

**HALIFAX REGIONAL SCHOOL BOARD
COLE HARBOUR DISTRICT HIGH SCHOOL GYMNASIUM
JOINT USE AGREEMENT**

PURPOSE: This report is submitted by Operations Services for information regarding the Joint Use Agreement (JUA) between Halifax Regional School Board (HRSB) and Halifax Regional Municipality (HRM) for the Cole Harbour District High School Gymnasium.

BACKGROUND: Cole Harbour District High School received a major renovation that was completed in 2014-15. HRM contributed \$630,000 for a community enhancement of 2100 square feet additional gymnasium space.

Article 133 (1) of the Education Act states the following: “A school board and a municipality may enter into an agreement whereby the municipality agrees to pay the capital cost of a community facility to be acquired by the school board in or in association with a public school and the cost of maintaining and operating the community facility.”

Paragraph (6) states that: “An agreement with respect to a community facility is of no effect unless the agreement is approved by the Minister.”

CONTENT: As noted above, a Joint Use Agreement was drafted to establish parameters for the operation and reciprocal use of the gymnasium and is attached to this report as Appendix A.

The JUA was developed collaboratively through consultation between staff from HRM Parks and Recreation, HRSB Operations Services, Administration Services and Cole Harbour District High administration, with input from the Department of Education and Early Childhood Development (EECD) Facilities Management and reviews by HRM and HRSB legal counsel. It is intended as a stand-alone document but reflects the intent of the existing Service Exchange Agreement (SEA) between HRM and HRSB.

HRM facility bookings staff is responsible for program development and community bookings of the gymnasium after hours. HRSB has priority to book the gymnasium up to 6:00 pm each week day and to 10:00 pm Monday, Tuesday and Thursday evenings.

The cost for building systems maintenance in the gymnasium will be reimbursed to HRSB by HRM through quarterly invoices based on a 20 % recovery of these operational costs.

The JUA allows for review of the agreement at any time upon request in writing from either party. A performance monitoring report will be presented annually by the Facility Operations Committee (FOC).

COST: N/A

FUNDING: N/A

TIMELINE: The Joint Use Agreement will become effective upon signing by the parties and approval by the Minister of Education and Early Childhood Development.

APPENDICES: Appendix A: Joint Use Agreement Halifax Regional Municipality and Halifax Regional School Board/Cole Harbour District High School Gymnasium.

RECOMMENDATIONS: It is recommended that the Board receive this report for information.

COMMUNICATIONS:

AUDIENCE	RESPONSIBLE	TIMELINE
Department of Education and Early Childhood Development	Superintendent	Upon Board Approval
Halifax Regional Municipality	Director Operations Services	Upon Board Approval

From: For further information please contact:
Ron Heiman-Director Operations services at 464-2000 ext 2241 or at e-mail address rheiman@hrsb.ns.ca;

To: Senior Staff September 15, 2015
Board September 23, 2015

Joint-Use Agreement

Halifax Regional Municipality
and
Halifax Regional School Board

Cole Harbour District High School Gymnasium



Halifax Regional School Board
33 Spectacle Lake Drive
Dartmouth, Nova Scotia
B3B 1X7

Tel: 902-464-2000
www.hrsb.ns.ca



Halifax Regional Municipality
Community & Recreation Services
Community Development & Partnerships
PO Box 1749
Halifax, Nova Scotia B3J 3A5

Tel: 902-490-5713
Fax: 902-490-5950
www.halifax.ca

THIS JOINT-USE AGREEMENT MADE THIS ___ day of _____, 2015

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY (“HRM”)

- and -

HALIFAX REGIONAL SCHOOL BOARD (“HRSB”)

respecting the gymnasium at Cole Harbour District High School

BACKGROUND:

WHEREAS in 2004, HRM and HRSB (hereafter collectively referred to as “the Parties”) entered into a cooperatively developed principle-based Service Exchange Agreement (“SEA”), the intent of which was to provide a long-term solution regarding access to facilities, programs and services between the Parties as well as ensuring Facility availability for the general community;

AND WHEREAS this Agreement is intended to give effect to the spirit and intent of the SEA, but exists in its own right separate and apart from the SEA. Unless otherwise specified, the terms of the SEA do not qualify or govern this Agreement;

AND WHEREAS pursuant to the Education Act, the HRSB and HRM may enter into an agreement wherein HRM agrees to pay the capital cost of a community facility in association with the new school and the cost of maintaining and operating the community facility;

AND WHEREAS with a capital contribution of \$630,000 from HRM, the Provincial Department of Education & Early Childhood Development have constructed a new gymnasium at Cole Harbour District High School;

AND WHEREAS the Parties agree that a joint use concept will best provide for the usage, maintenance and operation of the gymnasium;

HRM AND HRSB THEREFORE AGREE AS FOLLOWS:

