

HALIFAX

Sale of Surplus Municipal Real Property: Community Interest

Administrative Order 50

A Guide to Less than Market
Value Property Sales to
Non-Profit and Charitable
Organizations





**Fall River Minor Football Association—
1018 Fall River Road, Fall River**

Following closure of the Fall River West School the building was used by a seniors' social club and assorted community groups for meetings and social events. These activities will continue with an infusion of youth from the Football Association's team members.



**Herring Cove Community Association—
30 Latter Pond Lane, Herring Cove**

Constructed by volunteers of the former Herring Cove & District Fire Department in the early 1960's, the former fire station and community hall annex lay dormant after the new Fire Station #60 opened. Following partial demolition, the hall will be remediated and re-open to the public.



**Lake City Employment Services Association—
4 Fernhill Drive, Dartmouth**

This vacant parcel of land abutting the Association's vocational facility will be conveyed pending re-zoning to enable the expansion of services to persons living with a mental illness.



**Lake Loon Cherry Brook Development Association—
220 Lake Loon Road, Cherry Brook**

The communities of Lake Loon and Cherry Brook were settled in the late 1700's by Black Loyalists and Black Refugees during a period of racial segregation. The exclusion of residents from public institutions led to the construction of the Lake Loon School on land donated by a member of the community. Conveyance to the Association will help preserve the cultural and historical significance of the site.



**Riverline Activity Centre Association—
80 Grono Road, Dutch Settlement**

Constructed by local residents in the 1960's, the Riverline Community Hall hosted meetings and social activities. In the 1970's the facility was expanded funded by an area rate and the former Halifax County held title to secure financing. A conveyance through Administrative Order 50 returned ownership to the former non-profit owner.

Cover Image: Terence Bay Community Hall Association—Terence Bay

The Facility, former Fire Station 53 and Community Hall, was declared surplus and now serves as a Community Centre for the Terence Bay and surrounding Communities.

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1. An Introduction to Administrative Order 50

In 2013, Halifax Regional Council approved the introduction of policy (called an Administrative Order 50) to establish consistent procedures for the disposal of surplus municipal real estate. A copy of Administrative Order 50 is available at: <http://www.halifax.ca/legislation/adminorders/documents/A050.pdf>. In 2017, the policy was amended to expedite the disposal of lower value properties and to acknowledge the equity interest of former non-profit owners, long-term tenants, or communities seeking to acquire land or a building of cultural or historical significance.

This guidebook explains the disposal process for Community Interest properties, how to prepare a submission, and the decision-making process. The guide can be used as a reference to assist in developing a proposal to purchase a surplus property no longer required for the delivery of a municipal program or service. However, Regional Council must approve the surplus status of the property and the category of disposal *before* the disposal process can begin.

Disposal Sub-Categories

Administrative Order 50 assigns property to a disposal category according to criteria set out in the policy.

Economic Development	Sold to maximize land use or value, foster employment, neighbourhood regeneration, or to generate revenue (including property taxes) that can be invested in new municipal infrastructure. <i>Sold at market value but a private interest or government agency could make a joint application with a non-profit organization.</i>
Community Interest	Potential non-profit interest based on prior community or institutional use or because of location, specialization, or scarcity of property available in the area. <i>Offered first to only non-profit and charitable organizations. May be sold at less than market value. Joint applications from non-profits are accepted.</i>
Ordinary	The routine disposal of property with no legal constraints. <i>Sold at market value. Non-profit and charitable organizations may participate in bidding but with no preferential consideration or discounted purchase price.</i>
Remnant	Land that is under-sized or the typography or dimensions limit the use can be sold to an abutter. <i>Sold at market value or a price determined by Regional Council.</i>
Extraordinary	Legal restrictions that limit disposal, for example property held in trust by the Municipality or a deed with reserving rights ¹ .
Intergovernmental Transfer	Property to be used for a public purpose by another level of government. <i>Sold at market value.</i>

Non-profit and charitable organizations can and do participate in market value disposals (Economic Development, Ordinary, Remnant) but less than market value sales are only considered under the Community Interest category.

¹ For example, the seller may retain an interest in the land (rent, an easement) or the deed requires that the land revert back to the former owner if the terms of agreement are not upheld (the specified use ceases) or the property is to be sold or conveyed.

By directing a sale through the Community Interest category HRM can sell, but is not obliged to sell, a property at less than market value to a non-profit or charitable organization. If there are no submissions, or none accepted by the Council, the property may be re-assigned to another category. Municipal property is listed for sale on the HRM web site at: <http://www.halifax.ca/business/real-estate-land-management>.

HRM does not provide a search of municipal property holdings in response to unsolicited requests regarding future availability. Please refer to the real estate listings provided online.

Reports to Regional Council

Meetings of Regional Council are open to the public with agenda (including reports) and meeting schedules posted on the HRM web site at: <http://www.halifax.ca/council/agendasc/cagenda.php>. Staff reports will not be released or discussed prior to being available to Regional Council.

Public Hearing

If Regional Council decides to consider a disposal to a non-profit organization at less than the appraised market value and the property is worth more than \$10,000, Section 63(3) of the HRM Charter requires that Council first hold a public hearing.

The notice of the public hearing shall be issued at least twice in a newspaper circulating in the Municipality, the first notice to appear at least fourteen (14) days before the hearing. The notice of the public hearing shall include:

- the date, time and place of the hearing;
- location of the subject property (civic address and/or property identification number);
- estimated value of the property (appraised market value); and
- the purpose of the sale.

Any member of the public can participate in the public hearing and speak for or against a recommendation or make a written submission through the Office of the Municipal Clerk. Once the hearing is closed Council will debate the motion(s) and vote. A vote to sell at less than market value must be approved by a two-thirds majority of Council present and voting² at the public hearing.

² A member of Council may be recused if there is a conflict of interest or may be ineligible to vote if they were not present at the public hearing.

2. Less than Market Value Sales: General

The HRM Charter (2008) allows the Municipality to lease or sell property at less than market value to a non-profit organization “that Council considers to be carrying on an activity that is beneficial to the Municipality” (Section 63). Because “benefit” to the municipal government is the only criteria required by legislation, the Purchaser’s intended use for the property and related benefit to the public is included in the evaluation of all proposals.

Eligibility

All applicants must be registered as a non-profit or charitable organization as of the date of application (on or before the application deadline stated in a Call for Submissions or a Direct Sale request). A non-profit organization includes the following forms:

- a society registered under the Societies Act (1989);
- a non-profit association incorporated under the Co-Operative Associations Act (1989);
- a not-for-profit corporation under the Canada Not-for-profit Corporations Act (2009);
- a non-profit incorporated under an Act of the Nova Scotia Legislature; or
- a registered charity shall be incorporated under the Income Tax Act (Canada).

The federal, provincial or municipal government, their agents, boards or commissions are not recognized as a non-profit³. Joint submissions from partnerships between non-profit and for-profit organizations or non-profit and government organizations cannot be accepted under the Community Interest category. However, a joint application in which all the parties are non-profit and/or charitable organizations is acceptable.

Applicants shall be in good standing with the Municipality with respect to overdue accounts (for example, tax, rent, fees and fines), in compliance with any contractual agreement with the Municipality (for example, grant, contribution, lease, sale, or service agreement), and Municipal by-laws and regulations.

What is Market Value?

To establish that a property is in fact “less than market value” it is necessary to determine its “market value”. Market value is a *concept*: it is an estimate of the probable price a property may be sold for in an open and competitive market and assumes that both the buyer and seller are acting in what they consider to be their best interest. HRM will obtain a **market value** from an independent, accredited real estate broker, real estate company or agent, or an accredited appraisal company. The **assessed value** of the property as determined by Property Valuation Service Corporation will also be shared with applicants. The assessed value is used for property tax billing and will help applicants prepare their projected operating budget.

An applicant may choose to obtain an appraisal of the subject property at their own expense and include the full appraisal report in their submission.

Technically, all Community Interest sales are less than market value because in restricting consideration to only non-profit and charitable organizations the process is not open to the entire ‘market’. However, property has been sold to non-profits for a percentage of the market value and at full market value because the Purchaser was highly motivated due to the timing of an opportunity, the property’s specialized design, location or scarcity.

³ Joint proposals from government and non-profit are accepted under the Ordinary or Economic Development disposal sub-categories.

Establishing a Purchase Price

The Community Interest disposal process is not by negotiation. Therefore, it is important to put your best offer forward at the outset: proposals cannot be amended after the stated deadline but you may be contacted if the staff evaluation team has questions of clarification. It is also important to state if your offer is conditional: meaning that if HRM cannot accommodate or does not accept the terms stated in your proposal, is your offer withdrawn or amended? This level of detail helps avoid an “all-or-nothing” assumption on the part of the staff evaluation team.

