



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 14.2.2
Halifax Regional Council
April 10, 2018

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Councillor Bill Karsten, Chair, Audit and Finance Standing Committee

DATE: March 21, 2018

SUBJECT: Administrative Order 50 Disposal of Surplus Real Property – PID 00076471 1588
Barrington Street, Halifax

ORIGIN

Motion passed by the Audit and Finance Standing Committee at a meeting held on March 21, 2018.

LEGISLATIVE AUTHORITY

Section 8 of the Audit and Finance Standing Committee's Terms of Reference:

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

- (a) new programs or services not yet approved or funded;
- (b) programs or services that are being substantially altered;
- (c) proposed changes in any operating or project budget items;
- (d) the commitment of funds where there is insufficient approved budget;
- (e) new or increased capital projects not within the approved budget;
- (f) increases in project budget due to cost sharing; and
- (g) the creation or modification of reserves and withdrawals not approved in the approved budget."

RECOMMENDATION

The Audit and Finance Standing Committee recommends Halifax Regional Council:

1. Set a date for a public hearing to consider the sale of 1588 Barrington Street, Halifax, to the 1588 Barrington Building Preservation Society for the proposed less than market value price of \$1.00 as per the proposed terms and conditions set out in the Discussion section of the February 2, 2018 staff report and a Buy-Back Agreement included as Attachment 1 of the February 2, 2018 staff report;
2. Subject to the outcome of the public hearing, approve the sale and authorize the Mayor and Municipal Clerk to enter into an Agreement of Purchase and Sale with the 1588 Barrington Building Preservation Society as per the terms and conditions set out in Table 1 of the February 2, 2018 staff report;

. . . recommendations continued on page 2

3. Subject to confirmation from the 1588 Barrington Building Preservation Society that the sale is unconditional and is a firm and binding purchase agreement, approve and authorize the Chief Administrative Officer to execute a Contribution Agreement for a grant of up to \$250,000 under the terms and conditions contained in the February 2, 2018 staff report and included as Attachment 2;
4. Approve an unbudgeted reserve withdrawal from the General Contingency Reserve, Q421 to fund the grant, up to \$250,000; and,
5. Refer the 1588 Barrington Building Preservation Society's request for tax relief to the Tax Relief for Non-Profit Organizations Program pursuant to Administrative Order 2014-001-ADM.

BACKGROUND

A staff report regarding this matter was submitted to the March 21, 2018 meeting of the Audit and Finance Standing Committee.

DISCUSSION

The Standing Committee considered the report and passed a motion endorsing the staff recommendation as noted above.

FINANCIAL IMPLICATIONS

Financial implications are outlined in the attached staff report dated February 2, 2018.

RISK CONSIDERATION

Risk considerations are outlined in the attached staff report dated February 2, 2018.

COMMUNITY ENGAGEMENT

The Audit & Finance Standing Committee meetings are open to public attendance, a live webcast is provided of the meeting, and members of the public are invited to address the Committee for up to five minutes at the end of each meeting during the Public Participation portion of the meeting. The agenda, reports, minutes, and meeting video of the Audit & Finance Standing Committee are posted on Halifax.ca

ENVIRONMENTAL IMPLICATIONS

Environmental implications are addressed in the attached staff report dated February 2, 2018.

ALTERNATIVES

The Standing Committee did not provide alternatives.

ATTACHMENTS

Attachment 1: Staff report dated February 2, 2018.

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: Sheilagh Edmonds, Legislative Assistant 902.490.6520

P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 12.4.2

**Audit & Finance Standing Committee
March 21, 2018**

TO: Chair and Members of Audit & Finance Standing Committee

Original signed

SUBMITTED BY: _____
Jerry Blackwood, Acting CFO/Director of Finance and Asset Management

Original signed

Jacques Dubé, Chief Administrative Officer

DATE: February 2, 2018

SUBJECT: **Administrative Order 50 Disposal of Surplus Real Property – PID 00076471
1588 Barrington Street, Halifax**

SUPPLEMENTARY RECOMMENDATION REPORT

ORIGIN

January 30, 2017 – Motion approved that Regional Council consider the sale for 1588 Barrington Street for \$1.00 to the 1588 Barrington [Street] Building Preservation Society and direct staff to prepare a supplementary report respecting:

- (a) the financial implications of the sale, including the requested grants;
- (b) proposed terms and conditions for the sale of the Property to the Society, and return to Council for a determination whether to proceed with the sale of the Property; and
- (c) with the sale to include the standard buy back agreement.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), 2008, S.N.S c.39

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

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

(3) Where the Council proposes to sell property referred to in subsection (1) valued at more than ten thousand dollars at less than market value, the Council shall first hold a public hearing respecting the sale

(4) The Council shall advertise the public hearing at least twice, in a newspaper circulating in the Municipality, the first notice to appear at least fourteen days before the hearing.

