

TO: Mayor Savage and Members of Halifax Regional Council

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

DATE: January 10, 2020

SUBJECT: Eastern Shore Recreation Commission - Facility Operating Agreement

ORIGIN

This report originates with a staff review of the expired Property Management and Operating Agreement between HRM and the Eastern Shore Recreation Commission.

LEGISLATIVE AUTHORITY

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

Section 61 (3) The property vested in the Municipality, absolutely, or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise

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

Section 75 (1): "The Municipality may agree with any person for the provision of a service or a capital facility that the Municipality is authorized to provide."

(2): "An agreement made pursuant to subsection (1) may allow for the lease, operation or maintenance of the facility or provision of the service by a person..."

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 Halifax Regional Council:

1. Authorize the Chief Administrative Officer to negotiate and execute a Facility Operating Agreement with Eastern Shore Recreation Commission substantially in the same form as set out in Attachment 2 of this report.

2. **BACKGROUND**

The Eastern Shore Recreation Commission (ESRC) is a not for profit organization incorporated through an Act of the Provincial Legislature in 1971 and currently provides stewardship to the Eastern Shore Community Centre. The ESRC has operated the Eastern Shore Community Centre since the facility's inception in 1973.

The Eastern Shore Arena, a 37,400 sq. ft facility, located in Musquodoboit Harbour, includes a full-size arena, community hall, and a heated mezzanine. The facility was purchased from the ESRC by the Halifax Regional Municipality in 2002, and a Management Agreement with the Eastern Shore Community Association Board of Directors was executed that same year for the operation of the facility. A Property Management and Operating Agreement was prepared in 2004, and is the current document being utilized to manage the facility. Staff have been unable to find record of the agreement having been fully executed.

HRM Parks and ESRC also have an annual Parks Partnership agreement which provides funding to the ESRC for the maintenance of the surrounding park grounds. The terms and funding requirements are evaluated and agreed upon annually between the Parks and Recreation business unit and the ESRC. Reference to the park partnership agreement has been included in the new Facility Operating Agreement in order to outline the relationship between the two.

This report addresses the operating responsibilities in a new agreement between ESRC and HRM for the facility.

DISCUSSION

HRM and ESRC have a common interest in providing the best experience and value to the users of the indoor and outdoor facilities. The Eastern Shore Arena is one of the nine arena facilities, being managed by a community partner on behalf of the Municipality and is included in the Community Access Plan <https://www.halifax.ca/about-halifax/regional-community-planning/community-facility-planning>. The Eastern Shore Arena staff continue to work collaboratively with HRM to ensure standards of fair play and allocation formulas are implemented. A key initiative identified in the Parks & Recreation Business Plan is to continue to implement new and updated partnership agreements. HRM entered into new agreements with several of the facilities through the Multi-District Facility project and staff are now negotiating updated agreements with other partnership facilities. It is the intention of Parks & Recreation to subsequently negotiate similar updated agreements with the Centennial Arena as well as the Spryfield Arena.

There are no proposed changes to the operating model of the Eastern Shore Community Centre or the ball diamonds at this location. The ESRC continues to focus on providing excellent service to the community through the operation of the community center and the surrounding park. A revised and updated Facility Operating Agreement is required as a matter of responsible municipal governance. Also, the agreement accurately reflects the operating governance model as well as updated and modernized terms.

Under the proposed Facility Operating Agreement, HRM would continue to be responsible for and pay all costs associated with capital work, major facility repairs and major building operating equipment, as detailed in Attachment 2 of this report.

The Commission would continue to be responsible for and pay all costs associated with the delivery of the services including, staffing, programming costs, utilities and general maintenance of the facility.