Sale of Property “As Is/As Zoned”

Typically, properties assigned to the Community Interest category are sold “as is/as zoned”. The disposal of a property “**as is**” means that HRM does not make improvements to the property to attract buyers or increase the sale price. The term “**as zoned**” indicates that HRM has not re-zoned the property to maximize potential future use or to increase the market value. Government-owned property usually has a restrictive zoning that reflects the intent of public amenities. Therefore, if a proposal relies on, for example, retail sales or commercial tenancy and these uses are not permitted under current zoning, the sustainability of the operation should be addressed when developing your projected operating budget.

Property owned and occupied⁴ by the Municipality is exempt property tax but a conveyance will trigger re-assessment. Applicants are advised to take current zoning and future property taxes into account in preparing their proposal.

- Is your intended use permitted under current zoning? If not, the cost of a re-zoning application and holding costs (maintaining the property while vacant with no revenue) should be included in your projected operating budget. These costs might include insurance, utilities, security, property tax, snow and ice, grass-cutting etc.
- If not an occupant of the subject property, does your projected operating budget include re-location costs?

Guided Site Visit

A guided tour of the facility may be convened at a date and time determined by the Municipality. Notice of the site visit will be included in a Call for Submissions and posted on the HRM web site:

www.halifax.ca/business/doing-business-halifax/community-interest-surplus-properties-disposal Attendance is not mandatory but a building inspection is an opportunity for applicants to view the premises with individuals who might assist in the development of a submission (for example, a contractor, consultant, banker). Typically, site visits are not scheduled for vacant land holdings.

Buy-Back Agreement

Subject to Regional Council's approval, a property sale at less than market value may include a Buy-Back Agreement in addition to the Agreement of Purchase and Sale. The Buy-Back Agreement is essentially an option in favour of the Municipality to re-acquire the property on certain terms. A Buy-Back Agreement may be used to protect the public interest:

- against default (the terms and conditions of sale are not upheld), loss of the property through foreclosure or tax sale proceedings, or liens against title;
- to discourage speculative acquisition (sale or conveyance of title to another party);
- to protect a registered heritage property from de-registration or demolition, as applicable; or
- to encourage the timely development of vacant land or substantive re-development of an existing property, as applicable.

HRM may elect to exercise its right, but is not obliged, to repurchase the property under the conditions set out in the Buy-Back Agreement. Each Buy-Back Agreement varies according to individual circumstances.

⁴ If leased or licensed to a third party the property, or applicable portion, is taxable.

For further detail and a sample Buy-Back Agreement template refer to Appendix 1. "Sample Buy-Back Agreement".

Closing Costs

HRM recovers only *partial closing costs* under Community Interest disposals⁵. These fees are set out in Schedule 2 of Administrative Order 50. However, full costs are recovered if a property is sub-divided to create a parcel of land to be sold through the Community Interest process. Applicants unable to pay closing costs in full at the time the property is conveyed may apply to the Revenue Division, Finance and Asset Management, for a payment plan:

- the maximum payment term is 24 months;
- the amount is interest free and billed monthly due in 30 days from the date of billing;
- simple interest of 1.25% per month shall be applied to arrears;
- a standard fee is applied to NSF payments;
- transaction fees are a lienable charge;
- after 90 days of persistent arrears accounts will be referred for collection proceedings.

Municipal Property Tax

Administrative Order 50 is not a tax relief program. Your projected operating budget should include the full payment of property taxes until any application under the municipal Tax Relief for Non-Profit Organizations Program (Administrative Order 2014-001-ADM) has been considered by Regional Council. Tax relief is a separate application process. Information on tax relief for non-profit organizations is posted online at: www.halifax.ca/business/doing-business-halifax/tax-relief-non-profit-organizations.

Funding Requests

Administrative Order 50 is a not a grant program. The dollar value of any discounted purchase price is the equivalent of an "in-kind donation" and typically additional funds are not granted towards holding costs, repairs, upgrades, or refurbishing. However, exceptions may be made on a case-by-case basis to remedy a system failure (septic field/tank, water supply, fire safety) or known environmental contamination. But, if the cost to remedy is high an alternate disposal method may be preferable. Full or partial demolition might also be required if the property is deemed to be unsafe or the cost of remediation cost-prohibitive. Any financial contribution beyond a discounted sale price would be subject to a separate Contribution Agreement⁶.

A discretionary municipal grant shall not be awarded for any of the following:

- a feasibility study for the potential acquisition of a Community Interest property;
- the preparation of a submission for the acquisition of a Community Interest property; or
- the purchase price, closing costs, or fees associated with a non-profit organization's due diligence in regard to the acquisition of a Community Interest property.

Access to Information and Privacy

Applicants are advised that any records created by the Municipality can be requested under Freedom of Information and Privacy legislation. Applicants will be notified by HRM should a FOIPOP request be received related to their application. Proposals may be affixed in their entirety or extracts included in reports to Regional Council.

⁵ Administrative Order 50 Schedule 2. Migration/Deed fees up to a maximum of \$2,500 + HST per property transaction and Appraisal/Comparative Market Analysis up to a maximum of \$2,500 + HST per property transaction. Sub-division and lot consolidation full cost recovery + HST.

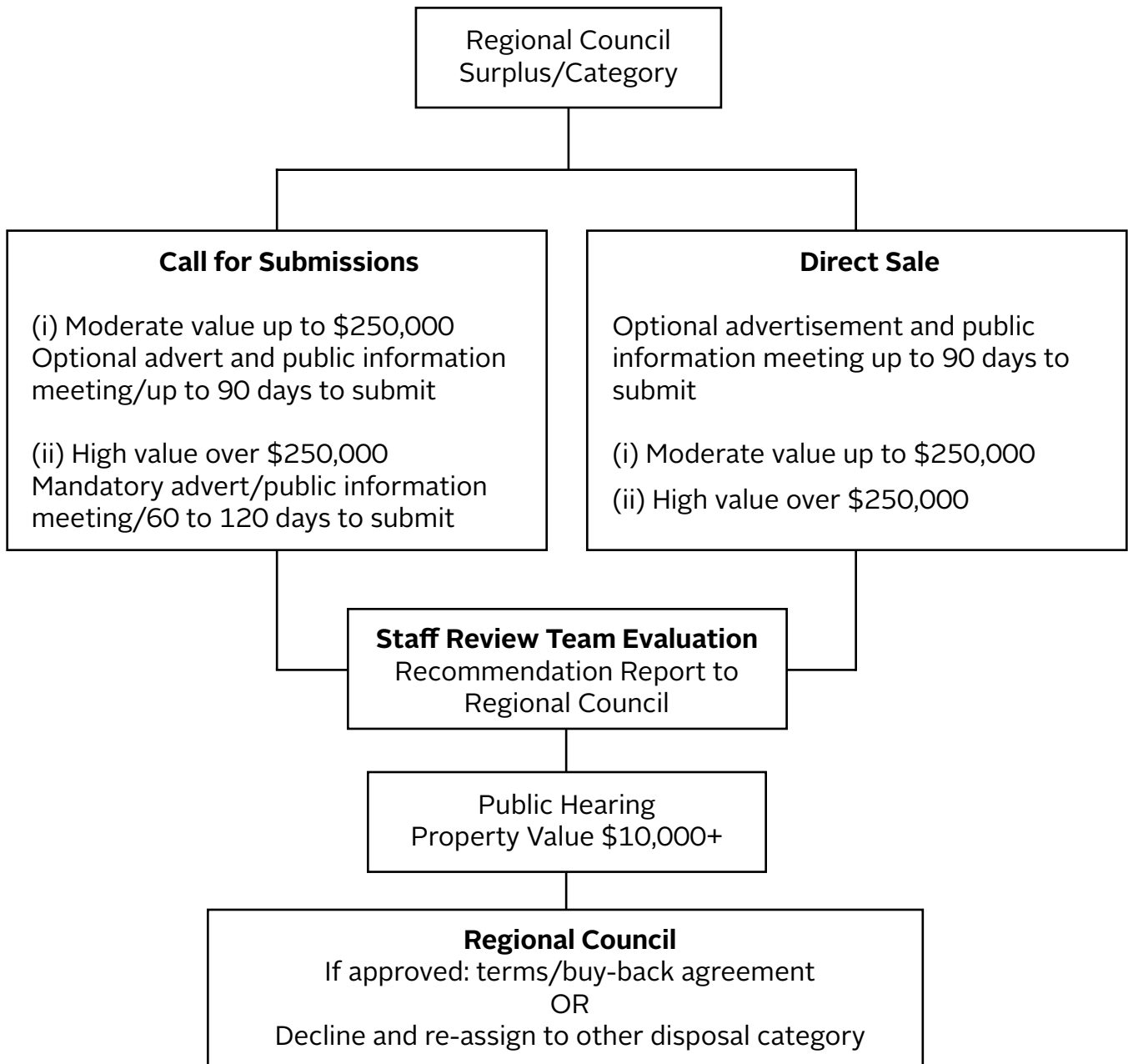
⁶ A Contribution Agreement is used if an award falls outside an established municipal grant program. The agreement includes the purpose, terms and conditions of funding, and reporting requirements.