(5) Notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or description of the tangible personal property, the estimated value of the property and the purpose of the sale. 2008, c.39, s.63.

Section 120(3)(a) The capital reserve fund includes funds received from the sale of property.

Administrative Order 50 Disposal of Surplus Real Property

Sub-clause 2(2)(b) Community Interest

Properties known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

Administrative Order 2014-015-ADM Respecting Reserve Funding Strategies.

Municipal Government Act (1998):

Section 109

(1) Where a deed transfers property

...

(c) by way of gift, notwithstanding that

...

(i) there is a nominal consideration therefor,
it is exempt from deed transfer tax.

RECOMMENDATION

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

1. Set a date for a public hearing to consider the sale of 1588 Barrington Street, Halifax, to the 1588 Barrington Building Preservation Society for the proposed less than market value price of \$1.00 as per the proposed terms and conditions set out in the Discussion section of this report and a Buy-Back Agreement included as Attachment 1 of this report;
2. Subject to the outcome of the public hearing, approve the sale and authorize the Mayor and Municipal Clerk to enter into an Agreement of Purchase and Sale with the 1588 Barrington Building Preservation Society as per the terms and conditions set out in Table 1 of this report;
3. Subject to confirmation from the 1588 Barrington Building Preservation Society that the sale is unconditional and is a firm and binding purchase agreement, approve and authorize the Chief Administrative Officer to execute a Contribution Agreement for a grant of up to \$250,000 under the terms and conditions contained in this report and included as Attachment 2;
4. Approve an unbudgeted reserve withdrawal from the General Contingency Reserve, Q421 to fund the grant, up to \$250,000; and,
5. Refer the 1588 Barrington Building Preservation Society's request for tax relief to the *Tax Relief for Non-Profit Organizations Program* pursuant to Administrative Order 2014-001-ADM.

BACKGROUND

On March 22, 2016, Regional Council declared 1588 Barrington Street, Halifax, surplus to municipal operational requirements and approved disposal through the Community Interest category of Administrative Order 50. A Call for Expressions of Interest to acquire the subject property was issued November 19, 2016, with a submission deadline of May 29, 2017. One (1) offer of purchase was received. The offer to purchase is from the 1588 Barrington Building Preservation Society ("the Society"). A staff recommendation to defer a recommendation whether to proceed with a conveyance pending receipt of additional information was defeated. Instead, Council directed staff to prepare a supplementary recommendation report with respect to possible terms and conditions of sale, including any capital and/or operating grants requested by the Society, and the proposed terms of a Buy-Back Agreement.

A detailed description of the subject property and the Society's submission is included in the staff recommendation report to the Regional Council meeting of January 30th, 2018, Administrative Order 50 Disposal of Surplus Property – Community Interest PID 00076471 Barrington Street, Halifax, dated

November 20, 2017 (Item 9.1).

DISCUSSION

Property Description: The subject property is a registered heritage property located within the Barrington Street Heritage Conservation District. The building has zero set-back from the sidewalk and no rear entrance but has an easement over a portion of the abutting Parcel A-E 1580 Barrington Street for maintenance and use as an access ramp and fire escape. In 2018, the assessed value of the property decreased by \$12,300 to \$1,498,600: the depreciation is attributed to the building's general condition and protracted vacancy.

Proponent Profile: Incorporated in 2015 as a non-profit society, the Society was formed for the purpose of acquiring 1588 Barrington Street, Halifax, as an arts facility in support of emerging artists and arts organizations. Should the operations of the Society cease, after the satisfaction of all debts and liabilities, any property shall be distributed to a non-profit organization in Canada having similar objectives. The Society is in its formative stage. To date, revenues have comprised of fundraising and project-specific government grants towards preparation of a property re-development proposal. Membership in the Society is expected to commence in 2019.