Facility Operating Agreement

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

Table 1: Facility Operating Agreement Key Terms and Conditions

Properties	Eastern Shore Arena 67 Park Rd. Musquodoboit Harbour PID 40192320
Commencement Date	Date agreement is executed by CAO
Notice	Either party shall have the option to terminate the agreement upon providing six (6) months written notice to the other party at any time or for any reason.
Term	Ten (10) Years with a one (1) year renewal option
Operating Subsidy	HRM may pay ESRC an annual Operating Subsidy. The amount of the Operating Subsidy will be evaluated annually and shall be included in the Annual Operating Budget approved by Halifax Regional Council. The amount of the subsidy would be based on the Commission's annual budget and will require approval by Council annually as part of the HRM's Annual Operating Budget
Key Conditions	<ul style="list-style-type: none"> - All revenues and expenses from the operation of the facility are the responsibility of ESRC - The provision of labour and materials required to operate the facility is the responsibility of the ESRC. - All programming is the responsibility of the ESRC - All personnel are employed by the ESRC. The employees shall under no circumstances or at any time be considered employees of HRM - Any surplus realized in any fiscal year shall be set aside to underwrite the continued operation of the Facility or any Operating Reserve Funds - HRM will insure all real and personal property owned by HRM - HRM is responsible for all Capital work - The Community Partnership Agreement with HRM Parks will be negotiated on a yearly basis with HRM Parks & Recreation (Schedule A of the agreement) - HRM will provide insurance coverage language, policies and limits will be amounts deemed reasonable and prudent by HRM. The Board shall complete or assist in the completion of all insurance applications as may be required and provide substantiating documentation as required.

FINANCIAL IMPLICATIONS

The 2020/21 proposed operated budget included an operating subsidy of \$7,000 in C705-8001. Any maintenance or repair costs related to HRM's responsibilities under the agreement will go through HRM Facility Management and Operations account (W212/213), which has sufficient budget for operating maintenance.

Additionally, the annual cost of \$25,500, of the Community Partnership Agreement is included in the 2020/21 Parks operating budget (W187).

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate Low. To reach this conclusion, consideration was given to operational and financial risks for both HRM and the ESRC. An approved agreement in place between the parties mitigates risk.

COMMUNITY ENGAGEMENT

The Board of Directors for the Eastern Shore Recreation Commission is made up of members of the community.

ENVIRONMENTAL IMPLICATIONS

No environmental implications.

ALTERNATIVES

- Alternative 1: Regional Council could direct the Chief Administrative Officer to not approve the agreement and direct staff to assume operation and management of the facility.
- Alternative 2: Regional Council could direct the Chief Administrative Officer to negotiate a Less than Market Value lease with the Eastern Shore Recreation Commission. This would change the operating model from the group providing alternative service delivery to a straight lease of the building with no operating support from HRM.
- Alternative 3: Regional Council could direct the Chief Administrative Officer to negotiate alternative terms. This would require additional negotiation with the group and a subsequent report to Council.

ATTACHMENTS

- Attachment 1: Site Plan of Property (including Buildings & Land)
Attachment 2: Facility Operating Agreement

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

Report Prepared by: Trish Higby, Partnership Coordinator, Parks and Recreation, 902.490-1808

HALIFAX

ATTACHMENT "1"

SITE MAP

PID 40192320 (outlined in green)

Building Premises (identified as 67 Park Rd.)



Facility Operating Agreement

Between:

Halifax Regional Municipality

and

Eastern Shore Recreation Commission

FOR

67 Park Rd, Musquodoboit

Prepared by:

Halifax Regional Municipality
Parks & Recreation
Program Support Services
PO Box 1749
Halifax, Nova Scotia, B3J 3A5

www.halifax.ca



HALIFAX

THIS AGREEMENT is made as of the _____ day of _____, 20_____

BETWEEN:

Halifax Regional Municipality (hereinafter referred to as “HRM”)

OF THE FIRST PART

- and -

Eastern Shore Recreation Commission (hereinafter referred to as the “Commission”)

OF THE SECOND PART

- and –

WHEREAS HRM is the owner of the Eastern Shore Recreation Centre located at 67 Park Road Musquodoboit Harbour (the “Facility”);

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

AND WHEREAS the Commission is a community-based organization established for the purpose of promoting and operating a public sports, recreation or community facility;

AND WHEREAS the Commission has demonstrated the organizational capacity to operate the Facility, including the delivery of programming;

AND WHEREAS the Commission wishes to oversee the operation of the Facility and to promote public use and general access to the Facility;

AND WHEREAS HRM and the Commission agree that all residents of the Halifax Regional Municipality should have similar opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status;

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

1. DEFINITIONS

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

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

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

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

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

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

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

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

“Commission Board” means the Board of Directors of the Commission;