3. Community Interest Sales: Disposal Categories

There are two (2) disposal categories under the Community Interest disposal process:

1. An open Call for Submissions.
 - A “simplified” process for property valued up to \$250,000.
 - A “standard” process for property valued over \$250,000.
2. A Direct Sale.

The property must be declared surplus and assigned to the Community Interest category by Regional Council *prior* to the start of the disposal process.



4. Call for Submissions

Public Information Meeting

If a property valued at \$250,000 or above is assigned to the Call for Submissions process a public information meeting must be held prior to the formal⁷. The public information meeting must be held in the area where the subject property is located. Attendance is voluntary. Prospective applicants and members of the public will be provided with basic information about the property and the Administrative Order 50 decision-making process.

Council may, at their discretion, waive a public information meeting if the subject property is valued at \$250,000 or below⁸. The decision to waive a public meeting will be made by Council on a case-by-case basis. If a public information meeting is to be convened it must be hosted within the area where the subject property is located.

Call for Submissions Notice

The public will be notified of a formal Call for Submissions in an advertisement placed in the Municipal Notices section of a newspaper circulating throughout the region. The notice includes the following:

- the civic address and property identification number of the subject property;
- the application deadline;
- the web site link to the Call for Submission document; and
- contact information for inquiries.

The Call for Submissions is also posted on the HRM website at:
www.halifax.ca/business/doing-business-halifax/community-interest-surplus-properties-disposal

Call for Submissions Document

Every Call for Submissions document is customized. In addition to providing general direction to applicants, the document includes technical details about the property to be sold including the current zoning and any reports on file with the Municipality (for example, a building condition report, energy or environmental assessment). If applicable, the date and time of any guided site visit is stated. If the property has been leased or vacant for an extended period, information on HRM's annual operating costs may be unavailable or only partial. Also, the Municipality's expenses will differ from those of a non-profit organization's due to a large deductible on insurance, bulk purchasing, and the use of contract services.

Mandatory Submission Content

Use the following check list to ensure that your submission meets the mandatory submission content⁹. Changes to a submission are not accepted after the official application deadline.

- Proof of registration as a non-profit or charity.
- A description of the organization and its programs and services (for example, an organizational chart, related property ownership experience or tenancy, past projects or successes relevant to the proposal, a list of the current Board of Directors).
- A statement of the intended use for the subject property. What current and/or future programs and services will be delivered on-site or administered using the subject property?

⁷ Administrative Order 50 sub-clause 10(1)(b).

⁸ Administrative Order 50 sub-clause 10(2)(a).

⁹ Administrative Order 50 Sections 7, 8 and 9.

- Complete financial statements for the prior three (3) years with all revenues, expenses, assets and liabilities itemized. If the applicant organization has not operated for three (3) years, complete financial statements should be submitted for the fiscal years the organization has been incorporated. If available, supporting notes to the financial statements should be included.
- A complete copy of the organization's Articles of Incorporation, Charter, or Constitution and By-laws.
- The terms and conditions of the offer of purchase including:
 - purchase price including deed transfer tax¹⁰ as applicable;
 - the transaction fees as set out in Schedule 2 of Administrative Order 50;
 - requested closing date; and
 - any terms and conditions specific to the subject property.
- A 5-Year Operating and Capital Budget (See: Appendix 2. "5-Year Operating Budget and Capital Plan"):
 - for a property valued at \$250,000 or below use the "Simplified 5-Year Operating and Capital Budget" guidelines in Appendix 2.
 - for a property valued over \$250,000 use the "Comprehensive 5-Year Operating and Capital Budget" in Appendix 2.

Optional Content

A proposal may be strengthened by including the following:

- Describe any related skills and experience that demonstrate the organization's ability to operate the subject property. For example, property ownership or long-term tenancy. Applicants with no property-related experience might support their application by describing the qualifications and experience of the Board of Directors, a consultant or professional assistance used to develop their proposal.
- Documentation to support the cultural, historical or programming significance of the subject property to residents. For example, the continuation or expansion of a program or service, a strategic opportunity, the social or heritage significance of the land or building.

Sign and attach the Application Form provided by HRM to the front of your submission.

Submission Timeline

The official Call for Submissions deadline shall not be extended. Late submissions will not be considered. The application deadline is stated on the Call for Submissions document.

For a property valued at \$250,000 or less: applicants have up to 90 days to submit a proposal.

For a property valued over \$250,000: applicants have a minimum of 60 days and no more than 120 days to submit a proposal.

Re-Assignment of Disposal Category

If no submissions are received by the stated deadline, or if none of the submissions received by the stated deadline are awarded a less than market value sale, Regional Council may assign the property to another disposal category of Administrative Order 50. However, the Call for Submissions process must be completed in its entirety prior to any re-assignment to a Direct Sale.

Evaluation of Submissions

The valuation criteria and weighted scoring used by the staff evaluation team is included Section 6. "Evaluation of Proposals: HRM Staff" of this guide. The criteria to be considered by Regional Council are included in Section 7. "Evaluation of Proposals: Regional Council" of this guide.

¹⁰ Deed transfer tax is 1.5% of the purchase price (Section 109 Municipal Government Act).

5. Direct Sale Consideration

The term “Direct Sale” applies to a ‘closed’ disposal process in which there is no ‘open’ Call for Submissions to all non-profit and charitable interests.

The intent of the Direct Sale option is to expedite the disposal of surplus property with nominal value/ marketability and recognizes circumstances in which a non-profit organization may have a financial investment in the property. For example, former ownership of the subject property, long-term tenancy with significant capital improvements made to the land or building, an area-rated property, or the site has significant cultural or historical significance to, for example, a particular organization or community of interest¹¹.

In the case of long-term tenancy of the property, the aim of a Direct Sale is to avoid a lengthy Call for Submissions disposal process and any perception of a foregone conclusion. However, consideration is not based on “first come, first served”. For example, if a municipal building has been occupied long-term by multiple tenants these same tenants may apply individually or make a joint application to purchase the property.

Mandatory Process

The subject property must be declared surplus by Regional Council and assigned to the Community Interest disposal category¹². *If Council decides to proceed with a Direct Sale (in preference to a Call for Submissions) the decision must be made at the same meeting where the property is categorized as a Community Interest property. For clarity, HRM will not commence an open Call for Submissions and then change the classification due to an unsolicited request for Direct Sale consideration.*

General Procedures

A Direct Sale can be initiated in one of several ways:

- i. An unsolicited written request from a non-profit organization to acquire title by Direct Sale should be sent to: Corporate Real Estate, Finance & Asset Management, Halifax Regional Municipality PO Box 1749, Halifax, NS B3J 3A5.

In accordance with subsections 11(2)(a)(b) of Administrative Order 50 the request must be included in the next real property review provided to Regional Council or in a separate report to Regional Council if the matter is time sensitive. The staff report shall include a recommendation regarding the surplus status of the property, assignment to the Community Interest category, and the advisability of a Direct Sale in preference to an open Call for Submissions.

OR

- ii. The Municipality may advance disposal of a specific property through a Direct Sale to reduce the Municipality's portfolio of surplus property or to advance a strategic municipal outcome. For example, prior to expiry/renewal of a lease agreement a long-term tenant may be contacted to determine their interest in acquiring ownership. The staff report to Regional Council shall include a recommendation regarding the surplus status of the property and a rationale for Direct Sale consideration in preference to an open Call for Submissions.

OR

- iii. As directed by Regional Council.

¹¹ For the purpose of this guide, a common-interest community comprises individuals and non-profit groups who share common values or the pursuit of a common goal and may share certain characteristics, for example, demographic, ideology, or property (e.g. cooperative housing, a co-location office building).

¹² Administrative Order 50 Sections 11 and 12.

If Council directs that a Direct Sale be considered, the applicant(s)¹³ will be provided with the guidelines and an Application Form.