Proponent's Intended Use: The Society wishes to acquire title to the subject property with a view to renovating and expanding the building to operate a cultural hub and arts incubator. The term "arts incubator" refers to the provision of space and resources to emerging artists and arts organizations within a collaborative, multi-disciplinary environment.

Proponent's Terms and Conditions of Offer: The Society's offer includes:

- a purchase price of \$1.00;
- "if unable to secure project financing to complete Capital upgrades within 24 months of the date of closing, HRM may repurchase the property for the price of \$1.00 (one dollar). Full buy-back terms to be negotiated and confirmed between the parties prior to Purchase";
- \$0 towards payment of closing costs; and
- a requested closing date of January 5, 2018.

It is recommended that Audit and Finance Standing Committee accept a purchase price of \$1.00 to support the restoration of an iconic registered heritage building and the development of a cultural facility.

- If Audit and Finance Standing Committee accepts a purchase price of \$1.00 deed transfer tax is not applicable as per sub-clause 109(1)(c)(i) of the *Municipal Government Act*. Using the assessed value of \$1,498,600 as a proxy for market value, the opportunity cost to the Municipality would be \$22,479.

To manage risk, it is recommended that HRM apply a two-tiered Buy-Back Agreement.

A Buy-Back Agreement is a schedule to the Agreement of Purchase and Sale whereby the Municipality sets specific conditions upon the property's use, ownership status and/or development in exchange for Council's contribution of property at less than market value to a non-profit or charitable organization. The agreement is essentially an option in favour of the Municipality to re-acquire the property on certain terms.

Should the Purchaser cease the beneficial activity for which Council granted a less than market value sale pursuant to subsection 63(1) of the *HRM Charter*, or the Society is in default of the terms and conditions of the Buy-Back Agreement, the Municipality may, at its sole discretion, re-purchase the property at a purchase price set out in the Buy-Back Agreement or in accordance with specific terms. The standard Buy-Back Agreement has an initial term of 25 years followed by an automatic review by Regional Council to

consider continuation, amendments or release of the Buy-Back Agreement¹.

1. Given uncertainty with respect to the Society's ability to raise approximately \$3,000,000, the proposed 25-year Buy-Back Agreement allows HRM to repurchase the property for \$1.00 if within two (2) years of the closing as stated on the Agreement of Purchase and Sale if the Society is unable to redevelop the property.
2. If the Society realizes substantial financial investment in capital improvements *to the subject property* as envisaged in their proposal, and the Buy-Back Agreement is invoked at some future date, the repurchase price would be based on an independent appraisal of market value less the value of the land, less any municipal funding and, if applicable, less any default of a financing agreement obtained by the Society secured by the subject property paid by the Municipality to enable a repurchase.

Alternative Buy-Back options are included in the Alternatives section of this report. See: Attachment 1, Draft Buy-Back Agreement.

In addition to donation of the subject property for \$1.00 the Society requests:

- an operating grant of \$100,000 to hire a fundraiser at an estimated cost of \$65,000 to \$75,000 and \$25,000 for holding costs (security, utilities etcetera);
- a capital grant of \$200,000 towards unspecified capital improvements to the building to be paid in fiscal year 2018;
- exemption or payment by the Municipality of deed transfer tax and development fees estimated to total \$45,000; and
- full tax exemption for an initial 10-year term.

In response to a request from staff for clarification, the Society confirmed that the additional financial support is to be addressed on an item-by-item basis: the offer is not conditional upon acceptance of all terms proposed. However, the Society is "firm" in their request for capital funding of \$200,000 and waiver of deed transfer tax.

It is recommended that, Audit and Finance Standing Committee approve a one-time grant of up to \$250,000 towards holding costs and asbestos abatement (inclusive of applicable development fees) commencing in fiscal year 2018.

- An immediate transfer of title to leverage funding consideration from other levels of government will result in the Society's assumption of property-related holding costs in 2018. Subject to Council's approval, a one-time contribution would enable protection of the premises while vacant. Further, a contribution towards asbestos abatement recognizes that immediate occupancy of the premises is not permitted. Any balance remaining may be directed towards conveyance costs and development fees as applicable.

To comply with procurement policy, any transfer of funds would be effective as of the date of title registration² with the Nova Scotia Registry of Deeds.

