



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

Item No. 15.2.1
Halifax Regional Council
July 16, 2019

TO: Mayor Savage and Members of Halifax Regional Council
Original Signed

SUBMITTED BY: _____
Councillor Russell Walker, Chair, Audit and Finance Standing Committee

DATE: June 26, 2019

SUBJECT: Waverley Community Association Agreement Request

ORIGIN

March 26, 2019 motion of Halifax Regional Council, item 15.3.1.

June 26, 2019 meeting of the Audit and Finance Standing Committee, item 12.4.1.

LEGISLATIVE AUTHORITY

Section 8(a) 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 new programs or services not yet approved or funded.'

RECOMMENDATION

The Audit and Finance Standing Committee recommends that Halifax Regional Council:

1. Approve the provision of a two-year contribution in the amount of \$20,000 annually to the Waverley Community Association towards operating expenses to be funded from Operating Account C230;
2. Authorize the Chief Administrative Officer, or their designate, to negotiate, enter into, and execute a Contribution Agreement on behalf of the Municipality with the Waverley Community Association substantially in the same form as the draft Contribution Agreement included as Attachment 1 of the staff report dated June 12, 2019, and otherwise acceptable to the Chief Administrative Officer.

BACKGROUND

A staff report dated June 12, 2019 was before the Audit and Finance Standing Committee at its meeting held on June 26, 2019. The report identifies a funding source in response to a request from the Waverley Community Association to provide annual funding of \$20,000 towards operating expenses.

For further information, please refer to the attached staff report dated June 12, 2019.

DISCUSSION

The Audit and Finance Standing Committee considered the June 12, 2019 staff report and forwarded the recommendation to Halifax Regional Council as outlined in this report.

FINANCIAL IMPLICATIONS

Financial implications are addressed in the attached June 12, 2019 staff report.

RISK CONSIDERATION

Risk consideration is outlined in the attached June 12, 2019 staff report.

COMMUNITY ENGAGEMENT

The Audit and 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 and Finance Standing Committee are posted on Halifax.ca.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with the recommendations.

ALTERNATIVES

The Audit and Finance Standing Committee did not discuss alternative recommendations. Alternatives are outlined in the attached June 12, 2019 staff report.

ATTACHMENTS

Staff report dated June 12, 2019.

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: Krista Vining, Legislative Assistant, Office of the Municipal Clerk, 902.490.6520

Item No. 12.4.1
Audit and Finance Standing Committee
June 26, 2019

TO: Chair and Members of Audit and Finance Standing Committee
Original Signed

SUBMITTED BY: _____
Denise Schofield, Director, Parks and Recreation
Original Signed

Jacques Dubé, Chief Administrative Officer

DATE: June 12, 2019

SUBJECT: **Waverley Community Association Agreement Request**

ORIGIN

March 26, 2019 Regional Council motion:

MOVED by Councillor Streach, seconded by Councillor Blackburn
THAT Halifax Regional Council direct the Chief Administrative Officer to prepare a report to respond to a request from the Waverley Community Association dated January 24, 2019 for HRM to negotiate a Contribution and Service Agreement to provide annual funding of \$20,000. MOTION PUT AND PASSED UNANIMOUSLY.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, S.N.S. 2008, c.39
Section 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;**
- (b) the expenditure is in respect of an emergency under the *Emergency Management Act*, or
- (c) the expenditure is legally required to be paid.

RECOMMENDATION

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

1. Approve the provision of a two-year contribution in the amount of \$20,000 annually to the Waverley Community Association towards operating expenses to be funded from Operating Account C230;
2. Authorize the Chief Administrative Officer, or his designate, to negotiate, enter into, and execute a

RECOMMENDATION CONTINUED ON PAGE 2

Contribution Agreement on behalf of the Municipality with the Waverley Community Association substantially in the same form as the draft Contribution Agreement included as Attachment 1 of this report, and otherwise acceptable to the Chief Administrative Officer.

BACKGROUND

In 1995, in advance of amalgamation, the Waverley Village Commissioners incorporated as a non-profit society, known then as the Waverley Ratepayers Association, in order to continue operations of the Waverley Village Hall located at 2463 Rocky Lake Drive, Waverley. In 2013, the Waverley Ratepayers Association changed its name to the Waverley Community Association (WCA).