Public Notice

When approving a Direct Sale disposal process, Council must also decide if a public information meeting is required. If the requirement for a public information meeting is to be waived by Council, the Council may direct that a public advertisement be placed in a newspaper circulating throughout the region to notify the public that Direct Sale consideration has been granted¹⁴.

An advertisement notifying the public that Direct Sale consideration has been granted to an organization or a joint request must include the following:

- the date the property was declared surplus and assigned to the Community Interest category;
- the location of the subject property;
- the name of the non-profit organization(s) making the request for a Direct Sale; and
- the appraised and assessed value of the subject property.

Mandatory Submission Content

Use the following check list to ensure that your submission meets the mandatory submission content¹⁵. Changes to a submission are not accepted after the official application deadline.

- Proof of registration as a non-profit or charity.
- A description of the organization and its programs and services (organizational chart, related property ownership experience or tenancy, past projects or successes relevant to the proposal, a list of the current Board of Directors).
- A statement of the intended use for the subject property. What current and/or future programs and services will be delivered on-site or administered using the subject property?
- Complete financial statements for the prior three (3) years with all revenues, expenses, assets and liabilities itemized. If the applicant organization has not operated for three (3) years, complete financial statements should be submitted for the fiscal years the organization has been incorporated. Supporting notes to the financial statements should be included, if available.
- A complete copy of the organization's Articles of Incorporation, Charter, or Constitution and By-laws.
- The terms and conditions of the offer of purchase including:
 - purchase price including deed transfer tax¹⁶ as applicable;
 - the transaction fees as set out in Schedule 2 of Administrative Order 50;
 - requested closing date; and
 - any terms and conditions specific to the subject property.
- A 5-Year Operating and Capital Budget (See: Section Appendix 2." 5-Year Operating Budget Capital Plan"):
 - for a property valued at \$250,000 or below use the "Simplified 5-Year Operating and Capital Budget" guidelines in Appendix 2; or
 - for a property valued over \$250,000 use the "Comprehensive 5-Year Operating and Capital Budget" in Appendix 2.

¹³ Use of the plural "applicants" acknowledges the prospect of a joint application between two or more non-profit organizations.

¹⁴ Administrative Order 50 sub-section 14(1) and (2).

¹⁵ Administrative Order 50 Sections 7, 8 and 9.

¹⁶ Deed transfer tax is 1.5% of the purchase price (Section 109 Municipal Government Act).

A Direct Sale proposal may be strengthened by including documentation to support a Direct Sale in preference to an open Call for Submissions. *The following examples are for illustration purposes only.*

- The land was conveyed to the Municipality without a reversion clause by a non-profit organization (for example, a former volunteer fire station, land for a playground or sports field). The former owner might request a Direct Sale if the property is now surplus to the Municipality's requirements supported by proof of former ownership of the land and/or building (for example, a deed, minutes of meetings, an Agreement of Purchase and Sale).
- The organization has a long-term lease for municipal land upon which they constructed a building. As the expiry of the lease approaches the tenant wishes to acquire the land to secure their investment and re-capitalize the building. The organization is able to provide documentation to support their capital investment in the property independent of any municipal funding. For example, a copy of the lease agreement showing that the tenant paid a nominal rent in lieu of paying all operating and capital costs.
- A ratepayer's association requests title to a surplus property that was purchased, constructed and/or operated using funds from a local area rate.
- Documentation to support the cultural or historical significance of the property to local residents, the organization(s), or a community of interest.
- Sign and attach the Application Form provided by HRM to the front of your submission.

Submission Timeline

If a Direct Sale process is approved by Regional Council, the applicant has **up to 90 days** to submit a proposal; this date will be provided in writing by HRM staff.

Re-Assignment of Disposal Category

If a Direct Sale is not approved, Regional Council may direct disposal under a Call for Submissions process (open to all non-profits and charities) according to the subject property's market value, or assign to another disposal category of Administrative Order 50.

Evaluation of Submissions

The staff evaluation of a Direct Sale proposal is the same as that for a Call for Submissions. See: Section 6. "Evaluation of Proposals: HRM Staff" and Section 7. "Evaluation of Proposals: Regional Council".

6. Evaluation of Proposals: HRM Staff

All submissions are reviewed by an inter-departmental staff evaluation team and scored according to four (4) criteria:

Viability	The probability of the applicant's ability to operate the subject property based on past experience or related successes, financial stability, and demonstrated planning.
Benefit to the Community	The extent to which the intended use of the property will benefit the local geographic community or an identified non-profit sector in terms of program or service continuity; addressing a gap in program, service or amenity; or the subject property's cultural or historical significance.
Benefit to the Municipality	<i>This is the only statutory, legislated criteria and must be included in Council's decision.</i> Benefit to the "Municipality" refers to the municipal government, not a geographic area. To what extent does a proposed property use align with the Municipality's jurisdictional mandate (services required by legislation) or Council's discretionary priority outcomes ¹⁷ ? Applicants should clearly describe and objectively demonstrate the need for programs or services to be offered on-site or administered from the subject property.
Compensation	The purchase price and closing costs included in the applicant's offer to purchase.

The review team's individual scores are averaged to arrive at a score out of 100 points. By consensus, the team will determine the applicant with the highest score and provide a recommendation to Regional Council, including the proposed terms and conditions of sale or the application of a Buy-Back Agreement as applicable. All members of the staff review team sign a conflict of interest and confidentiality statement. As shown below in Table 1 and Table 2 the "weighting" of scores differs according to property value.

¹⁷ Regional Council's priority areas are described at: <https://www.halifax.ca/sites/default/files/documents/city-hall/regional-council/Strategic%20Plan2017-21.pdf>

Table 1. Property Valued \$250,000 or below		
Criteria	Description	Points
Viability	Organization's financial status and organizational stability; applicant's related experience or success; completeness of the application, test of assumptions and projections in simplified business plan.	35
Benefit to the Community	Continuation of an existing non-profit program, service or amenity; program, service or amenity not offered by HRM or another non-profit in the local area; cultural or historical significance of the property.	35
Benefit to the Municipality	Alignment of intended use with Municipality's mandate or priority interests.	20
Compensation	Any discounted sale price and any ancillary agreements for which financial compensation not received; direct or indirect impact on municipal capital and operating budgets or reserves.	10
		100

Table 2. Property Valued over \$250,000		
Criteria	Description	Points
Viability	Organization's financial status and organizational stability; applicant's related experience or success; completeness of the application and financial information, 5-Year Capital and Operating Plan demonstrates realistic planning, assumptions disclosed and substantiated; financing identified and confirmed.	40
Benefit to the Municipality	Continuation of an existing non-profit program, service or amenity; program, service or amenity not offered by HRM or another non-profit in the local area; cultural or historical significance of the property.	30
Benefit to the Community	Alignment of intended use with Municipality's mandate or priority interests.	10
Compensation	Any discounted sale price and any ancillary agreements for which financial compensation not received; direct or indirect impact on capital and operating budgets or reserves.	20
		100

If a Call for Submissions results in only one (1) applicant, the standard evaluation process shall be applied.

Compensation.

In addition to an assessment of a proposal's sustainability, the staff evaluation team must also examine the cost to the public of any discounted sale or property donation including:

- the dollar value of any financial discount applied to the purchase price;
- any reduction in deed transfer tax due to a discounted sale price;
- any direct or indirect impact on municipal finances or services (for example, a cost or a saving to a departmental operating or capital budget, whether the proceeds from sale have been included in the Municipality's capital budget);
- if the proceeds from sale have been included in a capital budget the implications must be presented in the staff report (for example, the impact on a planned project, the cost to borrow the funds or the impact of a withdrawal from a reserve to offset revenue loss); and
- the value of HRM's transaction-related cash expenditures not recovered from the Purchaser in accordance with Schedule 2 of Administrative Order 50.

7. Evaluation of Proposals Criteria: Regional Council

Following receipt of a staff recommendation report Regional Council will also consider:

- the overall context of the disposal including the market value of the subject property;
- the Planning Strategy of the area and compliance with zoning regulation;
- the benefit of any cost-saving to the Municipality;
- the consequences, beneficial or otherwise, to the community or the Municipality as a whole; and
- Council will weigh the beneficial consideration of any submission against the benefit to the Municipality of selling the property at market value, among other factors.

If Regional Council decides to continue the disposal process and the property is valued at \$10,000 or above a public hearing is required.