Given the scale of the proposed capital investment and the need to confirm construction readiness, the proposed Contribution Agreement includes a holdback on capital funds (including development

¹ Report to Regional Council meeting of July 22, 2014, Use of Buy-Back Agreements in Property Sales to Non-Profit Organizations, dated June 22, 2014.

² If HRM owns the property and is expending public money on this same property, the expenditures fall under HRM's Procurement policy (eg. tender, standing order etcetera).

fees) pending written confirmation of a construction start-date and sufficient funding to commence work.

- The waiver of municipal development fees is not an option: exemption under HRM By-law B-201 is restricted to affordable housing projects undertaken in relation to government housing agreements³. Therefore, a portion of the proposed contribution may be used towards development fees as applicable.
- An operating grant of up to \$75,000 to hire a fundraiser is not recommended. If the Municipality was to provide funding for this purpose it could be precedence-setting and requests from other non-profit interests might be anticipated.

See: Attachment 2, Draft Contribution Agreement for proposed terms and conditions of funding.

It is recommended that the Society's request for full exemption be referred to the Tax Relief for Non-Profit Organizations Program application process in accordance with Administrative Order 2014-001-ADM.

- Administrative Order 50 excludes any consideration of property tax relief. The Society may make application to the Municipality through the regular process in accordance with Administrative Order 2014-001-ADM. It should be noted that only non-profit and charitable organizations are considered under HRM's tax relief program and awards are annual.⁴ As of the date of this report the property has not been assessed as taxable.

Summary: In the context of a less than market value property sale, an opportunity cost is the benefit (sale price, deed transfer tax, property tax) forfeited by the Municipality that might otherwise have been realized through a sale at market value or some portion thereof. This type of opportunity costs is implicit: the 'cost' is not recorded as a budget expenditure. Revenue is forfeited in lieu of some other form of "benefit" to the Municipality judged to be of comparable value or higher priority in accordance with Subsection 63(1) of the *HRM Charter*.

If adopted, the opportunity costs associated with conveyance of the subject property for \$1.00 includes the property's potential market value (based on current assessed value) and deed transfer tax. A value of \$1,521,079 is comparable to the combined value of grants sought from the federal and provincial government (\$1,500,000) and Society's fundraising goal for capital costs (\$1,500,000).

Property Donation	\$1,498,600
Deed Transfer Tax	<u>\$ 22,479</u>
Total	\$1,521,079

An opportunity cost of \$1,521,079 excludes the value of recurring annual property tax revenues that might otherwise be realized through a market value sale to either a private interest or another level of government.

Council's Consideration

In accordance with sub-clause 4(1)(e)(i) of Administrative Order 50, Council shall consider the overall context of the disposal including:

- (i) the market value of property;
- (ii) the Planning Strategies of the area of the property;
- (iii) the benefit of any cost saving to the Municipality;

³ Report to Regional Council meeting of December 5, 2017, Incentives for Affordable Housing Projects, dated October 3, 2017.

⁴ A link to Administrative Order 2014-001-ADM was included in the Call for Submissions.

- (iv) the consequences, beneficial or otherwise, to the community or the Municipality as a whole;
- (v) the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value; and
- (vi) whether or not a Buy-Back Agreement is a condition of sale.

The following information is provided for Council's consideration:

- the assessed value of the property is \$1,498,600 (2018);
- the appraised market value was included in a separate In-Camera Information Report dated November 20, 2017;
- the property is located within the Barrington Street Heritage Conservation District;
- the proponent's intended use complies with current zoning.

