


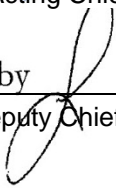
# HALIFAX

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

**Item No. 14.1.2**  
**Halifax Regional Council**  
**February 16, 2016**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by   
\_\_\_\_\_  
John Traves, Q.C. Acting Chief Administrative Officer

Original Signed by   
\_\_\_\_\_  
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** January 8, 2015

**SUBJECT:** East Dartmouth Community Centre - Facility Lease Agreement Amendment

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## **ORIGIN**

- August 6, 2013 Item 11.1.9 Halifax Regional Council motion:  
  
MOVED by Councillor Fisher, seconded by Councillor Watts that the Halifax Regional Council authorize the Mayor and the Municipal Clerk to enter into a Facility Lease Agreement with the Boys and Girls Club of East Dartmouth to lease and operate the East Dartmouth Community Centre as per the key terms and conditions set out in Table #1 in the discussion section of the report dated June 30, 2013. **MOTION PUT AND PASSED UNANIMOUSLY**
- Halifax Regional Municipality requesting to renew the expired lease agreement for the community policing office located at the East Dartmouth Community Centre with the Boys and Girls Club of Greater Halifax. The required subleasing approval process has determined that the current Facility Lease Agreement with the Boys and Girls Club of Greater Halifax is required to be amended to allow HRM to remain in the premises.

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipal Charter*, Section 63 (1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality. (2) A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by at least a two thirds majority of the Council present and voting.

## **RECOMMENDATION**

It is recommended that Halifax Regional Council authorize the Mayor and Municipal Clerk to amend the Facility Lease Agreement with Boys and Girls Club of Greater Halifax for the facility located at 50 Caledonia Road, Dartmouth, as per the proposed amendments set out in Table 1 in the Discussion section of this report.

## **BACKGROUND**

The East Dartmouth Community Centre is a recreation facility owned by Halifax Regional Municipality (HRM) which is located adjacent to Beazley Field on Caledonia Road. The Boys and Girls Club of Greater Halifax (formerly known as Boys and Girls Club of East Dartmouth) has managed and operated the facility on behalf of HRM since it opened to the public in February 2009.

On August 6, 2013 Regional Council approved a Facility Lease Agreement (FLA) with the Boys and Girls Club of East Dartmouth for a term of five (5) years, expiring on July 31, 2018.

The FLA has been the standard leasing document used for non-profit community groups who provide alternate service delivery for HRM through the management and operation of municipally owned facilities. The document positions HRM as the Landlord and the Boys and Girls Club of Greater Halifax as the Tenant. The FLA gives the tenant the responsibility to make the East Dartmouth Community Centre available to the public for community use.

The FLA also authorizes the Boys and Girls Club of Greater Halifax to enter into sublease agreements thereby providing exclusive use of specific portions of the facility to third parties. HRM maintains oversight of subleases by requiring the Tenant to have HRM approval on all proposed subleases. Any subleases proposed at a rate which is less than market value requires the approval of Regional Council.

The purpose of this report is to enable a housekeeping amendment to the facility lease agreement to exclude that portion of the building which will continue to house the community policing office.

## **DISCUSSION**

Due to operational requirements, HRM will occasionally occupy space within a municipally owned facility which is under a FLA. The space which is occupied by HRM should be excluded from the FLA and the tenant's control. HRM must be cautious of the potential operational impacts this may have on the facility, but ensure the space is available for HRM operations.

Prior to the Boys and Girls Club of Greater Halifax signing the FLA in 2013, a sublease for the Halifax Regional Police (HRP) community police office was already in effect for space they occupied in the East Dartmouth Community Centre. That sublease has expired and the terms and conditions for a new sublease have been under negotiations.

HRM Legal reviewed the draft sublease agreement being negotiated on behalf of HRP and expressed concerns with the contractual language. The process of HRM leasing space within facilities owned by HRM but operated by third parties is problematic. HRP is not a legal entity and, as such, any lease would have to be entered in the name of HRM.

In effect, HRM has been leasing space from itself and has agreed to various requirements under the former sublease, including obligations relating to insurance and indemnification that are counter to the wording in the FLA. In the FLA, HRM has gone to great lengths to clarify what responsibility and obligations rest with the Boys and Girls Club of Greater Halifax, however, the terms of the sublease essentially negate the terms in the FLA. As a result, Legal has identified that the insurance and indemnification clauses included in the current FLA are circular and unenforceable due to the language contained in the sublease. This would increase the risk to the municipality if an unforeseen incident were to occur. Therefore, an amendment to the current FLA is required to allow HRM to exclusively occupy and control the space within the facility and mitigate risk to the municipality.

The FLA currently includes the entire 20,758 square foot facility and the purpose of this amendment is a housekeeping task to exclude the 402 square feet which will continue to be used as a community police office. The Boys and Girls Club of Greater Halifax support the presence of the community police office at the Centre; however, they have raised concern with the loss of revenue from their operating budget. The

relationship between The Boys and Girls Club of Greater Halifax and HRM will be governed by a new service agreement between the parties and will be negotiated with the consideration of the loss of revenue from the prior sublease agreement.

