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Item No. 9.1.1
Halifax Regional Municipality Grants Committee
August 28, 2024

TO: Chair and Members of the Halifax Regional Municipality Grants Committee

SUBMITTED BY: Brad Anguish, Acting Chief Administrative Office

DATE: July 12, 2024

SUBJECT: Less than Market Value Lease: Youth Women’s Christian Association of Halifax

ORIGIN

Request by the non-profit entity, Youth Women’s Christian Association of Halifax, to enter into a less than market value lease to operate a day care within the premises located at 1583 Beaver Bank Road.

RECOMMENDATION

It is recommended that the Grants Committee recommend that Halifax Regional Council approve a less than market value lease with the Youth Women’s Christian Association of Halifax (YWCA Halifax) for the premises located at 1583 Beaver Bank Road, and the lease is to contain terms and conditions that are similar to those set out in this report, and authorize the Mayor and Municipal Clerk to execute the less than market value lease.

BACKGROUND

The Beaver Bank Kinsac Community Centre (BBKCC) is part of Parks & Recreation Community Partnership portfolio. The Beaver Bank Kinsac Community Centre Society (BBKCCS) has managed and operated the facility on behalf of HRM since it was built in 2004. The terms and conditions for a modern Facility Operating Agreement (FOA) to govern the relationship were approved by Regional Council on May 7, 2024.

Under the FOA governance model, non-profit partner organizations do not have legal authority to enter exclusive space lease agreements on behalf of HRM. Only HRM, as holders of the title to the land, can enter lease agreements for facilities governed under FOAs.

However, under the authority granted in the previous Property Management and Operating Agreement with HRM, the BBKCCS executed a sublease agreement in 2007 with the for-profit Beaver Bank Children’s Learning Centre Limited (BBCLCL). The lease and childcare operation are still active but under new ownership as the BBCLCL has recently sold their business to the YWCA Halifax, a non-profit society.

This transaction was facilitated by the Province of Nova Scotia as part of the N.S. Canada-Wide Early Learning and Child-Care Agreement. The goal of the program is to transform the child-care system to be more affordable and accessible, while creating new spaces in non-profit, publicly funded daycares.

HRM cannot assume the lease as is because the proper HRM approvals have not been attained. For the community to continue to benefit from the childcare service, HRM will need to enter into a lease agreement with the YWCA Halifax at the time the FOA is executed.

DISCUSSION

Upon execution of the FOA, any lease in the facility must be with HRM. The BBKCCS will be required to terminate the current agreement with the YWCA Halifax. The YWCA Halifax has been notified of the requirement to lease the space directly with HRM and understand any negotiated terms will require Regional Council approval.

As per Administrative Order 2020-013-OP, the Child Care Administrative Order, the municipality shall lease space to Non-Profit Child Care Centres at less-than-market-value, with Regional Council approval. Given this, staff negotiated a less-than-market-value lease with the YWCA Halifax. In March 2024 an Offer to Lease was sent to the YWCA Halifax for a five (5) year term and was accepted by the YWCA Halifax.

The base rent for the space has been negotiated at \$1.00 dollar plus HST per annum for the term of the agreement. The YWCA Halifax will be responsible for operating costs for the leased premises and pay these as additional rent. Any revenue HRM receives from the proposed lease, net of taxes, will be paid to BBKCCS as an additional operating subsidy. This approach ensures all leases are administered similarly and allows HRM oversight of tenants in HRM facilities, while still directing the revenue from leases to the FOA group to offset the operating costs at each facility.

The YWCA Halifax will be responsible for their proportionate share of the property tax plus HST. The YWCA Halifax may apply to the Tax Relief for Non-Profit Organizations Program under Administrative Order 2014-001-ADM Tax Relief to Non-Profit Organizations once a lease is executed.

The recommended proposed terms and conditions are outlined in Table 1.

Table 1: Key Lease Terms and Conditions

Property Address	1583 Beaver Bank Road, Beaver Bank, Nova Scotia PID 40158933
Tenant	Youth Women’s Christian Association of Halifax
Landlord	Halifax Regional Municipality
Property Manager	Beaver Bank Kinsac Community Centre Society
Premises	Approximately 1,424 square feet of interior space on the second floor
Initial Term	Five (5) years, anticipated to commence on October 1, 2024.
Renewal Term	One five (5) year renewal term
Permitted Use	Operation of a licensed non-profit preschool, afterschool care centre, and daycare and its associated activities
Termination	Landlord may terminate with one (1) year notice. Tenant may terminate with six (6) months notice.
Base Rent	\$1.00 plus HST per annum
Additional Rent: Operating Costs	\$6.75 per sq. ft, \$9,612.00 + HST per annum, payable monthly \$801.00 + HST. At the start of the fourth year of the Term the Operating Costs shall be increased by 3%, and shall continue to be increased annually, on the anniversary date, on a cumulative basis at a rate of 3%. per year.