Proposed Terms and Conditions of Conveyance

Table 1. KEY TERMS AND CONDITIONS (PROPOSED)	
Civic Address	1588 Barrington Street, Halifax PID 00076471
Area	Land Area of approximately 2,890 square feet. Building Area of approximately 10,285 square feet.
Zoning	DH-1 Downtown Halifax Zone.
Assessed Value	\$1,498,600
Appraised Value	See: In Camera Information Report to Regional Council meeting of December 12, 2017, dated December 5, 2017.
Tax Status	Commercial Exempt
Proposed Purchase Price	\$1.00
Terms of Offer	Property to be conveyed "as is/as zoned". The Society shall be responsible for all operating and capital costs including annual real property tax.
Proposed Use	Operation of an arts incubator and cultural hub with mixed non-profit and commercial tenancy.
Conditions of Sale	A Buy-Back Agreement shall be applied to the conveyance. If, after two (2) years the Society is unable to proceed with re-development of the property the Municipality may invoke the Buy-Back Agreement and repurchase the property for the sum of \$1.00. Should the re-development proceed, the Buy-Back Agreement shall continue for a total term of twenty-five (25) years ¹ followed by an automatic review by Regional Council to consider continuation, amendment or release. The Purchaser may apply to the Municipality for postponement to secure up to 65% of the property's market value as of the date of the request.
Closing Date	Within three (3) months of Regional Council's approval.
Cost of Sale Recoveries	The Purchaser shall pay up to a maximum of \$2,500 plus HST for legal/deed migration fees at closing upon receipt of an itemized invoice issued by HRM. Excludes payment for independent appraisal.

FINANCIAL IMPLICATIONS

Opportunity Costs: The terms of Purchase offered by the 1588 Barrington Building Preservation Society is

a less than market value sale of \$1.00. Based on the 2018 assessed value of \$1,498,600, a sale to the Society for the sum of \$1.00 represents an in-kind contribution by HRM of approximately \$1,498,600 plus an opportunity cost of \$22,479 in deed transfer tax.

Closing Costs: The Society did not offer to compensate HRM for any portion of the Municipality's closing costs estimated to be \$6,000. If Council overturns the staff recommendation to recover up to \$2,500 plus HST from the Society, these costs are reimbursed to Real Estate's operating budget from the Capital Fund Reserve Q526. Although there would be net \$0 impact on Real Estate's operating budget there is an overall net loss to the Municipality when such costs exceed the proceeds from sale (ie. a purchase price of \$1.00).

Additional One-time Contribution: If approved, a one-time contribution of up to \$250,000 would increase the combined value of HRM's consideration to \$1,771,079. The funds towards holding costs, asbestos abatement, and development fees exclusive to the subject property would be funded from Q421 – General Contingency Reserve to Fiscal Services account M310-8004.

Budget Summary: Obligation Reserve, Capital Fund Reserve Q526

Balance in reserve, January 31, 2018	\$14,840,628
Projected Contributions to reserve including interest to March 31, 2018	\$ 693,770
Commitments to March 31, 2018	\$(9,958,346)
Approval of Recommendations of Sale	\$ 1
Projected net available balance, March 31, 2018	\$ 5,576,053

Obligation Reserve – Capital Fund Reserve Q526

The reserve is funded by the sale of land in HRM, other than Business/Industrial Parks or sale of land conveyed to HRM for parks, playgrounds or similar public purposes. Several other large properties are now excluded from deposit to this reserve and are being re-directed to the Strategic Capital Reserve Q606. The Capital Reserve Fund is governed by the Halifax Regional Municipality Charter Section 120(1),(3) and (4). Withdrawals from the reserve are for capital expenses for which the Municipality may borrow. The recommendation does not have a negative impact to the reserve balance as this would be an unbudgeted contribution to the reserve.

Budget Summary: Risk Reserve – General Contingency Reserve, Q421

Balance in reserve, January 31, 2018	\$ 2,201,304
Projected Contributions to reserve including interest to March 31, 2018	\$ 388,473
Commitments to March 31, 2018	\$(1,855,771)
Withdrawal per recommendation #4	\$(250,000)
Projected net available balance, March 31, 2018	\$ 484,006

Risk Reserve – General Contingency Reserve, Q421 is to receive the annual operating surplus of the Municipality as prescribed by the Provincial Financial Accounting and Reporting Manual, and can be used to fund operating costs, offset deficits, or fund new operating and/or capital expenditures. This recommendation has a negative impact to the reserve as it is a withdrawal from the reserve balance.

The financial implications presented above exclude the cost of any future discretionary municipal tax relief.

RISK CONSIDERATION

Medium. In the absence of firm funding commitments, including self-generated capital funds, the scale of project is ambitious. If the Society is unable to proceed and relinquishes title to HRM, the Municipality's

cash contribution could be recovered through a market value sale. Further, the registered heritage status of 1588 Barrington Street, Halifax, and its located within the Barrington Street Heritage Conservation District affords protection against de-registration or demolition.

The application of a Buy-Back Agreement reduces HRM's risk exposure should the re-development of the subject property not proceed. However, should the property remain vacant for an extended period there may be additional deterioration in the condition of the premises.