Definitions

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

“Academic Year” means September 1st to June 30th in each calendar year;

“Agreement” means this joint-use agreement including any and all schedules attached hereto;

“Capital Contribution” means HRM’s capital contribution in the amount of \$630,000 towards the construction of the Gymnasium;

“Confidential Information” means the confidential or proprietary information of one party, including data, technical information, financial information including prices and utility rates, and business information including business plans, strategy and practices, which has been or may hereafter be disclosed, directly or indirectly to other party either orally, in writing or in any other material form pursuant to this Agreement;

“FOC” means the Facility Operations Committee comprised of the designated representatives of HRM and HRSB as outlined in Schedule “A”;

“Gymnasium” means the gymnasium at the School;

“Principal” means the principal of the School;

“Province” means the Province of Nova Scotia;

“School” means Cole Harbour District High School;

“SEA” means the Service Exchange Agreement entered into between HRM and HRSB; and

“Students” means pupils enrolled in regular or special education programs at the School.

1.0 Gymnasium To Be Shared

1.1 This Agreement is limited to the joint-use and sharing of the Gymnasium.

2.0 Access to Gymnasium

2.1 The Parties agree that HRSB shall have exclusive use of the Gymnasium at the following times:

- 7:00 am – 10:00 pm Mondays, Tuesdays and Thursdays through the Academic Year
- 7:00 am – 6:00 pm Wednesdays and Fridays through the Academic Year

HRM shall have exclusive access to and use of the Gymnasium at all other times, including but not limited to:

- 6:00 pm – 10:00 pm Wednesdays and Fridays through the Academic Year
- 9:00 am – 10:00 pm Saturdays and Sundays, year-round
- 9:00 am – 10:00 pm 7 days a week from July 1 to August 31

2.2 HRSB and HRM agree that the Gymnasium shall be available for use by the other party

on a first priority basis after the scheduling requirements for its own programs and services have been met. .

- 2.3 HRM and HRSB shall participate jointly on the FOC to ensure the ongoing successful communications and operations of the Gymnasium. The FOC will be chaired and populated with representatives as determined by Schedule "A".
- 2.4 All programs and activities scheduled under this Agreement shall comply with the policies and procedures established by the Parties through the FOC.
- 2.5 The Gymnasium will be available for scheduled use by the general public, community organizations and other groups on a year round basis provided that the Gymnasium is available to be scheduled. HRSB will work closely with HRM to promote an environment of mutual inclusion in decision making relative to access to the Gymnasium at times of the year when Students are not present.
- 2.6 Public access to the Gymnasium will be scheduled, supervised and managed by HRM.
- 2.7 HRM shall be responsible for all bookings of the Gymnasium (except during times when HRSB has exclusive use). Rental rates shall be set by HRM. All revenues will be retained by HRM. The HRSB retains the right to set rates and collect revenues for bookings made during its designated hours and to book and collect revenues for elections, without any requirement to share any revenues earned thereby with HRM. Such bookings shall be coordinated with HRM.
- 2.8 Each party and user group shall be responsible to supply its own athletic and other program equipment, with the exception of standards and nets, which shall be made available, on a best efforts basis, by each party for the benefit of the other party or user group as required.
- 2.9 Access to score clocks and audio visual equipment, including, but, not limited to, portable stereo equipment, microphones and sound systems, shall be coordinated in accordance with the policies established by the Parties in consultation with the FOC.

3.0 Cancellations

- 3.1 When the School is closed due to emergency circumstances or inclement weather, the Gymnasium shall also be closed, resulting in the cancellation of any bookings and access to Gymnasium.

4.0 Maintenance of Gymnasium

- 4.1 Except as set out otherwise in this Agreement, HRSB shall be responsible for maintaining the Gymnasium.
- 4.2 For greater certainty, and except as set out otherwise in this Agreement or agreed to between the parties, HRSB shall be responsible for all interior operating and maintenance

costs (including heat, hot water, electricity, custodial services, etc.), all exterior operating and maintenance costs (including landscaping, snow removal, garbage removal, etc.), all repairs, all replacements and all capital improvements related to the Gymnasium. HRM shall reimburse HRSB for 20% of all such costs.

- 4.3 If the parties cannot agree on the necessity or apportionment of such costs, the parties will submit to the Dispute Resolution process outlined in section 9 of this Agreement to determine same.
- 4.4 HRSB shall maintain the Gymnasium in good repair to a standard level which ensures each party's ability to conduct quality physical education or recreation programs in the Gymnasium aligned with the design intent of the space.
- 4.5 HRSB shall maintain custodial shifts to meet its custodial staffing guidelines. This will normally ensure that custodians are assigned and present at the School between the hours of 7:00am and 11:00pm, Monday through Friday, during the Academic Year and from 7am to 4:30 pm daily during the school closure periods (March break, summer break and Christmas break).
- 4.6 Staff and contractors performing maintenance duties in or around the Gymnasium must be diligent in their attention to the operations and the Students and HRM guests at the Gymnasium and all work shall be performed in a respectful manner.
- 4.7 Upon arrival at the site to perform work in, or impacting, the gymnasium, contractors shall inform the Principal (or designate), who shall determine what times, if any, the work should be stopped to accommodate the Students or HRM guests.