“Council” means the Regional Council of HRM;

“Expiry Date” means the date ten (10) years after the Commencement Date;

“Facility” means the public sports, recreation and/or community facility owned by the Municipality known as the "Eastern Shore Community Centre" located at 67 Park Road, Musquodoboit Harbour in the Halifax Regional Municipality, Nova Scotia (PID 40192320);

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

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

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

“HRM” means the Halifax Regional Municipality;

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

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

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

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

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

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

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

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

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

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

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

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

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

2. PURPOSE

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

3. TERM

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

4. RENEWAL TERM

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

5. SERVICES

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

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

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

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

6. OPERATING SUBSIDY

6.1 Operating Subsidy. HRM may pay to the Commission an annual Operating Subsidy in consideration of the Services provided by the Commission.

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

6.3 Installments. Subject to Council’s approval of HRM’s Annual Operating Budget, the Operating Subsidy will be disbursed by HRM to the Commission in two payments. The first payment will be 80% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Commission. The second payment will be the remaining 20% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Commission. Invoices shall be provided by the Commission to HRM by May 31st and by November 30th of each Fiscal Year. Disbursement of the Operating Subsidy payments is contingent on all required reports in accordance with Section 14 being received and approved by HRM. HRM may adjust the Operating Subsidy payment installment percentages or payment schedule from time to time with written notice to the Commission.

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

7. AUTHORITY TO CONTRACT

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

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

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

- a) Obtain loans for the Facility or HRM, whether secured or unsecured, or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facility or any portion thereof or any interest of the HRM therein, or obtain replacements of any mortgage or mortgages;
- b) Prepay in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated and approved in writing by HRM;
- c) Cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person;
- d) Cause HRM to enter into any contracts with respect to the Facility;
- e) Release, compromise, assign or transfer any claim, right, or benefit of the HRM, except with the written authorization of HRM;
- f) Allow a default judgement to be entered against the Facility or any assets associated with the Facility;
- g) Modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
- h) Grant easements or other property rights in the Facility;
- i) Purchase, exchange, convey or sell any HRM Property or any part thereof, on behalf of HRM;
- j) Install or modify closed circuit television without consulting with HRM Corporate Security; or
- k) Initiate litigation of any kind against a third party without the prior written consent of HRM.

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

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

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

7.7 Other Agreements (Including Leases)

With respect to any lease, license or other agreements related to the Facility, HRM and the Commission hereby agree:

- a) The Commission is not authorized to enter into any lease, license or other agreement related to the Facility, except for Rental Contracts and Operations Contracts in accordance with this Agreement;

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

8. COMMISSION PROGRAMMING

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

- a) development of the Programming list and schedule;
- b) production and circulation of promotional materials;
- c) management of registration process and records for Programming;
- d) hiring and contracting with instructors/contractors to deliver Programming
- e) oversight and management of instructors/contractors who are delivering Programming;
- f) providing and being responsible for adequate supplies to operate Programming;
- g) oversight, screening and management of any volunteers involved with delivery of Programming;
- h) assessment of credentials and compliance with Applicable Laws when recruiting instructors, contractors or volunteers;
- i) ensuring Programming is offered safely with proper risk-management and in a safe, inclusive environment;
- j) management of programming-related risks and issues; and
- k) the purchase, maintenance, repair and replacement of any equipment used or required for the Programming

8.2 Community Access. The Commission agrees to work collaboratively with the HRM to ensure the standards of fair play and allocation formulas for all municipality owned arenas as set out in HRM's Community Access Plan are implemented.

8.3 Pricing. HRM is undertaking a fee review for all recreation fees and services. When the new Fee Bylaw or Administrative Order is approved by Regional Council, HRM shall advise the Commission of the results, as well as any Council direction arising therefrom, and the Commission shall consider it in its preparation of the annual budget and business plan for the operation of the Facility.

The Commission shall establish user fees for the services offered at the Facility, subject always to the prior approval of HRM.

8.4 Community Facility Master Plan (CFMP). The Commission agrees to work cooperatively with HRM to implement any policies, initiatives, directives or other requirements

resulting from the current CFMP version 2, and any future versions of the CFMP, that are applicable to the Facility and/or Services.