COMMUNITY ENGAGEMENT

A mandatory public information meeting was held on November 26, 2016, at the Halifax Public Library, 5440 Spring Garden Road, Halifax. The meeting was publicized in a newspaper advertisement Saturday, November 19, 2016. The purpose of the meeting was to inform members of the public on the legislated process to purchase surplus municipal property and specific details about 1588 Barrington Street, Halifax.

A Call for Submissions was issued Saturday, December 1, 2016, with an application deadline of May 29, 2017. The notice included a site visit January 19, 2017.

ENVIRONMENTAL IMPLICATIONS

In 2010, HRM commissioned a Hazardous Building Materials Assessment by SLR Consulting (2010). The report identified asbestos-containing materials, lead-based paint, and fixtures possibly containing PBC or mercury. Such findings are not unusual in a building of this age. In 2012, All-Tech Environmental Services Limited conducted a Limited Hazardous Materials Assessment primarily for the detection of asbestos levels and lead paint. A re-assessment was done in 2016 to update the condition of any materials identified as containing asbestos. The asbestos is located primarily within plaster features throughout the building and may be located beneath dry wall: abatement precautions will be required if these materials are disturbed. Applicants were notified of these reports in the Call for Submissions.

ALTERNATIVES

1. Section E (13) of the proposed Buy-Back Agreement could be replaced with compensation for capital improvements to the building, less depreciation (amortized by asset class) and any municipal funding.

This option is not recommended: in the absence of funding contracts with other levels of government or major private donors the Society's contractual obligations, if any, are unknown. Instead, the Buy-Back Agreement can be used by the Society to inform prospective funders and the redistribution of any proceeds received through a repurchase would be the sole responsibility of the Society.

2. Audit and Finance Standing Committee could choose not to apply a Buy-Back Agreement to the conveyance.

This action is not recommended: In the short-term the Society's ability to establish the viability of the proposed re-development is unconfirmed.

3. Audit and Finance Standing Committee could limit HRM's contribution to those revenues forfeited by a less than market value sale, a corresponding loss of deed transfer tax, and only partial recovery of HRM's closing costs (closing costs are actual cash expenditures incurred by HRM to enable the sale).
4. Audit and Finance Standing Committee could award a grant towards only holding costs and exclude any contribution towards asbestos abatement and development fees. If this option is chosen the value of HRM's contribution could be reduced to \$25,000 for fiscal year 2018.

5. If Audit and Finance Standing Committee chooses to issue an operating grant in the amount of up to \$75,000 to the Society towards retaining a fundraiser there is no established municipal grant program that includes such expenses. As such, any award would have to be by resolution of the Council. As an unbudgeted expenditure, a funding source would need to be identified and a recommendation made to Council through the Audit & Finance Standing Committee.

ATTACHMENTS

1. Draft Buy-Back Agreement
2. Draft Contribution Agreement
3. Site Map and Photograph

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

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

DRAFT Proposed Buy-Back Agreement

This **Buy-Back Agreement** dated this [number] day of [month] , 2018.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a municipal body corporate
(hereinafter called the “**Municipality**”)

OF THE FIRST PART

-and-

1588 BARRINGTON BUILDING PRESERVATION SOCIETY, having a registered office in the city of
Halifax, Halifax Regional Municipality, Nova Scotia
(hereinafter called the “**Purchaser**”)

OF THE SECOND PART

WHEREAS by an **Agreement of Purchase and Sale** dated the [day] of [month], 2018, the Municipality agreed to sell and the Purchaser agreed to purchase the Property identified as 1588 Barrington Street, Halifax, in the Halifax Regional Municipality, Province of Nova Scotia;

AND WHEREAS the above-mentioned **Agreement of Purchase and Sale** contains, inter alia, a **BuyBack Agreement** in Clause [insert clause], of the said Agreement of Purchase and Sale;

WITNESSETH THAT in consideration of the mutual covenants contained herein and the other consideration of the sum of One Dollar (\$1.00) paid by each of the parties thereto the other party, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Purchaser hereby agree as follows:

A. Buy-Back Agreement as First Charge Upon the Property

1. It is agreed between the Municipality and the Purchaser that this **Buy-Back Agreement** will constitute a first charge upon the Property which may be registered as presently constituted or, alternatively, at the sole discretion of the Municipality, a Notice of Agreement will be registered at the Nova Scotia Land Registry against the title to the Property.
2. This **Buy-Back Agreement** shall have an initial term of twenty-five (25) years followed by a review by the Council of the Halifax Regional Municipality to consider continuation, amendment or release of the **Buy-Back Agreement**.

