 Facility (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facility), 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 Facility, 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 Facility;
- b) The Society acknowledges that (i) it will be the occupier of and employer at the Facility and will have far greater control over the Facility 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 Facility, 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 Facility, including but not limited to the following:
 - (i) its obligations under Article 21.2 of this Agreement;

- (ii) take every precaution that is reasonable in the circumstances to operate and maintain the Facility 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 Facility 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 Facility;
 - (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.
- a) All of the Society’s obligations set out in this Article 21.1 of this Agreement shall survive the expiration or other termination of this Agreement.

21.2 Hazardous Substances. The Society shall not allow any Hazardous Substances to be brought upon, placed or stored in or on the Facility except in accordance with the requirements of Article 21. If the Society:

- a) encounters Hazardous Substances at the Facility; or
- b) has reasonable grounds to believe that Hazardous Substances are present at the Facility the Society shall:
 - (i) take all reasonable steps including if necessary cessation of operations in the Facility, 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
 - (iv) comply with any provisions of this Agreement.

22. GENERAL TERMS AND CONDITIONS

22.1 **Facilities Inspection.** HRM shall be able to access the Facilities, with reasonable notice, 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.

22.2 **Amendment.** This Agreement shall only be amended by written agreement signed by both parties.

22.3 **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 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, 3rd floor
Dartmouth, NS

Society

Attention: Chair of Dartmouth Heritage Museum Society

Liam Caswell
DHMS
26 Newcastle St.,
Dartmouth NS
B2Y 3M5

22.4 **Amendments.** No amendment of this Agreement, nor any waiver of any of the terms and provisions of this Agreement shall be valid unless effected by a written amendment signed by both Parties.

22.5 **Waiver.** No failure by a party to exercise any right under this Agreement or to insist upon full compliance by the other party as to its obligations under this Agreement will constitute a waiver of any provision of this Agreement. Headings contained herein are included solely for convenience and shall not be considered part of this Agreement.

22.6 **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.

22.7 **Severability.** Should any part of this Agreement be determined to be void by a competent judicial or legislative authority, the remainder shall be valid and enforceable.

22.8 **Governing Law.** This Agreement shall be governed by the law of the Province of Nova Scotia.

22.9 **Schedule.** The following Schedules are attached to and form part of this Agreement:

Schedule "A" – Collection

22.10 **Entire Agreement.** This Agreement constitute 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.

22.11 **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.

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

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: _____

DARTMOUTH HERITAGE MUSEUM SOCIETY

Witness

Per: _____

Witness

Per: _____

I/we have authority to bind the Society

APPENDIX "A"

The Collection

The Collection to which this Agreement applies is owned by HRM and is comprised of:

- a) that body of material made up of artifacts, archival material and works of art acquired under the auspices of the Dartmouth Heritage Museum as operated by the former City of Dartmouth and HRM;
- b) any artifacts located in the Facilities, and Storage Facility;
- c) any artifacts, archival material and works of art acquired between July 20, 2000 and April 1, 2005 by the Society; and
- d) any artifacts, archival material and works of art acquired by the Society, on behalf of HRM, during this Agreement, or any prior management agreements, between HRM and the Society that commenced on April 1, 2005.

And, for greater certainty, the Collection includes the Collection Database and all associated Collection records.

The Collection shall be deemed not to include:

- a) any artifacts, archival material or works of art which compromise any other collections belonging to HRM or departments of HRM;
- b) any artifacts, archival material or works of art on deposit, consignment or loan to the Dartmouth Heritage Museum Society.

The Collection, in whole or in part, may be displayed or stored in the Facilities or Storage Facility.

The Society, through its staff and volunteers, will support HRM in the maintenance of the Collection and the Collection Database in an environment conducive to preservation, as directed by HRM from time to time.

The Society shall ensure that staff and volunteers who have physical access to the Collection and Collection Database are trained in, and use, appropriate care and handling of the Collection.