History of Property Ownership: The former St. John's Anglican Church (c.1862) was the first church built in the Waverley area. It was re-located to its current location on Rocky Lake Drive in 1893. In 1991, the former Waverley Village Commissioners purchased the property to protect the building from demolition. In 1994, the property was registered as a heritage property under the former Halifax County. In 1995, the Waverley Ratepayers Association requested title to the property be changed to the Waverley Heritage Museum and Community Centre. The dissolution of the former Village of Waverley under the *Halifax Regional Municipality Act* resulted in title of the property ceding to HRM. In 1996, Regional Council approved conveyance to the society but the transaction did not proceed until 2010. In accordance with Council's initial decision, the property was sold at less than market value. A Buy-Back Agreement is in effect to protect the heritage status of the building¹. The sale closed on January 25, 2012 and the building is now known as the Waverley Village Hall.

Building Use: The building is used by two primary groups – WCA and Waverley Heritage Society (WHS). The WCA has offered hall rentals, monitored local development, hosted a computer access site, enhanced local recreational amenities², and hosted activities as part of the annual Waverley Gold Rush Days event.

The Waverley Heritage Society (WHS) began in another location, Smith House in Waverley. They moved operations to the Waverley Village Hall in 1991. The WHS maintains the collection of memorabilia, historical records and artifacts relating to the Waverley area. They also provide school programming, research appointments, genealogical information and general tours.

Area Rate: Prior to 1996, a local area rate was instituted in Waverley to help defray the cost of constructing sidewalks. The tax base proved insufficient to raise the capital required and in 2011 Council discontinued the rate. A balance of \$67,665 was distributed to local organizations through the WCA to be used for upgrades to the Village Green, McDonald Park, and the village hall.

Recreation Area Rates: The use of area rates to fund municipal services was a well-established practice prior to amalgamation. Area rates enabled recreational amenities to be developed and maintained, including HRM-owned and operated facilities and non-municipal facilities and services. The latter were addressed in 2000 under a Recreation Area Rate Policy³. In 2014, Council approved the development of a new area rate administrative order. However, discontinuation of the Waverley area rate in 2011 preceded the review and was not in scope of that review. The account continued as an area services account, which became general rated. As a result, it was not captured under the area rated service accounts review. Therefore, annual funding continued to the WCA from general revenue without formal authorization.

¹ Regional Council meeting of April 20, 2010, Property Matter: Less than Market Value Sale 2463 Rocky Lake Drive, Waverley – Waverley Ratepayers Association, dated January 6, 2010.

² Powder Mill Lake, McDonald Park (provincial park) and the Waverley Village Green.

³ Report to Regional Council meeting of June 19, 2018, Area Rate Review, dated February 12, 2018.

Upon determination that the area rate had been discontinued, WCA was informed that the annual funding which was the primary source of funding for the organization would be discontinued. This report addresses the WCA request for transitional operating funds to provide a reasonable time frame to transition to alternative funding sources, without which the ongoing viability of the facility is in question. In reviewing this request, staff has considered the origins of this municipal operating funding, other sources of municipal assistance, and the current financial standing of the WCA.

DISCUSSION

Transitional financial assistance is recommended to help the WCA secure alternate funding sources and/or increase earned revenues. Further, adequate stewardship of a registered heritage property is in the public interest. Staff have assessed existing grant programs and determined that funding would need to be issued outside the terms and conditions of a formal municipal grant program. This funding would need to be administered under a Contribution Agreement. The proposed 2-year term of the contract is intended to allow the WCA to adjust their budgeting based on earned revenues and non-municipal funding sources. Further, this timeline will allow for the WCA to negotiate a lease agreement with the Waverley Heritage Society. Upon conclusion of the two-year agreement, the transition funding will be ended.

The following is an overview of the WCA's eligibility under existing municipal grant programs and an assessment of any impact a Contribution Agreement may have on eligibility:

(a) Interim Community Museums Grant Program (Administrative Order 2018-010-ADM)

Currently, although the WCA has an established role in supporting the Waverley Museum, the WCA does not qualify for operating and/or project-specific funding under the Interim Community Museums Grant Program because they are not the legal owner of the collection and does not administer museum operations. However, for the Waverley Heritage Society to qualify for municipal museum operating and/or project-specific grants, they must have legal ownership of the collection and either own or lease the premises occupied by the museum.