Property Tax	Tenant is responsible for their proportionate share of property tax levied upon the property.
Utilities	Landlord is responsible for water, sewer, electrical, HVAC, and propane expenses. Tenant is responsible for telephone, internet, cable, and any other utility expenses brought to Premises for tenant's sole use.
Tenant Responsibilities	<ul style="list-style-type: none"> • Daily cleaning of the Premises. Removal of garbage from the Premises to exterior dumpsters. Four-stream waste receptacles. • General maintenance and repair of the Premises. • Remain in good standing and in compliance with all governing and regulatory bodies overseeing the operation of the Permitted Use. • Maintain all necessary registrations and permits under applicable laws in order to carry on business and/or operate as a registered society or charity within the Province of Nova Scotia. • Obtaining Landlord's written consent for any proposed change of the Permitted Use.
Landlord Responsibilities	<ul style="list-style-type: none"> • Repairs and maintenance to the building operating systems including electrical, plumbing, septic, and HVAC. • The installation, maintenance, and repair of any life safety systems. • Regular cleaning of the common areas and general property, including pest control. • Regular garbage, recycling, and compost removal from the Property. • Winter maintenance including snow clearing and ice control from the walkways, entrances, and parking lot. • Capital repairs and improvements to the building, and the Property.
Assignment	The Tenant shall not assign the Lease, nor assign, sublet, part with or share possession or occupation of the Premises or any part thereof.
Insurance	Commercial General Liability in the amount no less than \$5,000,000 including content insurance, and Directors & Officers Liability insurance. Halifax Regional Municipality and Beaver Bank Kinsac Community Centre are to be on the policies as additional insured.
Surrender Requirements	Upon the termination of this agreement, any improvements made by or for the Tenant to the Premises during the Term may either be removed at the Tenant's expense or be surrendered to the Landlord without compensation, at the Landlord's sole discretion and direction.
Premises Access Restrictions:	Tenant acknowledges and agrees that if the Building or Property is closed by the BBKCCS or the Landlord for any reason, including items such as inclement weather, temporary safety measures or as a result of any health or safety requirements the Tenant shall also cease its operations at the Premises during this time.
Special Clauses	Use of all other spaces within BBKCC must be booked / rented from BBKCCS.
Alterations	Tenant shall not make any alterations to the Premises without the prior written consent of the Landlord. This includes the installation of signs.
Condition	Tenant accepts the Premises on an "as is" basis.

FINANCIAL IMPLICATIONS

There is no net financial impact to HRM related to the tenant lease. Cost Centre C709 will be used to collect revenues from the tenant and then make corresponding payments to the facility operator BBKCCS.

Market value base rent was established using the Regional Rental Rates Reference Guide prepared by Cushman & Wakefield. The market value base rent for this space is \$12.50 per square foot, which is at the lower end of market value spectrum, and the annual base rent is \$17,800 per annum.

The proposed less than market value base rent has been negotiated at \$1.00 dollar per annum. The rent difference in a below market value lease represents the equivalent of an 'operating grant' for the property's use. The term 'operating grant' represents the opportunity cost associated with HRM leasing the space at less than market value rather than full market value. The value of the operating grant being considered with HRM leasing the space at less than market value is approximately \$17,799 per annum and is \$88,995 over the term of the lease.

Property taxes are billed initially by the Municipal Government. HRM as Landlord will pay the property taxes through Parks and Recreation operating account C709-5508 as a clearing account. The Landlord shall invoice the Tenant the property taxes plus HST. Should the YWCA Halifax apply to Administrative Order 2014-001-ADM Tax Relief to Non-Profit Organizations, and Regional Council approve the inclusion of the YWCA Halifax in the program, the amount offset will represent an additional 'operating grant' from HRM.

RISK CONSIDERATION

Risk consideration is Low. The proposed tenant is a well-established organization and provincially incorporated non-profit society. Putting a valid lease agreement in place mitigates risks for the group and the Municipality.

COMMUNITY ENGAGEMENT

No community engagement required for the completion of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

The Grants Committee could:

1. Recommend that Regional Council direct the CAO to negotiate different terms for the lease of the property to the YWCA Halifax; or
2. Recommend that Regional Council not enter into a lease of the property to the YWCA Halifax.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, S.N.S. 2008, c. 39, states:

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 63 (1): Notwithstanding 71(2), the Municipality may sell or lease property at a price less than market value for any purpose that the Council considers to be beneficial to the Municipality, and

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

The Grants Committee Terms of Reference states:

The HRM Grants Committee shall review, evaluate, and make recommendations to Regional Council regarding annual cash grants, rent subsidies, property tax exemptions, less than market value property sales and leases to registered non-profit organizations and charities managed by a duly appointed Grants Committee.

Administrative Order 2020-013-OP, *The Child Care Administrative Order*

(8) When leasing spaces to Non-Profit Child Care Centres in Facilities, the Municipality shall, subject to the approval of Halifax Regional Council in accordance with the requirements of the Halifax Regional Municipality Charter, lease the space to the Non-Profit Child Care Centre at less-than-market-value.

ATTACHMENT

Attachment 1 – Proposed Premises – YWCA Halifax

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: Andy Conrad, Community Facility Partnership Co-Ordinator, Parks & Recreation, 902.223.4655.

HALIFAX

Proposed Premises (1,424 square feet) – YWCA Halifax (2nd floor)