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

9. FACILITY USE BY HRM

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

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

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

10. HRM REPRESENTATIVE

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

10.2 HRM Representative Responsibilities. The HRM Representative shall:

- a) review annual and bi-annual reports, provide recommendations and financial feedback to the Commission and follow-up with the Commission concerning financial variances;
- b) review the business plans and all other reports submitted by the Commission;
- c) review and respond to issues related to the Services and Facilities which require the approval of HRM;
- d) consult with the Commission before Capital Work is commenced;
- e) consult with the Commission before policies specifically impacting the Services are implemented;
- f) meet with the Commission, or designate, at minimum at least two (2) times per year, either in person, via conference call or other means of electronic communication to share information and discuss issues related to the Services and this Agreement; and
- g) respond to requests from the Commission in a timely manner.

11. RESPONSIBILITY FOR COSTS

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

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

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

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

12. FINANCES

12.1 Revenues. All Revenues derived from the activities of the Commission with respect to activities associated with the operation of the facility are the property of the Commission, and shall be used exclusively by the Commission to operate the facility.

12.2 Expenses. Any expenses incurred from the Services provided by the Commission are the property of the Commission and shall be paid exclusively by the Commission.

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

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

13. GOVERNANCE

13.1 Governance Covenants. The Commission covenants and agrees that:

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

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

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

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

14. REPORTING AND INSPECTIONS

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

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

14.2 Annual Budget and Business Plan

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

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

14.2.3 The Business Plan shall include the following components:

- a) Vision and Mission Statements;
- b) Strategic Priorities;

- c) Goals; and
- d) Annual Budget.

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

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

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

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

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

15. PURCHASING POLICY

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

16. FACILITY ALTERATIONS

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

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

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

17. HEALTH, SAFETY AND ENVIRONMENT

17.1 Compliance with Occupational Health and Safety Laws and Environmental Laws.

With respect to Applicable Laws respecting health and safety of the workplace, the environment and Hazardous Substances or any Applicable Law related thereto:

- a) The Commission covenants to operate the Facilities (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facilities), in compliance with all Applicable Laws, related to the protection of the environment, health and safety. The Commission warrants and represents that no Hazardous Substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere on, under or about the Facilities, other than in accordance with Applicable Law. Without limiting the generality of the foregoing, the Commission warrants and represents that it shall comply with all Applicable Laws regulating the use, generation, storage, transportation and disposal of Hazardous Substances on, under or about the Facilities;
- b) The Commission acknowledges that (i) it will be the occupier of and employer at the Facilities and will have far greater control over the Facilities than HRM on a day-by-day basis, (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facilities, and (iii) as part of the provision of Services, the Commission shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facilities, including but not limited to the following:
 - (i) its obligations under Article 17.2 of this Agreement;
 - (ii) take every precaution that is reasonable in the circumstances to operate and maintain the Facilities and deliver the Services in a manner that ensures the health and safety of persons thereupon;
 - (iii) exercise the precautions and duties of an “occupier of lands or premises used as a workplace” and “employer”, as those terms are used in the Occupational Health and Safety Act and the regulations;
 - (iv) adopt internal policies and programs relative to workplace health and safety that are substantially similar to HRM’s policies and programs, but which may differ to the extent required to adapt the Commission’s policies and programs to operate the Facilities in accordance with the Occupational Health and Safety Act and the regulations;
 - (v) produce such reports from time to time as HRM may reasonably require to audit and verify the Commission’s efforts in respect of health and safety and the Facilities;
 - (vi) comply with the Occupational Health and Safety Act and the regulations; and
 - (vii) immediately disclose to the relevant Governmental Authority and to HRM the occurrence of an event whereby the Commission failed to comply with the Occupational Health and Safety Act or the regulations.
- c) All of the Commission’s obligations set out in this Article 17.1 of this Agreement shall survive the expiration or other termination of this Agreement.

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

- a) encounters Hazardous Substances at the Facilities; or
- b) has reasonable grounds to believe that Hazardous Substances are present at the Facilities the Commission shall:

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

18. FACILITY INSPECTIONS

HRM or HRM's Contractor, shall have access to the Facility at all reasonable times by providing not less than twenty-four (24) hour written notice to the Commission for the purpose of completing an independent facility inspection report. These inspections will provide valuable information for recapitalization planning, insurance compliance issues, and operational planning. HRM may enter the Premises immediately and without prior written notice if, in HRM's sole but reasonable discretion, an emergency event or potential emergency event is occurring.