B. Conditions of Sale

3. The Purchaser has acquired title for the less than market value sum of One Dollar (\$1.00) for the purpose of re-development of the Property as an arts incubator and cultural hub.

4. The Purchaser agrees to uphold the Property's status as a municipally registered heritage property and to forego any consideration to de-register or demolish the Property.
5. The Purchaser shall maintain its status as a non-profit society registered with the Nova Scotia Registry of Joint Stock Companies.
6. The Purchaser agrees to notify the Municipality in writing in the event of any mortgage, line of credit or debt instrument, loan guarantee, or other financial instrument or encumbrance secured by the Property.
7. The Purchaser agrees to notify the Municipality in writing of any default resulting in a lien against title such as but not limited to real property tax arrears, contractor's lien, mortgage principle or interest, claims, actions or demands which may be brought against the Purchaser.

C. Postponement for the Purpose of Purchaser Financing

8. In the event that the Purchaser wishes to secure financing secured by the Property application shall be made in writing the Chief Administrative Officer of the Municipality.
9. The value of loan secured by the Property shall not exceed sixty-five percent (65%) of the Property's market value as of the date of the request.
10. Any Purchaser financing agreement shall include a reservation of right in favour of the Municipality to have notice of and the option to cover any default under the Purchaser's financing.

D. Repurchase of the Property

11. In the event that the Purchaser:
 - (i) ceases the beneficial activity for which the Council of the Halifax Regional Municipality gave its consideration to a less than market value sale of the Property pursuant to subsection 63(1) of the *Halifax Regional Municipality Charter*;
 - (ii) discontinues the operations of the Society;
 - (iii) is in default of any loan or financial instrument secured by title to the Property;
 - (iv) wishes to consider the sale or conveyance of the Property; or
 - (v) is in default of the terms and conditions of this Buy-Back Agreement

the Municipality may, at its sole discretion, have the right to repurchase the Property at a price set out in Section E.

E. Repurchase Price of the Property

12. In the event that the Purchaser is unable to proceed with re-development of the Property as an arts incubator and cultural hub within 24 months as of the date of closing the Agreement of Purchase and Sale the Municipality may repurchase the Property for the sum of One Dollar (\$1.00).
13. In the event that the Purchaser undertakes re-development of the Property as an arts incubator and cultural hub, and the Municipality elects to repurchase the Property pursuant to some action necessitated under Section D the repurchase price for the Property shall be the appraised value of the Property as determined by an independent appraiser, less the land value, less any municipal contribution or any payment made by the Municipality to cover default under the Purchaser's financing.

IN WITNESS WHEREOF the Municipality and the Purchase hereto have executed this Agreement on the _____ day of _____, 2018.

SIGNED, SEALED and DELIVERED

**1588 BARRINGTON BUILDING
PRESERVATION SOCIETY**

Witness

Witness

Witness

Witness

HALIFAX REGIONAL MUNICIPALITY

Mayor

Municipal Clerk

DRAFT Contribution Agreement

CONTRIBUTION AGREEMENT

Between

Halifax Regional Municipality

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

-and-

1588 Barrington Building Preservation Society

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

RECITALS

The 1588 Barrington Building Preservation Society intends to renovate and expand the former Church of England Institute, a registered heritage property within the Barrington Street Heritage Conservation District, located at 1588 Barrington Street, Halifax (the “**Facility**”). The Society requested that HRM provide funds to be used towards operating and capital costs.

Section 79(1)(av)(v) of the *Halifax Regional Municipality Charter* permits HRM to provide a grant or contribution to a number of different organizations within the Province of Nova Scotia, including “community organizations”.

On [date], 2018, HRM Regional Council passed a resolution to provide a contribution in the amount of up to [\$x] to the Society towards costs directly associated with maintaining the subject property while vacant pending re-development, remediation of asbestos and development fees subject to certain conditions and the execution of a formal Contribution Agreement.