The proposed amendments to the Facility Lease Agreement are outlined below in Table 1.

Table 1:

<b>RECOMMENDED AMENDMENTS</b>	
<b>Property Address</b>	50 Caledonia Road, Dartmouth
<b>Landlord</b>	Halifax Regional Municipality
<b>Tenant</b>	Boys and Girls Club of Greater Halifax
<b>Current Area in FLA</b>	20,758 square feet, (including the 402 square foot community police office)
<b>New Area in FLA</b>	20,356 square feet
<b>Term</b>	3 years, Expiring July 31, 2018
<b>Commencement Date</b>	Anticipated to be March 1, 2016

The execution of this FLA amendment, if approved, will decrease the revenue to the operating budget of the East Dartmouth Community Centre by approximately \$8,100 per annum. However, the Boys and Girls Club of Greater Halifax is in the process of negotiating terms and conditions for a new agreement where HRP will pay a monthly service fee which will be comparable to the previous sublease charge.

### **FINANCIAL IMPLICATIONS**

There is no overall financial impact to HRM.

### **COMMUNITY ENGAGEMENT**

Community members make up the Board of The Boys and Girls Club of Greater Halifax.

### **ENVIRONMENTAL IMPLICATIONS**

None

### **ALTERNATIVES**

Halifax Regional Council may choose to not allow the amendment to the FLA.

### **ATTACHMENTS**

Attachment 1: Amendment to the Facility Lease Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Andy Conrad, Service Delivery Coordinator, 902.490.8443

Report Approved by: \_\_\_\_\_  
Martin Ward, Q.C., Acting Director, Legal, Insurance and Risk Management  
Services 902.490.4226

Report Approved by: \_\_\_\_\_  
Brad Anguish, Director of Parks & Recreation, 902.490.4933

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Attachment 1

# Amendment

## to the Facility Lease Agreement

**Between:**

**Halifax Regional Municipality**

**and**

**Boys and Girls Club of Greater Halifax**

**FOR**

**East Dartmouth Community Centre  
50 Caledonia Road  
Dartmouth, Nova Scotia**

**Prepared by:**

Halifax Regional Municipality  
PO Box 1749  
Halifax, Nova Scotia, B3J 3A5  
[www.halifax.ca](http://www.halifax.ca)

Sept 30, 2015



**HALIFAX**

**THIS AMENDMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, the date on which the last signatory signed this Agreement.**

**BETWEEN:**

**HALIFAX REGIONAL MUNICIPALITY,**  
a municipal body corporate (the "**Landlord**")

- and -

**BOYS AND GIRLS CLUB OF GREATER HALIFAX,**  
a society incorporated under the Societies Act of Nova Scotia, (the "**Tenant**")

**BACKGROUND:**

- A. WHEREAS the parties entered into a Facility Lease Agreement for the premises located at 50 Caledonia Road, Dartmouth, Nova Scotia, dated September 19, 2013, defining the Agreement term to be five (5) years with the expiry on July 31, 2018 (the "**Lease**");
- B. AND WHEREAS the parties wish to amend the terms and conditions of the Lease as set out below in this Amendment of the Facility Lease Agreement ("**Amendment**").

**IN CONSIDERATION** of the mutual promises and obligations contained in this Amendment, the parties covenant and agree as follows:

- 1. Effective March 1, 2016 the Lease is hereby amended as outlined in this Amendment Agreement.
- 2. Clause 5.1 Leased Premises of the Lease shall exclude 402 square feet on the main floor as shown in the bolded box on Schedule "A", which also forms part of this Agreement. This space is exclusively occupied by the Landlord as a community police office and will remain under the care, control and use of the Landlord throughout the term of this Agreement. The Landlord may further exclude additional space as required for municipal purposes.
- 3. All other terms of the Lease remained unchanged. The Lease and this Amendment shall constitute the entire contract to the subject matter of the Lease, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties.
- 4. This Amendment is incorporated within and made part of the Lease and shall therefore be subject to its terms and conditions in the same manner as if the amendments herein were original articles of the Lease.

IN WITNESS WHEREOF the parties hereto have properly executed these present the day and year above written, being the date on which the Landlord executed this Amendment.

**SIGNED, SEALED and DELIVERED**

_____	)	<b>BOYS AND GIRLS CLUB OF GREATER HALIFAX</b>
Date	)	
	)	
	)	
_____	)	_____
Witness	)	
	)	
	)	
_____	)	_____
Witness	)	
	)	

By signing above, we hereby confirm we have binding signing authority to enter Boys and Girls Club of Greater Halifax into this Amendment.

	)	
	)	
_____	)	<b>HALIFAX REGIONAL MUNICIPALITY</b>
Date	)	
	)	
	)	
_____	)	_____
Witness	)	Mayor
	)	
	)	
_____	)	_____
Witness	)	Municipal Clerk

Schedule "A"