19. PERMITS

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

20. EMPLOYEES

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

20.2 General Manager. The Commission shall, at their sole discretion, select and hire a competent General Manager to supervise the day-to-day operations of the Facility.

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

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

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

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

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

21. BOOKS AND RECORDS

21.1 Books and Records. The Commission shall maintain or cause to be maintained complete and accurate books and records about the Facilities and Services in accordance with generally accepted accounting principles. HRM shall have the right at its own expense and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies and take extracts from the books of account and records maintained by the Commission pursuant to this Agreement. Such right may be exercised through any agent or employee designated by HRM.

21.2 Equipment and Material. All equipment, located in or purchased for the Facility at any time by the Board and material relating to the management, operation, capital and maintenance of the Facility shall be and remain the property of HRM and, upon termination of this Agreement, the Board shall return or turn over possession of the same to HRM. Any equipment with remaining useful life, which does not meet the Board's current or foreseeable future need, may be declared surplus by the Board. Any equipment that is declared surplus shall be made available to HRM for its business units or agents before being disposed of to a third party. Any surplus equipment that cannot be redistributed by HRM internally shall be disposed of by HRM in accordance with the provisions of its Procurement Policy respecting surplus assets, and any funds realized will be directed to the Facility

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

22. TERMINATION

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

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

shall promptly begin to remedy the default within the ten (10) business day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, then such default shall be deemed to be remedied.

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

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

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

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

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

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

22.6 Emergencies. Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of HRM there is a real or apprehended emergency or imminent damage or danger to persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to this Agreement, as a result of a breach by the Commission of this Agreement, HRM may, without notice and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, or condition.

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

- a) stop the performance of all Services hereunder;
- b) terminate all Rental Contracts and Operations Contracts as HRM may specify in writing;
- c) provide to HRM a detailed list of all licensed users and customers of the Facilities;
- d) be deemed to have licensed to HRM a royalty and license to use any and all patented and proprietary information, designs or processes contemplated to be used by HRM in the operation, management and maintenance of the Facilities, and shall forthwith execute and deliver to HRM a paid-up royalty and license, in form and

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

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

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

23. DISPUTE RESOLUTION

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

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

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

- a) If the parties are unable to agree, either HRM or the Commission (the initiating party) may appoint an arbitrator by notice in writing to the second party. The second party will have 10 business days after receipt of the notice to appoint its arbitrator, or to agree to have the matter heard by the arbitrator named by the initiating party, written notice of which will be given to the initiating party. Where two arbitrators are chosen, they shall, within 10 business days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the sole determiner of the matter.
- b) The single arbitrator shall provide a decision in writing within ten (10) business days

- of his or her appointment.
- c) The parties shall each be responsible for their own costs of arbitration and shall be jointly and equally responsible for the cost of the single arbitrator who determines the matter.
 - d) The decision of the single arbitrator shall be final and binding. No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

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

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

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

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

24. INSURANCE

24. Insurance for the Operating Period

All insurance coverage language, policies and limits will be amounts deemed reasonable and prudent by HRM. The Board shall complete or assist in the completion of all insurance applications as may be required and provide substantiating documentation as required.

24.1 Insurance coverage provided by HRM

HRM shall provide the following insurance coverages for the Facility, with the Board as an Additional Insured:

24.2 Commercial General Liability

HRM will provide insurance coverage related to legal liability imposed upon HRM or the Board for negligent acts that cause bodily injury and/or property damage to a third party arising from entering onto, leaving or while on the Facility premises, any products sold or other Facility operations or activities, including programs.

24.3 Excess Liability Coverage

HRM will provide excess policies as known to HRM to ensure sufficient levels of insurance coverage are in place to best protect HRM and the Facility.

24.4 Property (including business interruption)

HRM will insure all real and personal property owned by HRM or the Board or for which the Board is or HRM is legally responsible. This coverage insures for all risks of direct physical loss or damage including, but not limited to, fire plus many other hazards including windstorm and lightning.