On January 11, 2019, staff of Grants & Contributions (Finance) met with representatives of the WCA and the WHS to review their eligibility respecting HRM's Community Museums Grant Program. The Waverley Heritage Society needs time to confirm their ownership of the former private collection, a lease agreement to formalize any exclusive occupancy of a portion of the community hall and may have to assume some of the costs related to the museum's operations currently paid by the WCA. It is anticipated that the WHS will be asked to pay a proportional share (a specified percentage or itemized costs) of operating costs directly associated with museum operations.

(b) Community Grants Program

Staff confirmed that both organizations remain eligible to apply for project-specific grants under the Community Grants Program. The latter does not fund operating expenses and as such is not a long-term solution to a reduction in WCA's funding following discontinuation of the Waverley area rate in 2011.

Should the Waverley Heritage Society be admitted into the Community Museums Grant Program in 2020 or thereafter, their on-going eligibility under the Community Grants Program would be restricted to capital grants. Since the Community Museums Grant Program includes both operating and project specific grants to eligible community museums, admission to that program would restrict any additional funding under the Community Grants Program to capital projects as defined in the program's guidebook.

The Waverley Community Association, as owner of the property remains eligible to apply for capital and project-specific grants, but preference may be given to organizations not in receipt of government funding, including municipal. Consequently, if as proposed, the WCA receives a 2-year contribution in the amount of \$20,000 annually, it would be advisable that WCA confirm the eligibility and relative priority of both the proposed project and expenses in advance of making formal application to the Community Grants Program.

Regional Special Events Grants Program (Administrative Order 2014-021-ADM)

Regional Special Event Grant funding is provided to groups to help support local community events. In accordance with Section 10 of the Administrative Order, an applicant is ineligible for consideration if they are in receipt of municipal operating assistance, except tax relief. The proposed transition funding to the WCA would disqualify any applications for event funding during the term of the proposed Contribution Agreement. At the end of the proposed 2-year term of the Contribution Agreement, the WCA would again be eligible to apply for funding specific to community events.

(c) Municipal Tax Relief (Administrative Order 2014-001-ADM)

The WCA has requested an increase in the level of its tax relief under the 2019-20 Tax Relief for Non-Profit Organizations Program. If approved by Regional Council, an increase to full exemption would decrease property tax by an additional \$500 and would increase HRM's total tax relief to \$1,407. Further, if the Waverley Heritage Society's occupancy of a portion of the premises is formalized under a lease agreement between the WHS and the WCA, the WHS can be recognized under Section 4 of the program's policy and recognized under the tax relief provided to the non-profit property owner. To extend tax relief to the non-profit tenant, the WCA (property owner) would have to confirm the tenant's non-profit registration number, provide a copy of the signed lease and the total area occupied by the lessee.

Contribution Agreement

The property located at 2463 Rocky Lake Drive is privately owned by the WCA. The WCA provides community access, programming and housing for the WHS to maintain the history and artifacts of the area. As noted, the WCA has been receiving HRM general rate funds for several years with no formal relationship.

To preserve the community hall and the offerings of the WCA, the recommended Contribution Agreement with a two-year term would provide the WCA with \$20,000 per year as transitional funding. The funds would provide time for the WCA to explore new funding sources and put in place processes to become eligible for government grant programs while having security to continue their community activities.

A summary of the proposed terms and conditions is provided below in Table 1 and a draft Contribution Agreement is included as Attachment 2 of this report.

Table 1. Contribution Agreement: Proposed Key Terms and Conditions
<p>HRM's contribution to the Waverley Community Association will be twenty thousand dollars (\$20,000) for each of two years for a total of forty thousand dollars (\$40,000) to be used by the WCA solely for the payment of core recurring operating expenses for the community hall located at 2463 Rocky Lake Drive, Waverley. Under this agreement a community hall is defined as a community-owned and operated facility where residents and organizations of the area gather for group activities, social support, and public information.</p> <ul style="list-style-type: none">a. The contribution is a fixed contribution made directly to the WCA and HRM is not liable for any losses incurred by the WCA nor a guarantor of the WCA or the Facility;b. The contribution amount represents HRM's complete financial contribution to the WCA under the terms and conditions of the Agreement;c. The WCA will indemnify HRM.
<p>Under the proposed Contribution Agreement, the WCA shall:</p> <ul style="list-style-type: none">a. maintain active status as a non-profit society during the term of the agreement;b. maintain a complete and proper set of accounting records regarding its operations;c. submit an annual financial statement to HRM prior to the disbursement of payment under the agreement;

- d. acknowledge that the Contribution Agreement and associated documentation is in the public domain and may be disclosed in accordance with part XX of the *Municipal Government Act* (Freedom of Information and Privacy).