Appendix 1. Sample Buy-Back Agreement

A Buy-Back Agreement has an initial term of twenty-five (25) years followed by a review by Regional Council to consider continuation, amendment or release. A Buy-Back Agreement may restrict an owner's ability to secure financing. Under such circumstances, application must be made to HRM to consent to encumber the asset (a written request from the owner for "postponement" of HRM's first right of refusal in favour of a lending institution whose loan is to be secured by the property).

The value of the financing secured by the property cannot exceed 65% of the property's market value as of the date of the request for postponement. The request for postponement must be made in writing to the Chief Administrative Officer of HRM. If approved, the financing agreement must include a reservation in favour of HRM to receive notice of and the option ("right of first refusal") to cover any default under the Purchaser's financing. A Buy-Back Agreement will not determine your eligibility for a loan secured by the property. In practice, a bank or financial institution will do their own appraisal of the property's value and assess risk based on applicant's credit history and the organization's overall financial status, including the reliability of revenue sources and monthly cash flow.

A Buy-Back Agreement could be invoked if the Purchaser:

- i. ceases the beneficial activity for which the Council approved a less than market sale in accordance with sub-section 63(1) of the HRM Charter;
- ii. discontinues its operations;
- iii. is in default of any loan or financial agreement secured by title to the property;
- iv. wishes to consider the sale or conveyance of the property; or
- v. fails to abide by the terms and conditions of the Buy-Back Agreement.

The following sample agreement is for illustration purposes only.

Note: the Buy-Back Agreement template can be modified without notice. This template is for illustration purposes and is not to be completed and submitted with an application to HRM.

Buy-Back Agreement

Between:

Halifax Regional Municipality
and

For

PID _____

_____, Nova Scotia

Prepared by:

Halifax Regional Municipality
Corporate Real Estate
Finance & Asset Management
PO Bopx 1749
Halifax, Nova Scotia, B3J 3A5

t. 902.490.5477

f. 902.490.6030

www.halifax.ca

The HALIFAX logo is located at the bottom right of the page. It consists of the word "HALIFAX" in a bold, black, sans-serif font. The letters are closely spaced, and the overall style is clean and modern.

This **Buy-Back Agreement** is dated this _____ day of _____, 20____.

BETWEEN:

(hereinafter called the **"Purchaser"**)

OF THE FIRST PART

-and-

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

OF THE SECOND PART

WHEREAS by an Agreement of Purchase and Sale of even date herein (**"Agreement of Purchase and Sale"**) the Municipality agreed to sell and the Purchaser agreed to purchase the Property currently identified as apparent PID _____, being _____, in the County of Halifax, Province of Nova Scotia more particularly described in Schedule "A" attached hereto (**"the Property"**);

AND WHEREAS sections 18-24 of the Agreement of Purchase and Sale require the Purchaser to enter into this Buy-Back Agreement (**"Buy-Back Agreement"**);

WITNESSETH THAT in consideration of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) paid by each of the parties thereto the other party, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Purchaser hereby agree as follows:

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

1. The Purchaser hereby grants to the Municipality the first option and unrestricted right to repurchase the Property on the terms set out in this Buy-Back Agreement.
2. The Purchaser shall register this Buy-Back Agreement at the Land Registration Office in and for the County of Halifax at its expense as a first charge against the title to the Property forthwith upon closing the Agreement of Purchase and Sale. Alternatively, the Municipality may, in its sole discretion, permit the Purchaser to register a Notice of this Buy-Back Agreement instead of registering the full text, on the parcel register for the Property at the Nova Scotia Land Registration Office in and for the County of Halifax.

B. Term

3. This Buy-Back Agreement shall be for an initial term of twenty-five (25) years followed by a review by the Regional Council of the Halifax Regional Municipality to consider and determine in its sole discretion whether to continue, extend, amend or release this Buy-Back Agreement.

C. Conditions of the Sale of the Property to the Purchaser

4. The Purchaser has acquired title for the less than market value purchase price of _____ (\$_____.00) for the Intended Use of the _____.
The Purchaser covenants and agrees to operate the Property continuously in accordance with the Intended Use throughout the initial term of this Agreement and any extension or renewal thereof.

5. The Purchaser covenants and agrees to maintain its status as a non-profit society registered and in good standing with the Nova Scotia Registry of Joint Stock Companies throughout the initial term of this Agreement and any extension, continuation or renewal thereof.
6. The Purchaser covenants and agrees to comply with all Municipal By-Laws, Policies, and Administrative Orders applicable to the Property or the use of the Property and shall strictly comply with all environmental laws, regulations and work orders.
7. This Buy-Back Agreement shall be in priority to all other encumbrances and charges registered against the Property.

D. Postponement for the Purpose of Purchaser Financing

8. Provided however, during the initial term of the Buy-Back Agreement or any extension thereof, the Purchaser may apply in writing to the Chief Administrative Officer of the Municipality for a postponement of the Buy-Back Agreement to secure financing of up to sixty-five percent (65%) of the Property's market value as of the date of the request.
9. Any secured financing agreement shall include a reservation of the right in favour of the Municipality to be served by the secured lender with notice of any default by the Purchaser and shall give the Municipality the option to cover any default by the Purchaser under such financing arrangements, reserving to the Municipality, however, all rights of recourse against the Purchaser.

E. Notice of Default

10. The Purchaser agrees to notify the Municipality in writing forthwith in the event of default of any mortgage, line of credit or debt instrument, loan guarantee, or other financial instrument or encumbrance secured by the Property, and forthwith upon the happening of any other event or default resulting in any charge, lien or other encumbrance registered against title to the Property, such as, but not limited to, real property tax arrears, builder's liens, judgments, orders, work orders issued by any government or government agency, claims, actions or demands which may be brought against the Purchaser.
11. If the Purchaser consolidates the Property with other lands owned by Purchaser, or subdivides the Property, this Buy-Back Agreement shall attach to and encumber the entire parcel created by such consolidation, or each of the parcels created by such subdivision, as the case may be.

F. Repurchase of the Property

12. This Buy-Back Agreement gives the Municipality an exclusive, unencumbered and unrestricted right in its sole discretion to repurchase the Property for the sum of One Dollar (\$1.00), plus any capital improvements made to the Property by the Purchaser (less annual depreciation and less any municipal contribution to the Purchaser in any form or any payment made by the Municipality to cover default under the Purchaser's financing, should the Municipality choose to cover such default). The meaning of "capital improvements" is as set out in Appendix "X" to this Buy-Back Agreement.
13. The Municipality may in its sole discretion exercise its rights to buy back the Property if the Purchaser:
 - (a) ceases the beneficial activity for which the Council of the Halifax Regional Municipality gave its consideration to a less than market value sale of the Property pursuant to subsection 63(1) of the *Halifax Regional Municipality Charter*, namely the Intended Use as defined herein; or
 - (b) substantially disposes of the assets of the Purchaser or discontinues the operations of the Purchaser; or;
 - (c) ceases to operate as a non-profit or charitable society;
 - (d) defaults on any loan, mortgage, line of credit, or other debt or financial instrument secured against the title to the Property, or if a builder's lien, judgment or court order is registered against the title to the Property which the Purchaser does not discharge within thirty (30) days

of registration of same; or

- (e) considers or attempts the sale or other conveyance or disposition of the Property; or
 - (f) is in default of the terms and conditions of the Agreement of Purchase and Sale or this Buy-Back Agreement.
14. If the Municipality chooses to exercise its right to repurchase the Property pursuant to this Buy-Back Agreement, it shall provide thirty (30) days written notice to the Purchaser or such other notice as the Municipality deems appropriate in its sole discretion (the **"Notice Period"**). The Purchaser shall deliver up clean and vacant possession of the Property, together with all fixtures and improvements thereon, and convey the Property to the Municipality by Warranty Deed free and clear of encumbrances, and to be drawn at the expense of the Purchaser, within five (5) business days following Notice Period or within such other time as the Municipality may direct in writing. Adjustments for taxes, rates, rental, fuel and other expenses normally adjusted for in real estate transaction in Nova Scotia shall apply. The Purchaser shall reconvey the Property to the Municipality free and clear of any environmental contamination and in a condition not worse than the condition the property was in at the time of its conveyance to the Purchaser.
15. If the Municipality, at its sole discretion, refuses to accept the Property in its condition on the date the Municipality exercises its right to buy back the Property the Municipality may, in its sole discretion, determine the cost of reinstatement and remediation and the Purchaser shall pay such costs, legal expenses and interest forthwith upon demand.