24.5 Crime Insurance

HRM will insure the Facility for crime losses that are not insured under other insurance policies.

24.6 Boiler and Machinery Coverage (accident to an object)

HRM will provide insurance coverage against the sudden and accidental damages of pressure vessels, mechanical and electrical equipment owned and maintained by HRM or the Board, including expediting expense and contingent business interruption.

24.7 Directors and Officers

HRM will provide insurance coverage to insure against claims related to the wrongful acts or omissions committed or omitted by directors and board members, including for acts related to decisions and organization policies.

24.8 Settlement of Claims

Settlement authority for claims against or on behalf of HRM or the Board or involving the Facility shall be at the sole authority of HRM.

The Board shall cooperate with HRM, Insurers or others as may be necessary to assist in identification, quantification, assessment and mitigation of risks to the Facility, HRM or the public by implementing recommended strategies to manage risks.

24.9 Notification of Claims

The Board shall notify the HRM Representative in writing as soon as possible after: i) receipt of notice of any injury occurring in, on or about the Facility, that could reasonably be expected to result in a claim being made against HRM and/or the Board that involves the Facility, or ii) of any claim against HRM and/or the Board which involves the Facility. The Board shall take no action (such as the admission of liability) which would or could reasonably be anticipated to operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which would or could reasonably be anticipated to operate to prejudice the defence in any legal proceedings involving HRM or the Facility, or otherwise prevent HRM from protecting itself against any such claim, demand or legal proceeding. The Board shall fully cooperate with HRM in the defence of any claim, demand or legal proceeding.

24.10 Workers' Compensation Insurance

The Board shall obtain workers' compensation insurance for its employees in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia). The Board shall also ensure that workers' compensation insurance in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia) is provided by all Suppliers.

25. INDEMNIFICATION, LIMITATION OF LIABILITY AND CLAIMS

25.1 Indemnification. The Commission agrees to indemnify and save harmless HRM, its Mayor, Council members, authorized officials, employees, officers, agents and volunteers from and against any and all Claims for which HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall or may become liable or suffer by

reason of any breach, violation or non-performance by the Commission of any covenant, term or provision hereof or by reason of any death or injury of any person or any damage or destruction of any property resulting from any act, neglect or default on the part of the Commission, or any of its volunteers, employees, agents, licensees or invitees whatsoever occurring in, on or around the Facilities, including any liquor-licensed areas.

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

25.3 Claims.

- a) The Commission shall notify HRM in writing as soon as possible after the Commission becomes aware of any Claim or possible Claim against the Commission and/or HRM that involves the Services and/or Facilities.
- b) The Commission shall notify HRM in writing as soon as possible after it becomes aware of any injury occurring in, on or about the Facilities, which could reasonably be expected to result in a Claim being made against HRM or the Commission.
- c) The Commission shall take no steps (such as the admission of liability) that would operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which will operate to prejudice the defense in any legal proceeding involving HRM or the Facilities, or otherwise prevent HRM from protecting itself against any such Claim.
- d) The Commission shall cooperate fully with HRM in the defense of any Claim.
- e) The handling, denial or settlement of any Claim by the Commission or their insurer must be reported to the HRM Manager of Risk and Insurance Services.
- f) If HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers are, without fault on their part, made a party to any litigation commenced by or against the Commission, then the Commission shall promptly indemnify and hold free and harmless HRM and shall pay HRM all costs and expenses, including, without limitation, all expenses and legal fees (on a solicitor and his own client basis) that may be incurred or paid by or on behalf of HRM or such other parties in connection with the litigation.
- g) HRM may at its option, and Commission's expense, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing or any other matter for which the Commission is required to indemnify HRM under this Agreement. Alternatively, Commission agrees that HRM may require Commission at Commission's expense to assume carriage of and responsibility for all or any part of such litigation or discussions, subject to Commission at all times keeping HRM up to date in writing as to the status thereof.