FINANCIAL IMPLICATIONS

The annual funds of \$20,000 can be absorbed in the Parks and Recreation operating budget, account C230. There will be a budget requirement for the additional \$20,000 in the following year (2020-21) which could be an operating pressure.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered for HRM rate Low. The risk considered to the WCA is High. Without this Contribution Agreement as a means for the WCA to secure other revenue streams, the ability for the WCA to keep the building open would be put in jeopardy. To reach this conclusion, consideration was given to the financial position of the WCA, terms of the Contribution Agreement, and risk to HRM.

COMMUNITY ENGAGEMENT

Staff have met with members of the WCA and the Waverley Heritage Society.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with the recommendations

ALTERNATIVES

Alternative 1: The Audit & Finance Standing Committee could recommend that Regional Council not approve a contribution to the WCA. Staff would continue to work with the WCA to help them become eligible for grant opportunities.

Alternative 2: The Audit & Finance Standing Committee could recommend that Regional Council amend any terms of the contribution agreement. This may require additional negotiation with WCA and a subsequent report from staff.

ATTACHMENTS

Attachment 1 - Letter from Waverley Community Association dated January 24, 2019
Attachment 2 - Draft Contribution Agreement

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

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



January 24 2019

Michael Ryan, HRM
40 Alderney Dr
Dartmouth, NS B2Y 2N5

Mr. Ryan:

The Waverley Community Association (WCA) respectfully requests Halifax Regional Municipality (HRM) to consider and approve a contribution/service agreement between the WCA and HRM to provide an annual fund of \$20,000. The purpose of the funds would be ongoing operational costs. The money will be used for such things as electricity, heating oil, insurance, and general property repairs.

The WCA operates a community centre, also housing a museum in the Waverley area since 1991. We believe HRM currently enjoys the benefits of this facility by not having to own and maintain the facility itself.

The facility is extensively used year round. Non-profit groups (ie Girl Guides), small businesses (ie fitness classes), and many local community groups (ie Waverley Amateur Athletic Association, Shubie Canal Waterway development) use the hall for meetings and events. The museum not only does tours of its exhibits for the general public, but also regularly hosts field trips from local elementary schools. They also utilize the hall for special events, like community teas, and also had a pop up bakery last summer. Additionally, each September the local festival, Gold Rush Days, is well attended and the building is used for many of the events.

The support of HRM will allow the WCA board to continue and maintain the facility at a high level, ensuring the facility can serve the community for many more years.

WCA has worked to operate the facility and support the community, and in addition, the WHS and their mandate. The discontinuation of this hall and museum would be a great loss for this small but engaged community. In addition, we believe this to be the only small hall in the area with a handicap accessible washroom.

With the support of HRM, the WCA will be able to extensively support the community, negating the requirement of HRM to support these services directly.

We look forward to your support.

Sincerely,

A solid black rectangular box used to redact the signature of Virginia L. Archibald.

Virginia L. Archibald
Chair

Attachment 2

CONTRIBUTION AGREEMENT

Between

Halifax Regional Municipality

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

-and-

Waverley Community Association

A society incorporated under the Societies Act of Nova Scotia (the “**WCA**”)

WHEREAS

- A.** The WCA is the owner of property located at 2463 Rocky Lake Drive, Waverley, Nova Scotia upon which sits the Waverley Village Hall (the “**Facility**”) which is used as a community hall, where residents and organizations of the area gather for group activities, social support, and public information;
- B.** The WCA has sought a financial contribution from HRM to assist the WCA with, among other items, its core, ongoing operational expenses as they are set forth in this Agreement;
- C.** The purposes of HRM, as set forth in Section 7A of the *Halifax Regional Municipality Charter*, are to: (a) provide good government; (b) provide services, facilities and other things that, in the opinion of the Council, are necessary or desirable for all or part of the Municipality; and, (c) to develop and maintain safe and viable communities and Section 79A(1) of the *Halifax Regional Municipality Charter* permits HRM to spend money for these municipal purposes; and
- D.** On March 26, 2019, Halifax Regional Council moved for HRM to respond to the WCA request for financial assistance by providing a contribution in the amount of twenty thousand dollars (\$20,000) each year, for a two-year period, subject to the negotiation and execution of this Contribution Agreement (the “**Agreement**”).