G. General Terms

16. Time shall be of the essence of this Buy-Back Agreement. In the event of a written agreement of extension, time shall continue to be of the essence. Day refers to calendar day unless otherwise specified.
17. This Buy-Back Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
18. This Buy-Back Agreement shall be a burden upon and run with the Property and shall ensure to the benefit of the Municipality and shall be binding upon the Purchaser, and its successors and assigns.
19. The Purchaser warrants it has full corporate authority to enter into this Buy-Back Agreement.
20. This Buy-Back Agreement may only be changed by a written agreement executed by both parties hereto.

IN WITNESS WHEREOF the parties hereto have properly executed this Buy-Back Agreement as of the day and year first above written by their respective duly authorized officers.

SIGNED, SEALED and DELIVERED
in the presence of:

Witness

Witness

SIGNED, SEALED and DELIVERED
in the presence of:

Witness

Witness

PURCHASER

Print Name:
Print Title:

Print Name:
Print Title:

HALIFAX REGIONAL MUNICIPALITY

**PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX**

ON THIS _____ day of _____, 20____, before me, the subscriber, personally came and appeared, _____, and _____ the subscribing witnesses to the foregoing Indenture, who, having been by me duly sworn, made oath and said that _____ and _____ of the Halifax Regional Municipality, signed, sealed and delivered the same in the _____ presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX**

I CERTIFY that on this _____ day of _____, 20____, the _____ (*Purchaser*) by its duly authorized officers, _____ and _____, a party mentioned in the foregoing and annexed Buy-Back Agreement, signed and sealed the said indenture in my presence, and I have signed as a witness to such execution.

A Commissioner of the Supreme Court of Nova Scotia

OR

**PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX**

ON THIS _____ day of _____, 20____, before me, the subscriber, personally came and appeared, _____, and _____ the subscribing witnesses to the foregoing Indenture, who, having been by me duly sworn, made oath and said that _____ and _____ of the Purchaser, signed, sealed and delivered the same in h_____ presence.

A Commissioner of the Supreme Court of Nova Scotia

[illegible]

Appendix X. Amortization Rates: Capital Improvements

Asset Class	Items	Useful Life
Parking Lot	Improvements to land such as asphalt or gravel.	20 years
Structural	Foundation, Load-bearing walls, floor and roof framing system.	40 years
Roof	Covering on the upper most part of the building that protects the building and its contents from the effect of weather.	40 years
Interior	Interior architecture including elevator, stairs, non- load bearing walls, ceilings, flooring, fixed cabinetry and millwork	15 years
Exterior	Exterior architecture elements that enclose the structure including windows, exterior doors. Excludes roof.	20 years
Electrical	Building systems: wiring, lighting, security alarm or camera system	40 years
Mechanical	Building systems: heating, ventilation, air conditioning, plumbing, waste disposal, fixed sprinkler system.	20 years
Site Work	Landscaping improvements including walkways, storm drainage, exterior lighting/lampposts, wastewater, well and septic systems, fixed (permanent signage). Excludes parking lot.	20 years
<p>Excludes equipment such as office furniture, soft furnishings (e.g. window coverings, carpet), fixtures, appliances, audio-visual or computer hardware and software, interior decorating (e.g. painting or decorative installations), exterior painting, landscape plants or outdoor furnishings.</p> <p>Excludes: operating, recurring preventative maintenances and minor repairs.</p>		

The “amortization rate” is applied to the cost of the capital improvement using the following formula:

$$\frac{\text{Cost of Item}}{\text{Lifecycle Expectancy}} = \text{Annual Depreciation}$$

Example: a replacement roof costs \$100,000

$$\frac{\$100,000}{20 \text{ Years}} = \text{depreciates } \$5,000 \text{ per year}$$

In this example, the asset (roof) would be valued at \$50,000 after 10 years.

Note: The value of donated goods and services towards all or a portion of a capital improvement shall be verified by documentation as of the time of the donation (not retroactive estimates) and may be subject to independent verification in the absence of an income tax receipt or vendor’s original invoice, receipt or similar instrument.

Appendix 2. 5-Year Operating Budget and Capital Plan

Presentation of Financial Information

The evaluation of proposals recognizes that the financial and human resource capacity of non-profit and charitable organizations varies significantly. In some circumstances, the cost of an audited financial statement is cost-prohibitive or unwarranted given the scale of operations. Despite these differences, a complete, itemized financial statement helps review team members assess the financial status of the applicant and the Projected Operating Budget Template and the 5-Year Capital Plan Template may help inexperienced applicants prepare a submission to HRM. However, use of this format is optional and it remains the responsibility of the Applicant to ensure that the mandatory information is included (See: page 7 and page 10 of this guide).

The review team or Regional Council can also request additional information or clarification during the evaluation or decision-making process.

Simplified 5-Year Projected Operating and Capital Plan – Property with a Value of \$250,000 or less.

- i. The mandatory 3-year financial information included with the submission should include:
 - Revenues;
 - Expenses;
 - Assets (eg. retained earnings, restricted or unrestricted reserves, investments, property, equipment);
 - Liabilities (eg. debt, financial obligations).
 - Include supporting notes to the financial statements, if available.
- ii. 5-Year Projected Operating Budget: Revenues and Expenditures
 - What changes to the organization's revenues, expenses and cash flow are expected as a result of purchasing the property?
 - If occupancy must be delayed for demolition, re-zoning, a Development Agreement, or for construction how will holding costs¹⁸ be funded?
 - If re-locating, include moving costs in Year 1 of the Projected Operating Budget.
- iii. A basic 5-Year Projected Capital Plan detailing the projected capital expenditures.

Comprehensive 5-Year Operating and Capital Budget – Property Valued over \$250,000

- iv. The mandatory 3-year financial information included with the submission should include:
 - Revenues;
 - Expenses;
 - Assets;

¹⁸ Holding costs are the expenses incurred before the property is occupied and starts to generate revenue. These costs could include insurance, property tax, security, snow and ice removal, and minimum heating to avoid damage due to freezing and should be included in Year 1 of the Projected Operating Budget.

- Liabilities
 - Statement of Financial Position/Balance Sheet;
 - Statement of Operations/Income Statement;
 - Statement of Cash Flow, if available;
 - Include supporting notes to the financial statements, if available.
- v. A 5-Year Projected Operating Budget including:
- Projected revenues.
 - Projected expenditures.
- vi. A 5-Year Projected Capital Budget detailing the projected capital expenditures with the source(s) of financing. Indicate if the funding is confirmed or unconfirmed (for example, a mortgage, a loan or line of credit, grant or contribution, or a designated capital campaign).

How will any immediate capital work be financed?

If phased, the submission is strengthened by a detailed construction schedule.

The Capital Plan template focuses only on new construction and capital improvements (major repairs, replacement) and helps explain how any immediate capital work will be financed. A comprehensive Capital Plan would be based on quotes or estimates provided by qualified trades or professional services and these fees should also be included in the project costs.

Depreciation

Depreciation is the phased allocation of the cost of a fixed asset over its useful life. Depreciation affects future expenses (the cost or replacement/re-capitalization) but has no impact on the cash flow of a non-profit because it is not a cash transaction. A basic understanding of depreciation can help applicants:

- understand what compensation they might receive should a Buy-Back Agreement be invoked by either party;
- develop a comprehensive building lifecycle plan and a capital budget.

Typically, non-profit organizations use a “straight-line method” where the depreciation expense is the same in each year of the fixed asset’s useful life. Examples are provided in Table 3 and 4.

Table 3. Sample Asset Lifecycle Depreciation		
Component	Examples	Asset (Years)
Site Work	Exterior capital improvements: parking lot, playground, sports field, fencing, landscaping, storm drains, water/sewer infrastructure	20
Architectural Exterior	Windows, walls, siding, exterior doors (excludes roof).	20
Architectural Interior	Elevator, stairs, escalator, interior walls, ceilings, floors, fixed cabinetry, fixed countertops, fixtures.	15
Roof	Replacement roof, major repair.	20
Mechanical	Heating and ventilation systems, air conditioning, plumb-ing/waste disposal, sprinkler system.	20
Electrical	Systems that receive power such as lighting, security, closed circuit television, wiring.	40
Structural	Foundation, load-bearing walls, roof framing system, load-bearing floor joists.	40

Note: excludes interior decorating (e.g. interior painting or furnishings), exterior painting, equipment, vehicles etc. Expenses to maintain an asset in its current condition (“maintenance”) is an operating cost: the expense does necessarily increase the value of the asset or extend its useful life.