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

26. COVENANTS, REPRESENTATIONS AND WARRANTIES

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

- a) that the Facilities will only be used throughout the Term or Renewal Term for

activities and events that are appropriate and desirable for municipal purposes and the Commission covenants and agrees that it will only use, and permit the use by others of, the Facilities as contemplated by this Agreement or as otherwise permitted in writing by HRM from time to time;

- b) the Commission shall operate the Facilities in compliance with all Applicable Laws to ensure the safety of all individuals present in the Facilities and to preserve the Facilities, ensuring its value does not diminish, and take all reasonable steps to safeguard the Facilities and any assets associated with the Facilities;
- c) the Commission is and shall remain during the Term of this Agreement and during any Renewal Term, organized and operated solely for a purpose other than profit, with no compensation to be paid to the directors and officers of the Commission; and
- d) employees, contractors, or any other person acting on behalf of the Commission shall comply with and meet the requirements of this Agreement at all times.

27. TAXES

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

28. PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

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

29. ADDITIONAL TERMS AND CONDITIONS

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

30. GENERAL TERMS AND CONDITIONS

30.1 Amendment. No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the parties, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver or, if not so specified, on the date on which the last party executes and delivers the amendment, variation or waiver.

30.2 Notice. All notices, demands, requests, approvals or other communication of any kind which the parties may be required or may desire to serve on each other in connection with this Agreement shall be delivered by Electronic Mail or Registered Mail to:

Halifax Regional Municipality

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

Or in person to:

Manager of Community Partnerships
88 Alderney Drive, 3rd floor
Dartmouth, NS

Eastern Shore Recreation Commission

Attention: Dale Stienburg, General Manager
Eastern Shore Community Centre
P.O. Box 143
Musquodoboit Harbour, NS B0J 2L0

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

30.4 Waiver.

- a) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.
- b) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.
- c) The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
- d) The acceptance by any party of payment or performance of any obligation after the breach or non-fulfillment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

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

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

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

30.8 Schedule. The following Schedule is attached to and forms part of this Agreement:
Schedule "A" - Outdoor Facility Maintenance Operating Agreement
Key Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

SIGNED AND DELIVERED:

HALIFAX REGIONAL MUNICIPALITY

Witness

Per: _____

Witness

Per: _____
I/we have authority to bind the Municipality

EASTERN SHORE RECREATION COMMISSION

Witness

Per: _____

Witness

Per: _____
I/we have authority to bind the Commission

Schedule A

Outdoor Facility Maintenance Operating Agreement Key Terms and Conditions

Properties	Specific locations as set out in the Outdoor Facility Maintenance Contract between HRM Parks and ESRC
Commencement Date	May of each year
Term	Annual Basis May 1 st – September 30 th
Parks Maintenance Reimbursement to Community Group (ESRC)	HRM shall pay ESRC an annual fee for services for the provision of general maintenance by ESRC for properties located in the community that are cemeteries, outdoor facilities, sports fields, parks or open spaces owned by the Municipality. The amount of the Parks Operating Subsidy for those services provided by the community group will be evaluated annually and shall be included in the Annual Operating Budget approved by Halifax Regional Council.
Key Conditions	<p><u>SERVICES PROVIDED BY COMMUNITY PARTNER</u></p> <ul style="list-style-type: none"> - Spring clean-up of site prior to grass mowing where applicable - Where applicable Grass mowing, trimming, whipping and edging of all turf areas as identified above in the 'Site Locations of Agreement - Provide minor repairs to fences, backstops, and outfield fences as required (within reason and capability). Continued improvement, including minor repairs and painting benches and tables as well as tournament / event preparation for all types of sporting events as requested (i.e. Soccer and ball tournaments) as needed - General litter pick up and dumping of all barrels at all sites where applicable. Litter to be moved off site - Shovel and rake pea stone back into play areas as required - Ball Field maintenance including grooming, raking of pitching area, pegging bases and lining fields where applicable <p><u>SERVICES PROVIDED BY HRM</u></p> <ul style="list-style-type: none"> - When available HRM will provided scheduled field maintenance including aeration, infield grooming, initial field set up and restoration (if determined) in accordance with the HRM Athletic Field Service Standards (Revised 2009) - Provide paint, hardware as deemed necessary for bleachers, benches, park areas and playground fixtures etc. (within reasonable limits) - Provide fertilizer and lime as required (determined by HRM) - Repair and replace fencing where required (based on available funding) - Routine inspection of playgrounds - HRM to provide topsoil for minor turf repairs, if required