5.0 Agreement Management and Reporting

- 5.1 HRM and HRSB shall be jointly responsible for the administration of this Agreement.
- 5.2 Either party may, at any time during the term of this Agreement, upon providing the other party with two (2) days' written notice, initiate a special meeting to discuss any concerns arising from this Agreement, or to discuss proposed amendments to the Agreement.
- 5.3 Representatives of the Parties shall jointly prepare an outcome report for the joint-use of the Gymnasium on an annual basis, including a summary of the total annual hours of usage by the Parties, respective benefits derived and a list of scheduling and/or operational issues which arose during the preceding year.

6.0 Term and Review of Agreement

- 6.1 Unless earlier terminated in accordance with this Agreement, this Agreement shall be effective as of the date first set out above and shall remain effective until the School is sold or otherwise disposed of by Department of Education and Early Childhood Development and HRSB.
 - 6.1.1 Either party may deem it necessary or beneficial to mutually review this Agreement at

any time. The party requesting the review shall do so to the other party in writing by contacting the following representatives:

To HRSB:

Halifax Regional School Board
c/o Superintendent
33 Spectacle Lake Drive
Dartmouth, NS B3B 1X7

To HRM:

Halifax Regional Municipality
Community & Recreation Services
c/o Director Community & Recreation Services
P.O. Box 1749
Halifax, NS B3J 3A5

7.0 Indemnity

7.1 HRM shall indemnify and save harmless HRSB, it's governing Board, Officers, Employees, Agents and Volunteers from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to HRM's execution of this Agreement or any action taken or things done by or maintained by HRM except for any claims resulting from negligence or alleged negligence of HRSB, its governing Board, Officers, Employees, Agents or Volunteers.

7.2 HRSB shall indemnify and save harmless HRM, it's Mayor, Officers, Employees, Agents or Volunteers from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to HRSB's execution of this Agreement or any action taken or things done by or maintained by HRSB except for any claims for damages resulting from negligence or alleged negligence of HRM, its Mayor, Officers, Employees, Agents and Volunteers.

8.0 Insurance

8.1 Each party shall carry and maintain, at its sole cost and expense, in a form at least as broad as the current Insurance Bureau of Canada wording, Commercial General Liability insurance or its equivalent in amounts not less than Five Million Dollars (\$5,000,000.) inclusive, against all losses, claims, incidents, expenses or costs for personal injury, death or property damage arising from activities of that party or activities authorized by that party, occurring in, on or about the Gymnasium/School and each party will ensure such coverage remain in effect and that nothing is done by that party to affect the validity of such insurance during the term of this Agreement.

8.2 HRSB shall carry and maintain industry standard broad form property insurance at its sole cost and expense, with Halifax Regional Municipality named as a loss payee, with coverage amounts at least equal to the value of the entire School, and will ensure such coverage remains in effect and that nothing is done by HRSB to affect the validity of such insurance during the term of this Agreement.

8.3 The Parties agree to provide each other with a Certificate of Insurance evidencing coverage for any insurance required under this Agreement.

- 8.4 Each party or their Insurer will provide thirty (30) days' notice of cancellation or policy amendment to the other party.
- 8.5 The cost of repairs arising out of the use of the Gymnasium (or equipment owned by either of the Parties) shall be assessed and paid for by the party using the Gymnasium when and where the damage occurs subject to the following:
- a. Where it can be established that the damage has been done by a party authorized by HRM to use the Gymnasium, HRM shall pay the cost of the repair and it will be HRM's responsibility to collect the cost of these repairs from the individual or group responsible for the damage;
 - b. Where the damage has been done by students or a party authorized by HRSB to use the Gymnasium, HRSB agrees to pay the cost of repair and it will be HRSB's responsibility to collect the cost of these repairs from the individual or group responsible for the damage; and
 - c. Where the party responsible for the damage cannot be established, the Dispute Resolution process outlined in Section 9.0 will be followed to determine who shall be responsible for the cost of the repairs.