Table 4. Annual Depreciation for New Building Valued at \$2,000,000			
Component	New Building Value	Useful Life (Years)	Annual Depreciation
Site Work	\$50,000	20	\$2,500
Architectural Exterior	\$300,000	20	\$15,000
Architectural Interior	\$200,000	15	\$13,333
Roof	\$200,000	20	\$10,000
Mechanical	\$100,000	20	\$5,000
Electrical	\$150,000	40	\$3,750
Structural	\$1,000,000	40	\$25,000
	\$2,000,000		\$74,583

This approach can also be used for single components. For example, you completely replace the roof on an existing building at a cost of \$200,000 and the roof has a useful life of 20 years the annual depreciation will be \$10,000 per year.

$$\begin{aligned} \text{Cost/Useful Life of the Asset} &= \text{Annual Depreciation} \\ \$200,000 \text{ divided by } 20 &= \$10,000 \end{aligned}$$

Projected Operating Budget Template

5-Year Revenues and Expenditures - [Date] to [Date]

Projected Operating Revenue

List all current and anticipated future sources of revenue. Examples listed below.

	Year 1	Year 2	Year 3	Year 4	Year 5
Facility Rentals					
Fundraising					
Program or Admission Fees					
Membership Dues					
Government Grants					
Donations					
Investment Income					
Other ¹					
Total Revenue	\$	\$	\$	\$	\$

Projected Operating Expenses

List all current and anticipated future expenses. Examples listed below.

	Year 1	Year 2	Year 3	Year 4	Year 5
Salaries and Wages ²					
Insurance					
Property Tax					
Utilities ³					
Mortgage or Debt Servicing					
Administration ⁴					
Maintenance/Upkeep ⁵					
Other (Describe)					
Total Expenses	\$	\$	\$	\$	\$

Projected Surplus or (Deficit)

Revenue less Expenditure	\$	\$	\$	\$	\$
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Notes:

1. Other. For example, corporate sponsorship, HST rebate, retail product sales.
2. Salaries and Wages, including benefits and mandatory contributions. This category could be sub-divided to separate permanent full and part-time staff from sessional employees such as summer students, temporary or seasonal employees, and contract services.
3. Utilities: electricity, furnace oil, propane, natural gas, water/waste water.
4. For example, telephone, Internet, equipment leasing/servicing, accounting service.
5. Grounds-keeping, snow and ice removal, janitorial, sanitary and cleaning supplies, inspection or testing (fire, well or septic), security system, office supplies, postage and shipping.

Professional Fees 5-Year Capital Plan Template Template

Projected 5-Year Period - [Date] to [Date]

Projected Capital Funding

List current or anticipated sources of capital funding. Indicate if this funding is confirmed or unconfirmed. Examples listed below.

	Year 1	Year 2	Year 3	Year 4	Year 5
Private Sector Loan/ Mortgage					
Government(s)					
Foundation Grants or Donations (non-profit)					
Corporate Sponsorship or Donation					
Fundraising					
Other (Describe)					
Projected Total					

Projected Capital Costs

	Year 1	Year 2	Year 3	Year 4	Year 5
External Site Work					
Exterior					
Interior					
Roof					
Mechanical					
Electrical					
Structure					
Professional Fees					
Other (Describe)					
Contingency (%)					
Total	\$	\$	\$	\$	\$

Agreement of Purchase and Sale

Between:

Halifax Regional Municipality
and

For

PID _____

_____, Nova Scotia

Prepared by:

Halifax Regional Municipality
Corporate Real Estate
Finance & Asset Management
PO Bopx 1749
Halifax, Nova Scotia, B3J 3A5

t. 902.490.5477

f. 902.490.6030

www.halifax.ca

**HALIFAX**

This **Agreement of Purchase and Sale** dated this _____ day of _____, 20____.

BETWEEN:

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

-and-

(hereinafter called the **"Purchaser"**)

WHEREAS the Municipality is the owner of a parcel of land currently identified as apparent PID _____, situate at _____, Nova Scotia more particularly described in Schedule "A" attached hereto (the **"Property"**);

AND WHEREAS the Municipality wishes to sell the Property to the Purchaser and the Purchaser wishes to buy the Property from the Municipality for the Purchaser's existing or intended use of the Property as _____ subject to the terms and conditions contained in this Agreement of Purchase and Sale and in the attached Schedules which are incorporated herein and form part hereof (**"this Agreement"**),

AND WHEREAS the parties are recording herein the terms and conditions of their agreement for the purchase and sale of the Property;

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants contained herein and in further consideration of the sum of Ten Dollars (\$10.00) paid by each party to the other party, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Purchaser hereby agree as follows:

A. Purchase and Sale for Intended Use

1. The Municipality hereby agrees to sell the Property to the Purchaser, and the Purchaser, having inspected and accepted the Property in its current condition, hereby agrees to purchase the Property from the Municipality for the Purchaser's intended use of the Property for _____ (the **"Intended Use"**), on the terms and conditions contained in this Agreement.
2. The Purchaser covenants and agrees to operate the Property continuously in accordance with the Intended Use. This covenant shall survive the closing of this Agreement.

B. Purchase Price

3. The purchase price for the Property shall be the below market price of _____ (\$_____.00) (the **"Purchase Price"**).
4. Harmonized Sales Tax (**"HST"**) is payable in addition to the Purchase Price. If the Purchaser, on or prior to the Closing Date, provides its HST number and evidence satisfactory to the solicitors for the Municipality by sworn statutory declaration that the Purchaser is an HST registrant under the Excise Tax Act, R.S.C. 1985, c. E-15 and that such registration is in good standing and has not been varied or revoked, the Purchaser shall self-assess the HST payable on this transaction and remit it directly to the Receiver General of Canada. The Purchaser shall indemnify and save the Municipality harmless from any liability for the collection and remission of HST. This indemnification shall survive the closing of this Agreement.

5. In addition to the Purchase Price, on the Closing Date the Purchaser shall also pay the Municipality's appraisal cost of \$_____.00 plus the Municipality's reasonable legal expenses for title migration and closing costs of \$_____.00 for a total sum of \$_____.00 plus HST (the "**Cost Contribution**").

C. Closing

6. The closing date for the closing of the transaction shall be on or before _____ (the "**Closing Date**"). The Municipality and the Purchaser may mutually agree to a Closing Date earlier or later than the date set out in this clause. The Manager of Corporate Real Estate, Finance & Asset Management for the Municipality is authorized to change the Closing Date on behalf of the Municipality.
7. On the Closing Date, the Purchaser shall pay the Purchase Price together with the Cost Contribution to the Municipality by certified cheque, bank draft or solicitor's trust cheque, subject to adjustments for interest, municipal taxes, and other matters normally adjusted for in property transactions of this nature. The Municipality shall convey the Property to the Purchaser by Quit Claim Deed drawn by the Municipality at its expense and shall have it delivered to the Purchaser on the Closing Date upon receipt of the Purchase Price and the Cost Contribution.
8. The Purchaser acknowledges that municipal Deed Transfer Tax is payable separately by the Purchaser in addition to the Purchase Price upon registration of the deed from the Municipality to the Purchaser on or following the Closing Date.
9. On the Closing Date possession of the Property shall be given to the Purchaser.

D. Condition of the Property

10. The Property is to be conveyed on an "as is" and "as zoned" basis. The Purchaser acknowledges that the Property may contain soil and water pollutants and hazardous materials such as PCBs, lead, hydrocarbons, and other harmful environmental contaminants which the Purchaser hereby undertakes to remediate at its sole risk, expense and responsibility. The Municipality specifically disclaims any and all warranties relating to the condition of the Property, environmental contamination, and the Property's fitness, merchantability and suitability for the Purchaser's Intended Use.
11. The Purchaser acknowledges that the Municipality has not made and shall not be deemed to have made any representation or warranties to the Purchaser with respect to the condition of the Property including, without limiting the foregoing, the condition of soil, sub-soil or water, or of the presence or absence upon or under the Property or any surrounding or neighbouring properties or the leakage, or the potential leakage, or emission from or onto the Property of any toxic, hazardous, dangerous or potentially dangerous substances or contaminants. The Purchaser's acknowledgement that the Municipality does not make any warranties or representations regarding the Property shall not be modified or varied in any manner whatsoever because of any oral or written communication to the Purchaser by the Municipality, its contractors, consultants, or other servants and agents. If any information is provided to the Purchaser by the Municipality, its consultants or contractors, it is as a courtesy alone and does not in any way relieve the Purchaser of its obligation to conduct its own due diligence and adequate inspections and investigations of the Property.
12. The Purchaser waives all rights, claims and recourse of any nature whatsoever against the Municipality for any defects in the Property, including without limiting the generality of the foregoing, hazardous materials and substances, contamination, drainage problems or defects in the soil or sub-soil and soil bearing capacity which may be present on the Property or affect the Purchaser's Intended Use and development of the Property.
13. The Purchaser shall indemnify and hold harmless the Municipality, its successors and assigns, officers, directors, employees and agents from and against all claims, demands, actions, causes of action, damages, losses, liabilities, expenses or such other matters arising out of this Agreement or the use, remediation or development of the Property by the Purchaser, its successor and assigns, including

without limitation, claims for environmental, clean-up, rehabilitation and remediation, and for fines based upon lack of compliance with laws, interest and legal costs or such other matters which may arise or be attributable to the Property or to the Purchaser's Intended Use of the Property.