The parties hereto covenant and agree as follows:

**SECTION ONE
CONTRIBUTION OF FUNDS**

Section 1.01 Amount of Contribution

- a) HRM shall make a one-time contribution to the Society in the amount of up to [\$x] (the “**Contribution Amount**”) to be used by the Society towards holding and re-development costs incurred by the Society’s ownership of 1588 Barrington Street, Halifax.
- b) The contribution is a firm-fixed amount and HRM will not be liable for any losses incurred by the Society in relation to ownership of the subject property.
- c) The Contribution Amount represents HRM’s complete financial commitment to the Society and HRM will not be obligated to provide any supplemental or incremental funding to the Society.

Section 1.02 Approvals

- a) Prior to the payment of the Contribution Amount the Society shall have title to 1588 Barrington Street, Halifax, as evidenced by the registration of the deed in the name of the 1588 Barrington Building Preservation Society at the Nova Scotia Land Registry.

Section 1.03 Payment Schedule

- a) Subject to the terms and conditions of this agreement, HRM shall pay the Contribution Amount to the Society in installments:
 - (i) an amount of \$25,000 towards holding costs;
 - (ii) a capital contribution towards asbestos abatement and development fees upon written confirmation of a construction start date and itemized costs for the work and associated fees described in subsection 1.04 (ii) and (iii).

Section 1.04 Expenditures

- a) The costs funded under this Contribution Agreement referenced in Section 1.01(a) include the following:
 - (i) facility holding costs including insurance, utilities, snow and ice control, and minor repairs for up to 2 years, effective as of the date of closing; (ii) capital costs incurred in asbestos abatement; and/or (iii) development fees.

Section 1.05 Restrictions

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

SECTION TWO FINANCES, RECORDS AND INFORMATION SERVICES

Section 2.01 Registry of Joint Stocks

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

Section 2.02 Accounting Records

- a) The Society shall maintain a complete and proper set of accounting records regarding its operations.

Section 2.03 Progress Reporting

- a) The Society shall submit a written progress report to HRM Finance & Asset Management at 6month intervals, the first report shall be due 6 months as of the date of closing, to include the following:
- (i) confirmation of federal and provincial government funding;
 - (ii) the implementation of a fundraising campaign indicating the pledges and any amounts received;
 - (iii) a financial statement showing the Society's cash position; and (iv) any revised capital and operating budget projections.
- b) HRM Finance & Asset Management will prepare information reports for Regional Council's consideration.

Section 2.04 Municipal Audit

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

SECTION THREE LIABILITY AND INDEMNITY

Section 3.01 Risk

- a) The Society agrees that its activities shall be at its sole risk and expense.

Section 3.02 Limitation of Liability

- a) HRM is not a guarantor of the Society or the Facility and in no event will HRM be liable for any direct, indirect, consequential, exemplary or punitive damages in relation to the Society's occupancy of the subject property regardless of the form of action, whether in contract, tort or otherwise.

Section 3.03 Indemnification

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

SECTION FOUR GENERAL PROVISIONS

Section 4.01 Notices

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

Halifax Regional Municipality

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

1588 Barrington Building Preservation Society

Attention: President
1588 Barrington Street Halifax,
NS B3J 1Z6

- b) Except in the event of a postal service strike or lockout (in which event the parties hereto agree to temporarily utilize other reasonable methods of communicating any notices), service of any notice or demand so made by registered mail shall be deemed complete on the date of actual delivery as shown by the registry receipt or at the expiration of the seventh business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing serve upon the other party as foreshaid, designate a different mailing address or different additional persons to which all such notices or demands are thereafter to be addressed.

Section 4.02 Confidentiality

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

Section 4.03 Governing Law

- a) This agreement shall be governed by and interpreted in accordance with the law of Nova Scotia.
- b) The parties hereby attorn to the exclusive jurisdiction of the courts of Nova Scotia to resolve any disputes arising out of this agreement.

Section 4.04 Effective Date

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

Section 4.05 Representations and Warranties

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

Section 4.06 Entire Agreement

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

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

1588 Barrington Building Preservation Society

Witness

Name:
Title:

Witness

Name:
Title:

Date Signed

Halifax Regional Municipality

Witness

Jacques Dube, CAO

Date Signed

HALIFAX

PID 00076471 – 1588 Barrington Street, Halifax
SITE MAP AND PHOTOGRAPHY



Site Map



Photo