NOW, THEREFORE the parties hereto covenant and agree as follows:

1. Term of the Agreement

- (a) The term of this Agreement shall be two (2) years, commencing on the Effective Date and ending March 31, 2021 (the “**Term**”).

- (b) This Agreement will become effective when both HRM and WCA 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) (the "**Effective Date**").
- (c) There is no renewal term for this agreement.

2. Amount of Contribution

- a) Subject to the terms and conditions of this Agreement, HRM shall make a contribution directly to the WCA in the amount of twenty thousand dollars (\$20,000) (the "**Contribution Amount**") each year during the term of this Agreement to be used by the WCA towards core, recurring operating costs incurred in the operation of the Facility.
- b) The Contribution Amount is a firm-fixed amount and HRM will not be liable for any losses incurred by the WCA in relation to the renovation, construction or operation of the Facility.
- c) The Contribution Amount represents HRM's complete financial commitment to the WCA under this Contribution Agreement, and HRM will not be obligated to provide any supplemental or incremental funding to the WCA.
- d) HRM's role is limited to making a financial contribution to the WCA and HRM will have no involvement in any renovations or construction to the Facility or the operation of the WCA. HRM is neither a decision-maker nor an administrator to the WCA.

3. Payment and Reporting Schedule

- (a) Subject to the terms and conditions of this Agreement, HRM shall pay the Contribution Amount to the WCA in accordance with the following schedule and milestones:
 - (i) an amount of twenty thousand dollars (\$20,000) in HRM's fiscal year 2019-20 to be used only toward the core, recurring operating costs of the WCA as set forth in Section 6(a); and,
 - (ii) a second and final installment in the amount of twenty thousand dollars (\$20,000) in HRM's fiscal year 2020-21 to be used only toward the core, recurring operating costs of the WCA as set forth in Section 6(a).
- (b) HRM will not pay interest for failing to make payments when due under this agreement.
- (c) Payments issued under Section 3(a) shall be inclusive of HST.

4. Appropriation and Withholding

- (a) Any payment of a portion of the Contribution Amount to be made to WCA is subject to there being an appropriation by HRM for the fiscal year in which the payment is to be made. If HRM's appropriation is changed or if funds are not available for any other reason, the

Contribution Amount may be reduced or withheld. If the Contribution Amount is to be withheld, this Agreement may be terminated by HRM in accordance with the provisions of this Agreement and HRM shall owe no further obligation to WCA under this Agreement. HRM will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from any such reduction or termination of funding.

- (b) If WCA receives any other financing for its core recurring operations during the Term, including, but not limited to, funding from other government departments or agencies, WCA shall provide details of such financing to HRM and HRM, in its sole, but reasonable discretion, may choose to reduce the Contribution Amount.

5. Conditions Precedent to Payment of Contribution Amount

- (a) Prior to HRM's disbursement of the first sum of the Contribution Amount as set forth in Section 3(a)(i), WCA shall provide the following to HRM, no later than September 30, 2019, for HRM's evaluation and acceptance:
 - (i) complete financial statements of the WCA, including the following:
 - 1. the most recent income statement outlining WCA's revenues and expenses;
 - 2. the most recent balance sheet showing WCA's retained earnings;
 - 3. a bank reconciliation indicating WCA's cash resources;
 - 4. a summary of expenses funded by the Contribution Amount to date and those to be funded prior to the end of HRM's fiscal year; and,
 - 5. a proposed budget for WCA operations for the balance of HRM's fiscal year.
 - (b) Prior to HRM's disbursement of the second sum of the Contribution Amount as set forth in Section 3(a)(ii), WCA shall provide the following to HRM, no later than April 30, 2020, for HRM's evaluation and acceptance:
 - (i) complete financial statements of the WCA, including the following:
 - 1. the most recent income statement outlining WCA's revenues and expenses;
 - 2. the most recent balance sheet showing WCA's retained earnings;
 - 3. a bank reconciliation indicating WCA's cash resources;
 - 4. a summary of expenses funded by the Contribution Amount to date and those to be funded in the fiscal year 2020-21;
 - 5. a proposed budget for WCA operations for the fiscal year 2020-21.
6. If WCA fails to comply with any of the condition's precedent set forth in this Section 5, HRM may, in its sole discretion, reduce the Contribution Amount, suspend payments of the Contribution Amount, or terminate this Agreement in accordance with its terms and conditions.