9.0 Dispute Resolution

- 9.1 Any dispute between the Parties in relation to matters governed by this Agreement shall be resolved as provided in this Section.
- 9.2 In the event of a dispute, either one of the Parties may give written notice of the dispute (the "Dispute Notice") to the Principal or the HRM representative designated from time to time as the individual to whom a Dispute Notice may be delivered, as the case might be, and the individual who receives such Dispute Notice shall notify the members of the FOC within one (1) business day of the receipt of such Dispute Notice.
- 9.3 Upon receipt of the Dispute Notice, the representative of the party served with notice shall have ten (10) days to meet with the other party and attempt to resolve the matter. If the dispute is not resolved within ten (10) days, the matter will be referred to the Superintendent of HRSB and the Chief Administrative Officer of HRM.
- 9.4 In the event the Superintendent of HRSB and the Chief Administrative Officer of HRM cannot resolve the dispute within ten (10) days of having been referred the matter, and this time frame for resolving the dispute has not been extended by mutual written agreement between the Parties, the matter shall be referred to arbitration by a single arbitrator, if the parties agree upon one; otherwise, the matter will be heard by a panel of three arbitrators, one to be appointed by each party and a third to be chosen by the nominees.
- 9.5 The award and determination of the arbitrator or arbitrators or any two of the three arbitrators shall be binding upon the Parties and their respective successors and assigns.

10.0 Amendment and Waiver

- 10.1 No amendment or variation of this Agreement shall operate to change or vary the terms, obligations, or conditions hereof except upon mutual agreement of the Parties, signed by an authorized representative of each party.
- 10.2 No waiver shall be inferred or implied by anything done or omitted by the Parties save only an express waiver in writing, signed by an authorized representative of the waiving party.

11.0 Confidentiality

- 11.1 Confidential Information relating to a party shall be held in confidence by the other party to the same extent and at least in the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party's consent. Each party shall, however, be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, sub-contractors and employees who are parties to a confidentiality agreement on terms at least as restrictive as contained herein and only to the extent that such disclosure is reasonably necessary for the performance of its obligations under this Agreement.

12.0 Freedom of Information and Protection of Privacy (FOIPOP)

- 12.1 The Parties agree for the purposes of FOIPOP and Part XX of the *Municipal Government Act* that this Agreement is a public document.

13.0 Governing Law

- 13.1 This Agreement shall be interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein.

14.0 Assignment

- 14.1 No part of this Agreement may be assigned by either party without the express written consent of the other.
- 14.2 This Agreement shall enure to the benefit of and be binding upon the Parties, their respective successors and permitted assigns.

15.0 Severability

- 15.1 If any provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement or the application of such provisions to persons or circumstances other than those to which it is deemed invalid or unenforceable shall not be affected thereby, and each such provision of

this Agreement shall be valid and enforceable to the extent granted by law.

16.0 Entire Agreement

- 16.1 This Agreement, including the Schedules referred to herein, which are hereby incorporated by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof, notwithstanding the fact that this Agreement is intended to give effect to the spirit and intent of the SEA between the Parties. This Agreement supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement.
- 16.2 The Minister of Education and Early Childhood Development's endorsement and approval of this Agreement shall not be construed as Ministerial Approval of the Service Exchange Agreement (SEA) or any other agreement between the Parties.

17.0 Holding and Disposition of Property

- 17.1 This Agreement is an agreement in respect of a community facility and as such must be executed and interpreted in accordance with the relevant provisions of the Education Act, S.N.S. 2002 (at the time of execution, Sections 133-136) as amended from time to time.
- 17.1 The parties acknowledge that HRM's Capital Contribution of \$630,000 for the construction of the Gymnasium was based on an anticipated minimum 30 year usage by HRM of the Gymnasium.
- 17.2 Any disposition of the School will be done in accordance with section 135 of the *Education Act*, as amended from time to time.

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

HALIFAX REGIONAL SCHOOL BOARD

Witness

Name:
Title:

Witness

Name:
Title

HALIFAX REGIONAL MUNICIPALITY

Witness

Mike Savage, Mayor

Witness

Cathy Mellett, Municipal Clerk

The Minister of Education hereby endorses approval of this Agreement.

Minister of Education

Date

List of Schedules

Schedule "A" Terms and Conditions for Facility Operating Committee

Schedule “A”

Terms and Conditions for Facility Operating Committee

Facility Operations Committee

Committee Membership:

- 3 representatives from HRM (Coordinator Client Services, Community Recreation Coordinator and Facility Recreation Program Manager)
- 3 representatives from Cole Harbour District High School (Principal, Athletic Director and Custodian)
- 2 representatives from HRSB (Operations and Facility Bookings) may attend meetings.

Committee Scope of Work:

- a) Committee will meet monthly with a shared agenda and minutes
- b) Committee will be jointly chaired by HRM and HRSB.
- c) Meetings are focused on the operational requirements of HRM / Cole Harbour District High School and will include:
 - Agendas
 - Minutes
 - Booking Requests
 - Program and Administrative Updates
 - Custodial Updates
 - HRSB Operational Updates
 - Debrief of Bookings and Programs and Future Recommendations
 - Issue Identification and Problem Solving
 - Other

Under each topic there may be a number of discussion points depending on what is happening at the Facility or time of year.