14. The Purchaser further agrees and acknowledges that:

- (a) the Property may have been rough-graded and filled by the Municipality or others and there may be significant variations in load bearing capacity and in soil compaction rates in and throughout the Property; and
- (b) the Purchaser is solely responsible for carrying out appropriate investigations to determine whether the Property and the Purchaser's Intended Use of the Property will comply with all applicable development, zoning, planning, building by-laws, policies, and municipal Administrative Orders, building codes, and all applicable environmental laws and regulations.

15. The Purchaser confirms that at its sole cost and responsibility it has or will have carried out prior to the Closing Date all such due diligence, including but not limited to site, soil and other inspections, surveys, environmental assessments, and all appropriate tests, assessments, and other investigations of the Property which the Purchaser deems necessary to determine its condition and its suitability for the Purchaser's Intended Use and that it is satisfied with the results of all such tests, assessments and investigations. The Purchaser accepts the condition of the Property and hereby waives any rights to subsequent objections and claims against the Municipality.

E. Title

16. The Municipality has migrated or shall migrate the title to the Property pursuant to the *Land Registration Act* and has provided or will provide the Statement of Registered and Recorded Interests, the approved legal description of the Property and any plans of survey and location certificates the Vendor has in its possession to the Purchaser or its lawyer. After receipt thereof, the Purchaser shall be entitled to five (5) business days within which to investigate the title to the Property, which it shall do at its own expense. If within that time any valid objection to title is made in writing to the Municipality, which the Municipality is unwilling or unable to remove, and which the Purchaser will not waive, this Agreement shall be null and void and the Municipality shall not be liable for any expenses incurred or damages sustained by the Purchaser.
17. The Property shall be conveyed subject to any encumbrances, easements, restrictions, covenants and overriding interests that affect the Property.

F. Buy Back Agreement

18. In consideration of the Municipality conveying the Property to the Purchaser at the below market Purchase Price, this Agreement is conditional upon the Purchaser executing a Buy-Back Agreement in form and content satisfactory to the Municipality and in favour of the Municipality (the "**Buy-Back Agreement**"). Immediately following the registration of the Deed on the Closing Date, the Purchaser shall register the Buy-Back Agreement at the Land Registration Office in and for the County of Halifax at its expense as a first charge against the title to the Property.
19. The Buy-Back Agreement is for an initial term of twenty-five (25) years from the Closing Date followed by an automatic review by Regional Council to consider and determine in its sole discretion whether to continue, amend or release the Buy-Back Agreement.
20. The Buy-Back Agreement shall be in priority to all other encumbrances and charges registered against the Property. Provided however, during the initial term of the Buy-Back Agreement or any extension thereof, the Purchaser may apply to the Municipality for a postponement of the Buy-Back Agreement to secure financing of up to sixty-five percent (65%) of the Property's market value as of the date of the request.

The Buy-Back Agreement gives the Municipality an exclusive, unencumbered and unrestricted right in its sole discretion to repurchase the Property for the sum of One Dollar (\$1.00) plus

any capital improvements made to the Property by the Purchaser, less annual depreciation and less any municipal contribution to the Purchaser in any form or any payment made by the Municipality to cover default under the Purchaser's financing, (should the Municipality choose to cover such default).

21. The Municipality may in its sole discretion exercise its rights to buy back the Property if the Purchaser:
- (a) ceases the beneficial activity for which the Council of the Halifax Regional Municipality gave its consideration to a less than market value sale of the Property pursuant to subsection 63(1) of the *Halifax Regional Municipality Charter*, namely the Intended Use as defined herein; or
 - (b) substantially disposes of the assets of the Purchaser or discontinues the operations of the Purchaser; or
 - (c) ceases to operate as a non-profit or charitable society; or
 - (d) defaults on any loan, mortgage, line of credit, or other debt or financial instrument secured against the title to the Property, or if a builder's lien, judgment or court order is registered against the title to the Property which the Purchaser does not discharge within thirty (30) days of registration of same; or
 - (e) considers or attempts the sale or other conveyance of the Property; or
 - (f) is in default of the terms and conditions of this Agreement or the Buy-Back Agreement.
22. If the Municipality chooses to exercise its right to repurchase the Property pursuant to the Buy-Back Agreement, it shall provide thirty (30) days written notice to the Purchaser or such other notice as the Municipality deems appropriate, in its sole discretion (the "**Notice Period**"). The Purchaser shall deliver up clean and vacant possession of the Property, together with all fixtures and improvements thereon, and convey the Property to the Municipality by Warranty Deed free and clear of encumbrances, to be drawn at the expense of the Purchaser, within five (5) business days following the Notice Period or at such other date as the Municipality may direct in writing.
23. If the Municipality, at its sole discretion, refuses to accept the Property in its condition on the date the Municipality exercises its right to repurchase the Property the Municipality may, in its sole discretion, determine the cost of reinstatement, and the Purchaser shall pay such costs forthwith on demand.

G. General Conditions

24. Any tender of money, documents or delivery of notices required to be made to the Municipality by the Purchaser shall be delivered to the Municipality to the attention of:

Legal Services

Halifax Regional Municipality
5251 Duke Street, 3rd Floor, Halifax
PO Box 1749
Halifax, NS B3J 3A5
FAX: 902.490.4232

With a copy of such documents and notices to be delivered to:

Manager, Corporate Real Estate, Finance and Asset Management
Halifax Regional Municipality
88 Alderney Dr., 3rd Floor Dartmouth Ferry Terminal, Dartmouth
PO Box 1749
Halifax, NS B3J 3A5
FAX: 902.490.6030

25. Any tender of documents or notices required to be made by the Municipality to the Purchaser shall be sent to the attention of the Purchaser as follows:

Or to the Purchaser's solicitor:

26. Time shall in all respects be of the essence of this Agreement. In the event of a written agreement of extension, time shall continue to be of the essence. Day refers to calendar day unless otherwise specified.
27. This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
28. The Buy-Back Agreement and all indemnities made by the Purchaser in this Agreement and the provisions of clauses 2, 10-15, and 18-24 shall survive the closing of this Agreement and shall continue in full force and effect.
29. This Agreement may only be changed by a written agreement executed by both parties hereto.
30. The Purchaser warrants it has full corporate authority to enter into this Agreement.
31. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective administrators, successors and permitted assigns.

IN WITNESS WHEREOF each of the Vendor and the Purchaser hereto has caused this Agreement to be properly executed by its respective duly authorized officers on its behalf.

SIGNED, SEALED and DELIVERED
in the presence of:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

SIGNED, SEALED and DELIVERED
in the presence of:

PURCHASER

Witness

Print Name:
Print Title:

Witness

Print Name:
Print Title:

[illegible]

Information Sources

Property Valuation Services Corporation

Assessment classification (Commercial, Residential, Resource) and assessed value.

Phone: 1-800-380-7775.

Web site: <https://www.pvsc.ca/en/home/default.aspx>

Nova Scotia Land Registry

Registration of deeds and associated contracts (easement, Buy-Back Agreement, mortgage etc.)

Phone: 1-800-670-4357.

Web site: <https://novascotia.ca/sns/access/land/land-services-information/land-registry.asp>

Nova Joint Registry of Joint Stocks

Registration and annual renewal reporting.

Phone: 1-800-670-4357

Web site: <https://novascotia.ca/sns/access/business/registry-joint-stock-companies.asp>

Revenue Division, HRM Finance & Asset Management

Inquiries regarding payment plans for closing costs or annual property tax.

Contact by e-mail: cashmgmt@halifax.ca

Grants & Contributions, HRM Finance & Asset Management

Information and application form for annual property tax relief under Administrative Order 2014-001-ADM.

Phone: 902.490.7191

Web site: www.halifax.ca/business/doing-business-halifax/tax-relief-non-profit-organizations

A Guide to Financial Statements of Not-For-Profit Organizations: Questions for Directors to Ask.

Chartered Professional Accountants Canada. 2012.

<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/nfp-financial-statements-guide-directors-questions>



Halifax Regional Municipality
Grants and Contributions
2019