6. Restrictions

- (a) The WCA shall direct the Contribution Amount toward core, recurring operating costs which may include the following:
 - (i) insurance, including general liability, property insurance, business interruption/loss of earnings insurance, Director's and Officers, liability and tenant insurance as applicable;
 - (ii) rent or mortgage payments as applicable;
 - (iii) snow and ice control;
 - (iv) real property taxes;
 - (v) fire prevention and emergency measures;
 - (vi) utilities;
 - (vii) telecommunications, including telephone and Internet charges;
 - (viii) janitorial and sanitary supplies;
 - (ix) preventive maintenance and minor repairs including mandatory or warranty inspections and servicing.

For clarity, the WCA shall not expend any portion of the Contribution Amount for capital improvements to 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 core operations of the WCA. The WCA shall make inquiries of HRM if the WCA is unsure if the Contribution Agreement may be apportioned to a certain expense.
- (c) No portion of the Contribution Amount shall be paid to employees, volunteers, officers or directors of WCA (ie salary, wage, stipend, honorarium, gift or commission.)
- (d) Any unexpended funds may be carried forward to a future fiscal year and applied to costs incurred as outlined above.
- (e) HRM may cease providing and/or cancel its provision of the Contribution Amount (or any portion thereof) with notice if, at HRM's sole discretion, WCA breaches any term or condition of this Agreement.

7. Finances, Records and Information Services

- (a) The WCA shall maintain, during the Term of this Agreement, active status as a Society pursuant to Nova Scotia's Societies Act.
- (b) The WCA shall maintain, during the Term of this Agreement, a complete and proper set of accounting records for Not for Profit and Charitable organizations as established from time to time by Chartered Professional Accountants Canada

- (c) HRM shall have the right, at its own expense, and with reasonable notice, to audit or examine the books of account and records maintained by the WCA pursuant to this agreement and the right to make copies thereof and take extracts therefrom.
- (d) HRM's Auditor General shall have the right, at its own expense and with reasonable notice, to examine, in the manner and to the extent the Auditor General considers necessary, the accounts, procedures and programs of WCA, in respect of the grant received by WCA from HRM, in accordance with section 50 of the *HRM Charter*, S.N.S. 2008, c. 39.
- (e) WCA will provide HRM and its designated representatives with reasonable and timely access to the Facility and access to any documentation requested by HRM for the purposes of audit, inspection, monitoring, evaluation, and ensuring compliance with this agreement.

8. Representations and Warranties

WCA represents and warrants to HRM that:

- (a) WCA has the capacity and authority to enter into and execute this Agreement;
- (b) this Agreement constitutes a legally binding obligation of WCA, enforceable against it in accordance with its terms and conditions;
- (c) all information submitted to HRM as set out in this Agreement and any proposals, documents or other material presented to HRM, is true, accurate, and was prepared in good faith to the best of WCA's ability, skill, and judgment; and,
- (d) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of WCA, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect WCA's ability to carry out the activities contemplated by this Agreement. WCA will inform HRM immediately if any such action or proceedings are threatened or brought during the term of this Agreement.

9. Liability and Indemnity

- (a) The WCA agrees to supply at its sole cost and expense all staff, volunteers, equipment and resources necessary to operate the Facility.
- (b) HRM is not a guarantor of the WCA or the Facility and in no event will HRM be liable for any direct, indirect, consequential, exemplary or punitive damages in relation to the ongoing operations of the WCA or any renovation or construction work undertaken by the WCA, regardless of the form of action, whether in contract, tort or otherwise.
- (c) WCA will at all times indemnify and save harmless HRM, its Mayor, Councillors, officers, servants, employees, volunteers or agents, from and against all actions, claims, demands, losses, costs, damages, suits or other proceedings in relation to this Agreement, the Facility,

or the operation of the WCA, whether in contract, tort (including negligence) or otherwise, by whomsoever brought or prosecuted in any manner, based upon or occasioned by:

- (i) WCA's performance or non-performance of its obligations under this Agreement;
- (ii) any injury to any person, including, but not limited to, death, economic loss or any infringement of rights;
- (iii) any damage to or loss or destruction of property of any person; or
- (iv) any obligation of any person, including, but not limited to, any obligation arising from a loan, capital lease or other long-term obligation.

10. Status of the Parties

HRM and WCA are contractors independent of one another, and neither has the authority to bind the other to any third party or to act in any way as a representative of the other, except as expressly set forth in this Agreement. This Agreement does not create, and shall not be construed as creating, a partnership or joint venture relationship between HRM and WCA. To the extent that the term "partner" or "partnership" may be utilized in this Agreement or in describing the relationship between HRM and WCA, such terms shall be utilized merely to convey the anticipated spirit of cooperation between HRM and WCA and is in no way intended to establish joint and several liability, fiduciary duties, or other implications of the legal term of "partner."

11. Termination

(a) Events of Default

- (i) Each of the following events constitute an event of default ("**Event of Default**") under this Agreement:
 - 1. WCA has not complied with one or more of the terms and conditions of this Agreement;
 - 2. WCA has submitted false or misleading information to HRM prior to the execution of this Agreement or made a false or misleading representation in this Agreement, except for an error in good faith, demonstration of which is incumbent on WCA, to HRM's reasonable satisfaction; or,
 - 3. An appropriation of the Contribution Amount is not available as set forth in Section 4 of this Agreement.

(b) Declaration of Default

- (i) HRM may declare a default has occurred if:

1. one or more of the Events of Default occurs;
2. HRM gave written notice to WCA of the event which in HRM's opinion constitutes an Event of Default; and,
3. other than an Event of Default occurring per Section 11(a)(i)3, WCA has failed, within thirty (30) days of receipt of the above notice, either to remedy the Event of Default or to notify and demonstrate, to the satisfaction of HRM, that it has taken such steps as are necessary to remedy the Event of Default.

(c) HRM Remedies for Default

- (i) In the event HRM declares a default under Section 11(b)(i), HRM may exercise one or more of the following remedies, without limiting any remedy available to it at law:
 1. suspend any obligation by HRM to make the Contribution Amount;
 2. terminate any obligation of HRM to make the Contribution Amount;
 3. require WCA to reimburse HRM all or part of the Contribution Amount paid by HRM to WCA; or,
 4. terminate this Agreement.

12. GENERAL PROVISIONS

(a) Notice

- (i) 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: Director, Parks and Recreation
Halifax Regional Municipality
P.O. Box 1749
Halifax, NS B3J 3A5

Waverley Community Association

Attention: Chair
Waverley Community Association
2463 Rocky Lake Drive

Waverley, NS B2R 1R5

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

(b) Confidentiality

- (i) WCA acknowledges that this Agreement is a public document and that any information, document, or record, in any form, provided to HRM by the WCA 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”).

(c) Governing Law

- (i) This Agreement shall be governed by and interpreted in accordance with the laws of Nova Scotia.
- (ii) HRM and WCA hereby attorn to the exclusive jurisdiction of the courts of Nova Scotia to resolve any disputes arising out of this agreement.
- (iii) This Agreement comprises the entire agreement between HRM and WCA 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 WCA except as expressly set out in this agreement.

(d) Survival

- (i) HRM’s and WCA’s rights and obligations which, by their nature, extend beyond the expiry or termination of this Agreement, including Sections 2, 3, 4, 5, 6, 7, 8 and 9 will survive any expiry or termination of this Agreement.

(e) Severability

- (i) If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between HRM and WCA is found to be or becomes invalid or unenforceable, in whole or in part, and if both HRM and WCA agree in writing, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

(f) Members of HRM Regional Council

- (i) No member of HRM Regional Council will be admitted to any share or part of this Agreement, or to any benefit arising from it, that is not otherwise available to the general public. WCA will promptly inform HRM should it become aware of the existence of any such situation.

(g) Conflict of Interest

- (i) No current or former employee or Councillor of HRM to whom any post-employment, ethics and conflict of interest legislation, guidelines, codes or policies of HRM applies will derive direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes. WCA will promptly inform HRM should it become aware of the existence of any such situation.

(h) Assignment

- (i) WCA will not transfer or assign its rights or obligations under this Agreement without the prior written consent of HRM. Any attempt by WCA to assign any of its rights, duties or obligations of this Agreement without HRM's express written consent is void.

(i) Amendments

- (i) This Agreement can only be amended in writing by both WCA and HRM.

(j) Waiver

- (i) WCA or HRM may waive any of its respective rights under this Agreement only in writing. Any tolerance or indulgence demonstrated by either HRM or WCA will not constitute a waiver.

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

WCA and HRM have executed this agreement through authorized representatives on the date stated opposite each party's signature.

**WAVERLEY COMMUNITY
ASSOCIATION**

Date

Name:

Title:

Date

Name:

Title:

HALIFAX REGIONAL MUNICIPALITY

Date

Name:

Title: