

## **Mission Statement**

*Freedom to Discover.*

## **Strategic Priorities**

*Strengthening Communities*

*Strengthening Individuals*

*Strengthening Our Organization*

## **HAMILTON PUBLIC LIBRARY BOARD**

**Regular Board Meeting  
Wednesday, November 18, 2009  
Central Library, Board Room**

5:30 p.m. Dinner  
6:00 p.m. Meeting

### **AGENDA**

**1. Discussion Period**

1.1 Ontario Library Association Conference – February 24 -27, 2010

**2. Acceptance of the Agenda**

**3. Minutes of the Hamilton Public Library Board Meeting  
of Wednesday, October 21, 2009**

**Attachment #3**

**4. Presentations**

**5. Consent Items**

5.1 2010 Meeting Dates – KH

Attachment #5.1

**Suggested Action: Recommendation**

**6. Business Arising**

6.1 2010 Operating Budget – WG

Attachment #6.1

**Suggested Action: Recommendation**

**7. Correspondence**

**8. Reports**

8.1 Chief Librarian's Report

Attachment #8.1

**Suggested Action: Receive**

**9. New Business**

- 9.1 Nominating Committee – KH Attachment #9.1  
**Suggested Action: Receive**
- 9.2 AODA Policy – LD Attachment #9.2  
**Suggested Action: Receive**
- 9.3 HPL/Market letter of Understanding – WG Attachment #9.3  
**Suggested Action: Recommendation**
- 9.4 Turner Park Operating Agreement – WG Attachment #9.4  
**Suggested Action: Recommendation**

**10. Private and Confidential**

- 10.1 Labour Issues

**11. Date of Next Meeting**

Wednesday, December 16, 2009  
**Central Library, Board Room, 5<sup>th</sup> Floor**  
5:00 p.m. Dinner (Christmas Dinner)  
6:00 p.m. Meeting

**12. Adjournment**

**HAMILTON PUBLIC LIBRARY**  
**LIBRARY BOARD**

**UPCOMING/OUTSTANDING ISSUES**

<b>Issue</b>	<b>Date Action Initiated</b>	<b>Admin Member/Staff Who Initiated</b>	<b>Month item will appear on Agenda</b>

**HAMILTON PUBLIC LIBRARY BOARD  
Regular Meeting**

**Wednesday, October 21, 2009  
Central Library, Board Room  
5:30 p.m. Dinner  
6:00 p.m. Meeting**

**MINUTES**

**PRESENT:** Jennifer Gautrey, Santina Moccio, George Geczy, Suzan Fawcett, Councillor Pearson, Mary Ann Leach, Doreen Horbach, Councillor Jackson, George Nakamura, Maureen McKeating

**REGRETS:** Krzysztof Gumieniak

**STAFF:** Beth Hovius, Lisa DuPelle, Paul Takala, Ken Roberts, William Guise, Maureen Sawa, Karen Hartog

**GUESTS:** Robert Plant, Karen Peter, Marnie Cluckie, Greg Sather

Ms Gautrey called the meeting to order at 6:05 p.m.

**1. DISCUSSION PERIOD**

- 1.1 It was announced that Laura Lukasik is the 2009 Week of the Child award winner for the Hamilton Public Library. The awards dinner is scheduled for November 13, 2009.
- 1.2 Mr. Takala reported that the launch of the new library website has been delayed for two weeks. The launch is now scheduled for November 9<sup>th</sup>.
- 1.3 The Hamilton Gallery of Distinction awards evening is being held on Wednesday, November 4, 2009 at the Hamilton Convention Centre. The Library has purchased a table. Interested board members are requested to contact Karen Hartog.

**2. ACCEPTANCE OF THE AGENDA**

Add: 6.4 Waterdown

**MOVED** by Ms McKeating, seconded by Councillor Pearson,

**THAT THE AGENDA BE APPROVED AS AMENDED.**

**MOTION CARRIED.**

**3. MINUTES OF THE HAMILTON PUBLIC LIBRARY BOARD MEETING OF WEDNESDAY, SEPTEMBER 23, 2009**

**MOVED** by Ms Horbach, seconded by Ms Fawcett,

**THAT THE HAMILTON PUBLIC LIBRARY BOARD MINUTES OF WEDNESDAY, SEPTEMBER 23, 2009 BE ADOPTED AS PRESENTED.**

**MOTION CARRIED.**

**4. PRESENTATIONS**

**4.1 Lynden Library**

Mr. Sather presented the preliminary renderings to Library Board members.

**MOVED** by Ms Fawcett, seconded by Ms Leach,

**THAT THE PRELIMINARY DESIGNS BE ACCEPTED BY THE LIBRARY BOARD AS PRESENTED.**

**1 opposed (Moccio)**

**1 abstention (Geczy)**

**8 in favour (Horbach, Gautrey, Pearson, Jackson, Leach, McKeating, Nakamura, Fawcett)**

**MOTION CARRIED.**

**5. CONSENT ITEMS**

**MOVED** by Ms Moccio, seconded by Ms McKeating,

**THAT CONSENT ITEM 5.1 BE APPROVED AS PRESENTED.**

**MOTION CARRIED.**

**5.1** Received for information.

**6. BUSINESS ARISING**

**6.1** 2009/2010 Operating Budget

Received for information.

**6.2** RFID Update

Received for information.

**6.3** Carpenter's Union

Received for information.

6.4 Waterdown

Mr. Roberts provided an update on the recently held meeting discussing the Waterdown Branch. Once more details are known, a public meeting will be organized and held for the residents.

**7. CORRESPONDENCE**

No correspondence.

**8. REPORTS**

No reports.

**9. NEW BUSINESS**

9.1 Dundas Trust/Westdale Reserves

**MOVED** by Ms Horbach, seconded by Ms Moccio

**THAT THE FUNDS IN THE DUNDAS LIBRARY FUNDRAISING TRUST ACCOUNT (CTRUS 125051) AND ANY INTEREST EARNED BE TRANSFERRED TO THE RESERVE FOR LIBRARY MAJOR CAPITAL PROJECTS (HAMTN 106008) AND THE TRUST ACCOUNT BE CLOSED OUT; AND**

**THAT THE FUNDS COMMITTED IN THE RESERVE FOR LIBRARY MAJOR CAPITAL PROJECTS (HAMTN 10608) FOR WESTDALE BRANCH LIBRARY IN THE AMOUNT OF \$12,627.08 BE RELEASED.**

**MOTION CARRIED.**

9.2 AODA Response re Built Environment

Received for information.

**10. PRIVATE AND CONFIDENTIAL**

No private and confidential items.

**11. DATE OF NEXT MEETING**

Wednesday, November 18, 2009  
**Central Library, Board Room, 5<sup>th</sup> Floor**  
5:30 p.m. Dinner  
6:00 p.m. Meeting

**12. ADJOURNMENT**

**MOVED** by Ms Moccio, seconded by Ms Leach,

**THAT THE HAMILTON PUBLIC LIBRARY BOARD MEETING OF  
WEDNESDAY, OCTOBER 21, 2009 BE ADJOURNED.**

**MOTION CARRIED.**

The meeting was adjourned at 8:05 p.m.

Minutes recorded by Karen Hartog.



# Hamilton Public Library

**Date:** November 13, 2009  
**To:** Chair and Members of the Board  
**c.c.** Ken Roberts, Chief Librarian  
**From:** Karen Hartog, Administrative Assistant  
**Subject:** 2010 Meeting Dates

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## **RECOMMENDATION:**

That the Hamilton Public Library schedule its 2010 Board meetings on the following dates.

- January 20<sup>th</sup>
- February 17<sup>th</sup>
- March 24<sup>th</sup> (March Break is scheduled for week of March 15<sup>th</sup>)
- April 21<sup>st</sup>
- May 19<sup>th</sup>
- June 16<sup>th</sup>
- September 22<sup>nd</sup> (Council meeting scheduled for September 15<sup>th</sup>)
- October 20<sup>th</sup>
- November 17<sup>th</sup>
- December 15<sup>th</sup>

## **FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

There are no financial implications.

## **BACKGROUND:**

The above-noted Board meeting schedule has been compared to the Council meetings in order to avoid conflicts. Council meets on the 2<sup>nd</sup> and 4<sup>th</sup> Wednesdays of the month. Usually, there is a conflict during the months where there are five Wednesdays. The conflict for 2010 will occur during the month September. It is being recommended that the Library Board meet on September 22<sup>nd</sup>.





# Hamilton Public Library

**Date:** November 13<sup>th</sup> 2009  
**To:** Chair and Members of the Board  
**c.c.:** Ken Roberts, Chief Librarian  
**From:** William Guise, Director, Finance and Facilities  
**Subject:** 2010 Proposed Operating Budget and 2009 Estimates

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## **RECOMMENDATION:**

That the attached 2010 Proposed Operating Budget and 2009 Estimates for the Hamilton Public Library be approved for submission to the City of Hamilton.

## **BACKGROUND:**

### 2010 Draft Operating Budget

The City of Hamilton has requested that Boards and Agencies (including the Hamilton Public Library Board) submit a 2010 budget based on a 2.0% or less increase over the 2009 Budget.

The attached draft budget was prepared by staff with a view to follow this guideline without a reduction in the level of service.

Two previous draft budgets have been submitted to the Board. The 1<sup>st</sup> draft budget had an increase of \$549,587 or 2.1% over the 2009 budget. The 2<sup>nd</sup> draft budget increase was reduced to \$527,663 or 2.0% increase over 2009. Subsequent to the preparation of the 2<sup>nd</sup> draft budget additional changes resulting from cost allocations charges from the City related mainly to facility costs added \$67,160 to the budget. The revised budget would have been a 2.2% increase over 2009. Additional reviews and revisions by staff have now revised the budget again and the 2010 Proposed Budget is being presented with an increase of \$543,168 or 2.0% over the 2009 Operating Budget.

In order to limit the increase in the operating budget for 2010 the staff complement has been reduced by 6.29 FTE. This will be accomplished mainly by staff attrition.

This draft budget was built using the following:

- Allowance for cost of living increase for salary and wages
- Increase in Library Materials by 3% over 2009 budget
- Increase in fine revenue as a result of increased circulation and the addition of Turner Park branch
- Guidelines issued by the City of Hamilton



Estimates for 2009

The estimated status of our operating budget as at December 31<sup>st</sup> 2009 was included in the report to the Board in October and is also being included in the attached spreadsheet. The estimates were based on what has been recorded as of September 30<sup>th</sup> 2009 and estimates of amounts owing and expected to be expended by December 31<sup>st</sup> 2009, an operating surplus of \$207,369 based on a Council approved Net Levy Budget of \$26,636,555 and have not been revised. The estimated projected surplus of \$207,369 would represent 0.78% of the Net Levy Budget.

Hamilton Public Library  
2010 Proposed Operating Budget and 2009 Estimates

Cost Category Report – Draft/Requested  
Year: 2010  
Version: Draft  
Dept: Library  
Details at: Department

2010 Requested vs. 2009  
Restated Budget

Department Account	2008 Actual	2009 Budget Council Approved	2009 Budget Restated	2009 Forecast	2010 Budget Draft	\$	%
Net Levy	25,178,572	26,536,555	26,619,325	26,329,186	27,162,494	543,169	2.0%
Expense	28,599,042	28,601,935	28,684,705	28,442,179	29,262,574	577,869	2.0%
EMPLOYEE RELATED COST	19,332,185	19,997,917	19,997,917	19,516,925	20,342,236	344,319	1.7%
MATERIAL AND SUPPLY	3,957,219	3,784,078	3,784,078	4,075,682	3,882,618	98,540	2.6%
VEHICLE EXPENSES	420,121	1,300	1,300	1,687	1,300	-	0.0%
BUILDING AND GROUND	458,007	483,640	483,640	468,249	418,100	(65,540)	(13.6)%
CONTRACTUAL	690,788	713,100	713,100	715,803	758,100	45,000	6.3%
AGENCIES and SUPPORT PAYMENTS	-	-	-	-	-	-	0.0%
RESERVES/RECOVERIES	517,916	121,900	121,900	136,697	142,040	20,140	16.5%
COST ALLOCATIONS	3,135,483	3,386,160	3,468,930	3,422,802	3,604,340	135,410	3.9%
FINANCIAL	87,323	113,840	113,840	104,333	113,840	-	0.0%
Revenue	(3,420,470)	(2,065,380)	(2,065,380)	(2,112,992)	(2,100,080)	(34,700)	(1.7)%
FEES AND GENERAL	(1,030,190)	(534,650)	(534,650)	(582,233)	(569,350)	(34,700)	(6.5)%
GRANTS AND SUBSIDIES	(1,637,676)	(1,530,730)	(1,530,730)	(1,457,772)	(1,530,730)	-	0.0%
RESERVES	(752,603)	-	-	(72,987)	-	-	0.0%

## Chief Librarian's Report

November, 2009

### **Waterdown**

We are meeting with the City of Hamilton's Portfolio Management Committee on Thursday, November 19<sup>th</sup> in order to discuss the future of both the former Flamborough Town Hall site and the future of the current library site in Waterdown. This could be an important step in our planned acquisition of land for an appropriate Waterdown library location.

### **Lynden**

Beth Hovius and I met with members of the Lynden citizen's committee as well as neighbors. We presented the plans for the new Lynden Library. While there were several suggestions, all of which have been passed along, there was excitement about the plans and the potential impact on the community of a new library.

### **Sherwood**

The Sherwood Branch is now in the midst of its renovations. It is expected to re-open early to mid-December. We will arrange for Board members to have an advance peek at the branch. Again, the bulk of the funding comes from the landlord as part of the lease renewal.

### **Terryberry**

Terryberry plans are advancing. The branch is currently slated to close in December for a period of approximately six weeks, but we are trying to determine if the branch can be closed for a shorter time period.

### **Central**

Contractors may begin to install the exterior glass before the Board meets on November 18<sup>th</sup>. They plan to have the entire building clad before Christmas. We are beginning to see some dramatic changes to the building as they lay concrete and work to complete the roofing.

### **Spectator Readers Choice Platinum Award**

As mentioned at the last Board meeting, the library has received a Platinum rating for "Movie Rental Store" in the 2009 Hamilton Spectator's Readers Choice Awards.

### **H Magazine**

H Magazine has produced its list of 2009's Greatest of Hamilton. Here is one excerpt that is applicable to the library.

*"Greatest current civic building renovation: Farmers' Market/Central Library complex. No other project in the city will make the impact that these two joint renovations will when they are completed in late 2010. Buildings that were afterthoughts when they were originally built will have new life breathed into them courtesy of architect, David Premi and his team at dp.ai. This is urban design at its best and I can't wait to see it finished."*

### ***Explore your Community Guide***

The 2009-2010 Community Guide is produced by Hamilton Community News and widely distributed. They provided an exceptionally positive article on the Hamilton Public Library, with several pictures.

### ***Dudley***

Dudley has been the star of our Paws for Reading program, patiently allowing many Hamilton young people to fill his head with stories. A retirement party honoring Dudley was held at the Turner Park branch on Thursday, October 29<sup>th</sup>. Eight other dogs were in attendance, along with many children. Dudley was presented with his own book, a picture book written by his own that features him and his experience at the Library. We have kept a copy for our archives.

### ***Reading Summit***

The TD Bank is sponsoring a national reading summit to be held in Toronto on Thursday, November 12<sup>th</sup>. We are sending three staff members. One of the goals is to place reading and literacy skills more dominantly in the public's mind and to set-up a national program that supports reading.

### ***OALT Conference***

I have been asked to give a plenary session talk at next Spring's Ontario Association of Library Technician's conference. It will be held at Mohawk College.

### ***HPL website and community site***

We "soft launched" the new HPL website and community site on Monday, November 9<sup>th</sup>. We have been receiving informal feedback from customers of the library and it is quite positive. The plan is still to launch the entire site, replacing our current website, on Monday, November 16<sup>th</sup>.

### ***Sorters***

From November 30<sup>th</sup> through the first two weeks in December the new sorter systems will be installed at Terryberry and Turner Park. Also during this time the Ancaster sorter will be upgraded and the mini-sorter will be installed at Westdale. These systems will help staff keep up with the increasing demand for Library materials. In early 2010 the plans for the Central sorter will be finalized so the system will be in place in time for the re-opening of Central.

### ***Ancaster Square/Library***

This project has been nominated for the 2009 Urban Design and Architecture Award, which is now a People's Choice process for selection. Here is the description of the project.

*"The redevelopment of the Ancaster Municipal Centre and Library has revitalized the heart of this community. Ancaster Square, as it is known, is a significant people place, a place of great historic importance, a place for Municipal Government services and a focal point on Wilson Street. The emphasis of the site design was not only to improve the overall aesthetic quality but to provide elements that help to create an integrated and well functioning site. Some of these elements include providing areas for people to sit and read books or eat lunch, a suitable place for children and adults to park their bicycles, safe and convenient access from the parking lots, and a place where the community can gather all within*

*the context of lush and beautiful gardens. The redevelopment of the building presented an opportunity to re-establish this site as a prominent place in the community. "*

### ***RFP for Print Materials***

We are in the process of issuing an RFP for the vendor(s) to supply print materials, and related cataloguing and processing. The evaluation process is quite detailed. The results will be ready for approval in either December or January.

### ***Pan Am Games***

I contacted David Adames, Executive Director of Tourism Hamilton, to offer our assistance and cooperation during the preparations for the Pan Am Games. I proposed several possible ways that HPL may be able to assist. For example, the new Market and Library are preparing for the potential of street festival activities on York Blvd and it may be a good idea to close down York for an arts street festival during the games. It may also be possible to use the Central Library's Wifi capabilities and the Information Commons to support the information needs of visitors or the media. As well, the LED lights for the exterior glass can be programmed by color and we could, perhaps, have them display the colors of flags from participating countries. David is happy to know of our support and to know that we are thinking of ways we might contribute to successful games.



# Hamilton Public Library

**DATE:** November 13, 2009

**REPORT TO:** Chair and Members of the Board

**C.C.:** Ken Roberts, Chief Librarian

**FROM:** Karen Hartog, Administrative Assistant

**SUBJECT:** Nominating Committee

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A Nominating Committee needs to be established in order to meet and review the completed forms submitted by library board members. The Nominating Committee recommends a slate of officers for 2010 at the inaugural meeting scheduled in January.

The library board bylaws state "**A Nominating Committee** composed of four members, one of whom shall be the Chair of the Board, shall be appointed by the Board annually at its November meeting to present the slate of officers for the ensuing year at the next Inaugural Meeting. In a municipal election year, the outgoing Chair of the Board shall appoint the Nominating Committee from among the members of the new Board immediately following the appointment of the new Board by City Council. In each year, the Nominating Committee shall meet before and report to the next Inaugural Meeting following its appointment"

Please complete the attached form and submit it to me no later than the December 16<sup>th</sup> meeting in order that the completed forms can be given to the Chair in preparation for the Nominating Committee meeting. Please submit a form with your name on it even if you do not intend on volunteering for any positions.

November 2009

To assist the Nominating Committee in its appointment process, please indicate whether you are interested in any one or more of the following positions on the Board for 2009. Please return completed forms at the next Board Meeting (December 16, 2009).

**NAME OF BOARD MEMBER:** \_\_\_\_\_

<b>POSITION</b>	<b>PLEASE CHECK IF INTERESTED IN THIS POSITION</b>
<b>Chairperson</b>	
<b>Vice-Chairperson</b>	
<b>Executive Committee Member</b>	
<b>Southern Ontario Library Service Board Representative</b>	
<b>Audit Committee</b>	





# Hamilton Public Library

**DATE:** November 13, 2009  
**TO:** Chair and Members of the Board  
**FROM:** Beth Hovius, Director, Public Service and Collections  
**Cc:** Ken Roberts  
**SUBJECT:** Accessibility for Hamilton Public Library Customers with Disabilities Policy

## Summary

The *Accessibility for Ontarians with Disabilities Act [AODA] 2005* requires municipalities and public sector boards including library boards to meet the requirements of the *Act* and associated *Regulations*. The first of the *Regulations* under the *Act* comes into effect on January 1, 2010. The *Accessibility for Hamilton Public Library Customers with Disabilities Policy*, which is attached for approval, reflects the specific expectations of Ontario Regulation 429/07, *Accessibility Standards for Customer Service*.

## Strategic Relevance:

Compliance with AODA requirements is relevant within all three strategic pillars of our organization as compliance will Strengthen Communities, Strengthen Individuals and Strengthen our Organization.

## Background

The *Accessibility for Ontarians with Disabilities Act [AODA] 2005* when fully implemented will replace the *Ontarians with Disabilities Act [ODA] 2001*. The legislation will apply to both public and private sector organizations and the current target date for full implementation is 2025.

The *AODA* is intended to substantially improve accessibility for Ontarians by establishing, implementing and enforcing accessibility standards in the broad areas of customer service, employment, the built environment and information and communications. More specific standards targeting individual sectors may also be developed under this legislation. To date, only one sector-specific standard has been drafted. It targets passenger transportation within municipal and provincial jurisdiction.

By Ontario Regulation 429/07 the Government of Ontario has established *Accessibility Standards for Customer Service*. This is the only accessibility Regulation currently in place although draft standards for employment, the built environment, information and



communication and transportation have been released for public comment and will be established.

**Required Policies and Procedures**

The Hamilton Public Library Board must have in place a policy governing the provision of its collections and services to persons with disabilities as mandated by the *AODA*. Additionally, it must ensure that its practices and procedures are consistent with the *AODA Customer Service Standards* and that its employees are appropriately trained to allow full understanding of their responsibilities under the *AODA* and appreciation of the special needs of persons with disabilities. *AODA* related training of library staff has been occurring and will be completed by year-end.

The attached *Accessibility for Hamilton Public Library Customers with Disabilities Policy* was developed based on information in the Acts and Regulation, information received from the Ministry and compliance discussions held at the Ontario Library Association SuperConference and the City Access and Equity Committee meetings.

***Annual Accessibility Report and Plan***

Annual reporting requirements regarding Accessibility Plans have been in effect since the enactment of an earlier statute, the *Ontarians with Disabilities Act, 2002*. The *Annual Accessibility Report* will be available at future meeting of the Board.



## **Accessibility for Hamilton Public Library Customers with Disabilities Policy**

### **Policy Level**

Hamilton Public Library Board

### **Author**

Draft created by HR/K. Deiter

### **Date**

December 2009

### **Next Review Date<sup>1</sup>**

December 2010

### **Purpose**

The purpose of this policy is to ensure that the Library is compliant with the requirements of the *Ontarians with Disabilities Act (ODA)*<sup>2</sup> and the *Accessibility for Ontarians with Disabilities Act (AODA)*<sup>3</sup>.

### **Scope**

This policy addresses accessibility policies and standards and includes areas outlined in the *Accessibility Standards for Customer Service*<sup>4</sup> regulation. This policy applies to all persons who provide library services.

“Accessibility” is a set of qualities of a library service or facility that enables people with disabilities to get to, find, reach and use the service or facility, with or without the help of special assistive devices. Accessible library services include collections, programs, meetings and facilities that are readily usable by a customer, regardless of his or her abilities.

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<sup>1</sup> Policy must be reviewed by Board annually at the time of the publication of its *Annual Accessibility Report and Plan*

<sup>2</sup> Ontario. Statutes of Ontario. Ch. 32, *Ontarians with Disabilities Act*. 2001.

<sup>3</sup> Ontario. Statutes of Ontario. Ch.11, *Accessibility for Ontarians with Disabilities Act*. 2005.

<sup>4</sup> Ontario. Regulation. 429/07, *Accessibility Standards for Customer Service*. 2007



Accessible formats include large font, font/background colour combinations, braille, audiotape, oral presentation, electronic format or other format that makes a document or collection accessible to a library customer.

“Library Services” means what the Library does for, or offers to, the public and includes reference, referral and readers’ advisory services, collections, circulation services, technology, programming and outreach.

“Persons who Provide Library Services” means employees, volunteers, Board members, students on placement or other persons engaged in the provision of Library Services to our customers and includes third parties who may create library services or deal with customers on the Library’s behalf.

“Disability or Disabilities” means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness, and without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide or service dog or on a wheelchair or other remedial appliance or device, an intellectual development disability, a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, a mental disorder, or an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997. Disabilities can be visible, hidden, permanent or temporary. Interpretative decisions relating to this definition made under the Ontario Human Rights Code are accepted as included in this definition.

### **Policy Statement**

The Hamilton Public Library is committed to providing Library services that are accessible to all persons who wish to obtain and use Library services. Library services will be relevant, inclusive and responsive to community needs and will comply with the requirements of the *Ontarians with Disabilities Act* and the *Accessibility for Ontarians with Disabilities Act*. Each member of the community, including persons with disabilities, has an equal opportunity to use Hamilton Public Library services. All library services will be provided in a manner that respects the dignity and independence of persons with disabilities. The Library will strive to provide library services in a way that meets the specific needs of persons with disabilities and in a way that is convenient and accessible to persons with disabilities. When communicating with a person with a disability, the Library will do so in a manner that takes into account the person’s disability.

### Temporary Service Disruptions

The Library will make reasonable effort to provide notice of planned or unplanned disruption of library services to the public, including information about the reason for the



disruption, its anticipated duration and a description of alternative facilities or services, if any, that may be available. In the case of unplanned disruption, advance notice will not be possible. Notice will be given to the public by posting the information at a conspicuous place on affected premises and by posting notice on the Library website, and by such other method as is reasonable in the circumstances. The Library will have a procedure document that sets out the steps to be taken in connection with a temporary disruption and, upon request, will give a copy of the document in an accessible format to any member of the public.

#### Assistive Devices

Persons with a disability may provide their own assistive device for the purpose of obtaining or using Library Services and may have free access to assistive devices available in the Library. An assistive device is any product, instrument, equipment or technological aid used by persons with disabilities to help prevent, compensate, relieve or neutralize a disability and which helps a person with a disability to carry out activities or to gain access to library services.

Exceptions may occur in situations where the Library has determined that the assistive device may pose a risk to the health and safety of the person with a disability or to the health and safety of others on Library premises. In these situations, the Library may offer a person with a disability other reasonable measures to assist him or her in obtaining and using library services, where the Library has such other measures available. It is the responsibility of the person with a disability to ensure that his or her assistive device is operated in a safe and controlled manner at all times.

#### Service Animals

Persons with a disability may enter Library premises accompanied by a service animal and may keep the animal with them. Service animals are animals that are individually trained to carry out tasks for people with disabilities. Service animals are generally dogs but do include other animals such as monkeys. If it is not readily apparent that the animal is a service animal, Library staff may ask the person for confirmation of the animal's status. It is the responsibility of the person with a disability to ensure that his or her service animal is kept under control at all times.

#### Support Persons

Persons with a disability may enter Library premises with a support person to assist with communication, mobility or medical needs or with access to Library Services and may have access to the support person while on the premises. The Library may require a person with a disability to be accompanied by a support person while on Library premises in situations where it is necessary to protect the health and safety of the person with a disability or the health and safety of others on the Library premises. A support person, when assisting a



person with a disability to obtain or use Library Services, will be permitted to attend at no charge where an admission fee is applicable. Upon request, persons with disabilities may be issued a duplicate library card, at no charge, for use by a support person.

#### Training

The Library will ensure that all persons that provide library services to whom this policy applies receive training as required by the Accessibility Standards for Customer Service. Training will be provided as part of orientation training for new employees and on a continuing basis as required. A record of training will be maintained in the Human Resources Department. The amount and format of training will be dependent on a person's interactions with Library users. The training will include a review of the purpose of the AODA and the requirements of the *Accessibility Standards for Customer Service* (Ontario Regulation 429/07), information about how to interact and communicate with customers with various types of disabilities and what to do if a person with a disability is having difficulty gaining access to Library Services. The training will help persons providing library services develop understanding of how to interact with persons with disabilities including those who use assistive devices or who require the assistance of a support person or service animal. The training will also provide orientation to this Policy, related procedures and guidelines and to the use of equipment and devices available on Library premises or through the website that may help with the provision of Library Services to persons with disabilities.

#### Consultation and Feedback

The Hamilton Public Library will consult with members of the public and community stakeholders when considering or reviewing customer service practices, service delivery channels, types of services and new buildings or renovations to current buildings. Public meetings for the purpose of consultation will be advertised in advance, will be held in accessible locations and accessibility services will be provided when a request is received in advance of the meeting. Additionally, the Hamilton Public Library will have in place a procedure for receiving and responding to feedback about how it provides library services to persons with disabilities. Such feedback from a member of the public may be given by telephone, in person, in writing, in electronic format or through other methods.

#### Annual Accessibility Report and Plan

The Hamilton Public Library will annually describe its activities relating to barrier-free design of library services and buildings. It will report the measures the Library has taken to identify, remove and prevent physical and attitudinal obstacles and promote free movement of persons with disabilities in a manner that is consistent with regulations, standards or codes of practice. The *Annual Report and Accessibility Plan* will report the measures in place to ensure that the Library assesses its policies, programs, practices and services to determine their effect on accessibility for persons with disabilities and the measures that the Library intends to take in the coming year to identify, remove and prevent barriers to



persons with disabilities. The *Annual Report and Accessibility Plan* will also provide a list of the by-laws, policies, programs, practices and services that the organization will review in the coming year in order to identify barriers to persons with disabilities.

#### Availability of Documents

This *Policy* and related procedures and forms and the Library's *Annual Accessibility Report and Plan* will be available on the Library's website. Additionally, a copy of this *Policy* and related procedures and forms will be provided in an accessible format upon request. No fees will be charged for the provision of documents required by this *Policy*.

#### **Inquiries**

Any inquiries related to this *Policy* or requests for documents related to this *Policy* may be directed to library staff at any public service point. Staff will respond as they are able and may refer the inquiry within the organization, including to the Chief Librarian.



# Hamilton Public Library

**Date:** November 13<sup>th</sup> 2009  
**To:** Chair and Members of the Board  
**c.c.** Ken Roberts, Chief Librarian  
**From:** William Guise, Director, Finance and Facilities  
**Subject:** Memorandum of Understanding HPL/HFM

---

## **RECOMMENDATION:**

That the Memorandum of Understanding between the City of Hamilton (Hamilton Farmers Market) and the Hamilton Public Library Board governing the framework to manage the HFM/HPL Renovation Project; and

That the Chief Librarian and Director of Finance and Facilities be authorized to sign the memorandum of understanding on behalf of the Board.

## **BACKGROUND:**

The renovations to both the Central Library and the Hamilton Farmers Market are being managed by the Environment and Sustainable Infrastructure Division of the Public Works Department (ESI) on behalf of the two (2) major stakeholders, namely the Hamilton Public Library Board and the Hamilton Farmers Market.

While the Project will be managed as one, designed by one Design Consulting group and built by one General Contract, program input is provided by the two (2) Stakeholders. Hence the need for this Memorandum of Understanding providing a framework for a defensible and equitable process, scope and budget assessment as well as decision making.



DATE:	09 NOV 2009	VER. DATE:	09 NOVEMBER 2009
VER. NO:	3.0B	OWNER:	CITY OF HAMILTON

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**PROJECT MEMORANDUM OF UNDERSTANDING AND GUIDELINES FOR  
JOINT SPONSORSHIP**

Between:

**CITY OF HAMILTON (HAMILTON FARMERS MARKET)**  
(the "HFM")  
OF THE FIRST PART

-and-

**HAMILTON PUBLIC LIBRARY BOARD (CENTRAL LIBRARY)**  
(the "HPL")  
OF THE SECOND PART

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**PROJECT:  
FARMERS MARKET AND LIBRARY RENOVATIONS**

**TABLE OF CONTENTS**

	<b>Page</b>
1. DEFINITIONS .....	3
1.01 Defined Terms .....	3
2. HISTORY.....	3
2.01 Hamilton Farmers Market.....	3
2.02 Hamilton Public Library Board.....	3
3. PROJECT BACKGROUND.....	4
4. SCOPE OF PROJECT.....	4
4.01 Overall Control of Project.....	4
5. APPOINTMENT OF PROJECT MANAGER .....	4
5.01 Appointment .....	4
5.02 Commencement and Completion of Construction .....	4
5.03 Term .....	4
5.04 Construction Documents and Related Agreements .....	4
5.05 Scope of Authority .....	4
5.06 Covenants of the HFM and HPL.....	5
6. SCHEDULING .....	5
6.01 Schedule .....	5
7. AMENDMENTS AND MODIFICATIONS .....	5
7.01 Amendments and Modifications .....	5
8. PROJECT FUNDING .....	5
8.01 Funding of Project Costs .....	5
8.02 Draw Certificate.....	6
8.03 Cost Allocation .....	6
8.04 Project Proportion Costs .....	6
8.05 Exception.....	7
9. COMMUNICATIONS .....	7
9.01 Project Communication .....	7
10. COORDINATION .....	7
10.01 Coordination.....	7
11. DISPUTE RESOLUTION.....	7
12. NOTICE.....	7
13. MISCELLANEOUS.....	7

## ARTICLE I - DEFINITIONS

### 1.00 **Defined Terms**

1.01 In this MOU the following terms will have the meanings indicated:

- (a) "Architect" means the successful proponent in the upcoming RFP process for Prime Design Consultant.
- (b) "Cost Over-Runs" means related additional Project Costs that exceed the approved Project Budget.
- (c) "ESI" means the Environment and Sustainable Infrastructure Division of the Public Works Department of the City of Hamilton.
- (d) "Final Completion" means the date upon issuance of the Certificate of Substantial Completion for the Project.
- (e) "HPL" means the Hamilton Public Library Board.
- (f) "HFM" means the City of Hamilton (Hamilton Farmers Market).
- (g) "HFM Renovation Project" means renovations to the Hamilton Farmers Market.
- (h) "HPL Renovation Project" means renovations to HPL's Central Library.
- (i) "HFM/HPL Renovation Project" means jointly the HFM Renovation Project and HPL Renovation Project merged as a single project.
- (j) "MOU" means this Memorandum of Understanding.
- (k) "Project" means the HFM/HPL Renovation Project.
- (l) "Project Budget" means the target budget figure covering the Soft Costs and Hard Costs of the Project.
- (m) "Project Manager" means ESI and its representatives.
- (n) "Stakeholder" means the HPL and the HFM.

## ARTICLE II - HISTORY

### 2.01 **The Hamilton Farmers Market**

The Hamilton Farmers Market was originally founded in 1837, at the corner of York & James Streets. Andrew and Mary Miller transferred a small parcel of land to the President and Board of Police of the Town of Hamilton, to be utilized specifically for a Market.

The Market has been in its current location, 55 York Blvd. (next to the Hamilton Public Library), since August 1980. The modern architectural design provides a mezzanine level and lower level, consisting of 176 stands and approximately 80 stallholders. All indoors!

Specialty products are also imported from many other countries around the world. This excellent product mix is offered each market day and attracts regular customers from the local community and tourists from all over the world.

### 2.02 **Hamilton Public Library Board**

On January 7, 1889 the voters of the City of Hamilton passed a by-law to create a public library and by the following month the first Library Board had been formed. On March 7<sup>th</sup> the first chief librarian was appointed: Richard T. Lancefield. The cornerstone of the first Hamilton Public Library was laid on October 23<sup>rd</sup> and the library was officially opened by Lord and Lady Aberdeen on September 16, 1890.

The library flourished in the early years of the twentieth century and on May 7, 1908 the first branch library was opened on Barton Street East. The Library Board began looking at building a new Main Library and, after receiving a grant from Andrew Carnegie of New York, constructed a new building on the south

side of Main Street West, across the street and west of the original building. The new Main Library was officially opened by the Lieutenant Governor [and Hamiltonian], Sir John Morison Gibson on May 5, 1913.

This library served Hamilton well for the next six decades. In the 1960's a drive began to find a new location for a larger library. A location was found in the civic square development and construction began. In May of 1980 H.R.H. the Prince Philip officially opened the new building and in October of 1980 a new Central Library was opened in Lloyd D. Jackson Square.

### **ARTICLE III – PROJECT BACKGROUND**

- 3.01 The City of Hamilton through ESI has initiated a project consisting in extensive renovations to both the Central Library and the Hamilton Farmers Market (the "HFM/HPL Renovation Project"). The two (2) major program Stakeholders on this Project are the HFM and the HPL.
- 3.02 While the Project will be managed as one, designed by one Design Consulting group and built by one General Contract, program input is provided by the two (2) Stakeholders. Hence the need for this MOU providing a framework for a defensible and equitable process, scope and budget assessment as well as decision making.

### **ARTICLE IV – SCOPE OF PROJECT**

#### **4.01 Overall Control of Project.**

This Project is managed and will be delivered as one project only. The presence of two (2) major Stakeholders requires a framework for decision making, budgetary and scope issues. The latter will deal with the components as follows:

- (a) Issues of common interest such as shared support/infrastructure systems (HVAC, Power, etc.) or other projects taking place at the same time and affecting this Project (e.g. York Blvd.);
- (b) Deviations or revisions to the approved scope within a given sub-project; and
- (c) The overall control of the Project will rest with ESI.

### **ARTICLE V - APPOINTMENT OF PROJECT MANAGER**

#### **5.01 Appointment.**

The HFM and the HPL appointed ESI as the Project Manager for this Project.

#### **5.02 Commencement and Completion of Construction.**

ESI will work diligently to cause the completion of design and construction provided the resources required are available in a timely manner.

#### **5.03 Term.**

This process will commence as soon as this MOU is endorsed by all parties and will terminate upon the date of Final Completion is achieved and Final Payment is made.

#### **5.04 Construction Documents and Related Agreements.**

ESI will manage the delivery of this Project for the benefit of the Stakeholders. It will direct consultants and contractors in the production of the necessary documentation to support the project effort through its life cycle from design, design development, permits, tenders, construction and substantial completion.

#### **5.05 Scope of Authority.**

Absolute authority is given to ESI to act on behalf of the Stakeholders to deliver the Project.

#### 5.06 HFM and the HPL - Communications.

All communications must flow through ESI. Prompt review and approvals and/or comments are expected from HFM and HPL when called to do so.

### ARTICLE VI - SCHEDULING

#### 6.01 Schedule.

The Project schedule will be firmed up and copied to the HFM and HPL by the ESI. If any Stakeholder requires earlier delivery, it will be seriously considered and the implications to the Project Costs and/or scope will be assessed as it affects all other Stakeholders by the Project Manager. Any additional costs incurred in the expedition of the Project schedule will be funded by the party requesting the revision.

Also if any Stakeholders require additional work which may affect the overall Project schedule, ESI will review the additional work and its impact on schedule with both parties and take the appropriate necessary action in the common interest of the Project.

Should a conflict or dispute arise from a scheduling issue, refer to Article XI of this MOU.

### ARTICLE VII - AMENDMENTS AND MODIFICATIONS

#### 7.01 Amendments and Modifications.

- (a) The only Project decisions brought forth to Stakeholders during construction will be the approval of any change orders that affect the individual Stakeholder's program or final design.
- (b) From time to time when deemed necessary by ESI, the Stakeholders will be copied a summary of all contemplated change orders and actual change orders on this Project.

### ARTICLE VIII - PROJECT FUNDING

#### 8.01 Funding of Project Costs.

- (a) The project costs of the HFM/HPL Renovation Project (the "Project Costs") include but are not limited to the following:
  - (i) Soft Costs: The costs for items and activities other than those directly incorporated into the building or structure but considered necessary to complete the Project including but not limited to Project management, design consultants (Architects and Engineers), survey, permit fees, site plan fees, due diligence including but not limited to environmental, geotechnical, archaeology, and designated substance; and
  - (ii) Hard Costs: The costs directly attributed to the construction of the Project, such as but not limited to the labour, material, equipment, and subcontracts associated with renovations to, which includes but not limited to, the Site Works, Common Area, HFM facility and HPL facility.
- (b) Unless otherwise specified in sub-sections (c) and (d) below, Project Costs will be divided proportionally between the HFM and the HPL (the "Cost Contribution Percentage") as per the Conceptual Budget.
- (c) Soft Costs are to be divided between the HFM and HPL using the Pre-Tender estimate proportions (based on square footage), beginning with the "Conceptual Budget" as provided below:
  - (i) All costs for Building Permit, Site Plan Approval, testing and inspections are to be divided with fifty percent (50%) allocated to the HPL facility and fifty percent (50%) allocated to the HFM facility;

- (ii) Due diligence documentation (Geotechnical Reports, Environmental Reports, Archeological Surveys, Legal Surveys, etc.) are to be divided with fifty percent (50%) allocated to the HPL facility and fifty percent (50%) allocated to the HFM facility; and
  - (iii) All costs for furniture, fixtures and equipment shall be divided by their actual costs to the HPL facility and the HFM facility.
- (d) Hard Costs are to be divided and paid for as agreed by HFM and HPL, using the Pre-Tender estimate proportions, beginning with the Conceptual Budget.
  - (e) The ESI will manage and control the Project Construction Budget once it has been approved in accordance with this MOU and authorize all spending on the HFM/HPL Renovation Project in accordance with such budget, subject to the HFM's and HPL's approval as provided for herein.
  - (f) The Cost Contribution Percentage will be based on the conceptual estimate and the stipulated funds will be applied in accordance with Section 8.03 until depleted. Upon depletion of the funds stipulated in 8.03, then the prorated formula in section 8.04 will apply for any outstanding balances.

#### 8.02 Draw Certificate.

- (a) During the course of the construction of the HFM/HPL Renovation Project and upon the receipt of a draw down certificate from the general contractor, consultants, and/or all other trades, sub-trades and other contractors providing material, labour and service to the Project (the "General Draw Certificate"), the ESI will access the specific accounts to draw the apportioned amounts and perform a reconciling with accounting.
- (b) A Contribution Draw Certificate will be issued by the ESI for an amount representing the HFM's Cost Contribution Percentage of any amount due under a General Draw Certificate.
- (c) A Contribution Draw Certificate will be issued by the ESI for an amount representing the HPL's Cost Contribution Percentage of any amount due under a General Draw Certificate.

#### 8.03 Cost Allocation.

- (a) The HFM agrees to pay SEVEN MILLION, SIX HUNDRED AND SIXTY-FIVE THOUSAND DOLLARS (\$7,665,000) (this amount may change as the baseline budget has not been approved yet) towards the Project Costs.
- (b) The HPL agrees to pay SEVEN MILLION, TWO HUNDRED AND THIRTY THOUSAND DOLLARS (\$7,230,000) (this amount may change as the baseline budget has not been approved yet) towards the Project Costs.

#### 8.04 Project Proportion Costs.

- (a) If the Project funding by HPL is found to be not sufficient for the scope of work required by HPL at the Pre-Tender estimate, the Project Manager will ask HPL to fully fund the difference. Or alternatively, the Project Manager will give options to HPL to omit and/or adjust certain items from scope so as to be within the funding availability.
- (b) If the Project funding by HFM is found to be not sufficient for the scope of work required by HFM at the Pre-Tender estimate, the Project Manager will ask HFM to fully fund the difference. Or alternatively, the Project Manager will give options to HFM to omit and/or adjust certain items from scope so as to be within the funding availability.
- (c) For items of common interests, be it Soft Costs or Hard Costs, any funding requirements that exceed the aggregate sum stipulated in 8.03, the cost over runs will be divided, with fifty percent (50%) allocated to the HPL facility and fifty percent (50%) allocated to the HFM facility (based on the square footage).

8.05 **Exception.**

- (a) Despite any other provision in this MOU, changes to the HPL's program, requested by the HPL or other relevant Stakeholder, save and except the HFM, after final sign-off, are expected to be fully funded by the HPL with respect to any additional costs or scheduling delays affecting the Project.
- (b) Despite any other provision in this MOU, changes to the HFM's program, requested by the HFM or other relevant Stakeholder, save and except the HPL, after final sign-off, are expected to be fully funded by the HFM or other relevant Stakeholder with respect to any additional costs or scheduling delays affecting the Project.

**ARTICLE IX - COMMUNICATIONS**

9.01 **Project Communication.**

All communications on the Project are to be directed through the Project Manager, for distribution to the Stakeholders at ESI's sole discretion.

**ARTICLE X - COORDINATION**

10.01 **Coordination.**

All HFM and HPL Programming (basic or revised) must be coordinated and communicated with the Project Manager.

**ARTICLE XI - DISPUTE RESOLUTION**

11.01 In the event that a dispute arises, ESI's determination will be final.

**ARTICLE XII - NOTICE**

12.01 Notices - all notices to be given pursuant to this MOU shall be sufficiently given if mailed, prepaid and registered:

- (a) in the case of the HFM, addressed to the HFM at:

City of Hamilton  
Community Services Department, Culture Division  
77 James Street North, Suite 305A  
Hamilton, Ontario L8R 2K3  
**Attention: Director of Culture**

- (b) in the case of the HPL, addressed to the HPL at:

Hamilton Public Library Board  
55 York Boulevard  
P.O. Box 2700  
Hamilton, Ontario, L8N 4E4  
**Attention: Director, Finance and Facilities**

unless either party gives notice to the other of a change of address by registered mail. The date of receipt of any such notice shall be deemed to be seventy-two (72) hours after such mailing.

Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of Canada Post shall be deemed to have been received only if delivered personally or sent by prepaid courier.

**ARTICLE XIII - MISCELLANEOUS**

13.01 This MOU is legally binding.

13.02 This MOU is governed by the laws of Ontario.

13.03 Acknowledgment - the parties agree to do or cause to be done, from time to time, all such things, and shall execute and deliver all such documents, agreements and instruments reasonably requested by another party, as may be necessary or desirable to carry out the provisions and intention of this MOU.

\*\*\*\*\*

We have agreed with the spirit and intent of this Memorandum of Understanding.

**CITY OF HAMILTON (HAMILTON FARMERS MARKET)**

Signed for and on behalf of the City of Hamilton by:

Signed \_\_\_\_\_

Name: Anna Bradford  
Title: Director of Culture

Date \_\_\_\_\_

**HAMILTON PUBLIC LIBRARY BOARD**

Signed for and on behalf of the Hamilton Public Library Board by:

Signed \_\_\_\_\_

Name: Ken Roberts  
Title: Chief Librarian

Date \_\_\_\_\_

Signed \_\_\_\_\_

Name: Bill Guise  
Title: Director, Finance and Facilities

Date \_\_\_\_\_





# Hamilton Public Library

**Date:** November 13<sup>th</sup> 2009

**To:** Chair and Members of the Board

**c.c.** Ken Roberts, Chief Librarian

**From:** William Guise, Director, Finance and Facilities

**Subject:** **Operating and Maintenance Agreement for Turner Park**

---

## **RECOMMENDATION:**

That the Operations and Maintenance Agreement between the City of Hamilton, The Hamilton/Burlington Young Men's Christian Association and the Hamilton Public Library Board governing the relationship and their respective rights and obligations in relation to the operation and maintenance of the facility located at 352/356 Rymal Road East and parking lot and related grounds be approved; and

That the Chief Librarian and Director of Finance and Facilities be authorized to sign the agreement on behalf of the Board.

## **BACKGROUND:**

In December 2002 the City, YMCA, Library and the Hamilton Police Services Board signed an Memorandum of Agreement in regard to the construction of a new facility combining the YMCA, Library and Police that agreed to set up an Operations Committee which would oversee the maintenance and operations of the facility. Subsequent to the signing of the agreement a decision was made to separate the facility and grounds of the Police facility from that used by the YMCA and Library and therefore the Police Services Board does not form part of the proposed Operating and Maintenance Agreement.

The facility occupied by the YMCA and Library opened in May of 2009 and all parties of this proposed agreement have been working together cooperatively maintaining the facility and related grounds. This agreement will formalize what has been agreed by the City, YMCA and Library.

**OPERATIONS AND MAINTENANCE AGREEMENT  
TURNER PARK COMMUNITY CENTRE**

**THIS AGREEMENT** made in sixuplicate as of this 1<sup>st</sup> day of March, 2009.

**BETWEEN:**

**CITY OF HAMILTON**

(hereinafter referred to as "City")  
OF THE FIRST PART

-and-

**THE HAMILTON/BURLINGTON YOUNG MEN'S CHRISTIAN ASSOCIATION  
carrying on business as THE HAMILTON/BURLINGTON YMCA**

(hereinafter referred to as the "YMCA")  
OF THE SECOND PART

-and-

**HAMILTON PUBLIC LIBRARY BOARD**

(hereinafter referred to as the "Library")  
OF THE THIRD PART

**WHEREAS** the City, the Library and the YMCA are focused on providing solutions to recreational facility needs in Hamilton, Ontario. Accordingly, the organizations are entering into this Operations and Maintenance Agreement to be the central governing document outlining the relationship and the respective rights and obligations of the parties in relation to the operation and maintenance of the Library facility and related grounds located at 352 Rymal Road East (the "Library Facility"), the YMCA facility and related grounds located at 356 Rymal Road East (the "YMCA Facility"), the common area building and related grounds connecting the Library Facility and the YMCA Facility (the "Common Facility"), and the City owned parking lot and related grounds (the "Parking Lot") all located at Turner Park in the City of Hamilton.

**AND WHEREAS** the Turner Park Community Centre ("TPCC") will consist of approximately 23,681 square foot Library Facility and approximately 50,182 square foot YMCA Facility, these facilities will be connected by a common entrance and circulation space of approximately 4,349 square foot (the "Common Facility") and the City owned parking lot and related grounds (the "Parking Lot").

**AND WHEREAS** the Library Facility will consist of a single-storey building comprised of an open area for stack shelving, children's area, adult lounge, computer room, community activity room, washrooms and a staff services area. The YMCA Facility will be a two-storey building which will house a two tank swimming area, gymnasium, fitness rooms, activity rooms, child care facility, cafe and change rooms. The Common Facility, which joins the YMCA Facility and the Library Facility, will consist of a common entrance and seating area for the YMCA Café.

**AND WHEREAS** the YMCA and the Library as lessee (the "Lessees"), and the City as lessor (the "Lessor"), are parties to Land Leases, all dated March 1, 2007 (as amended, supplemented or otherwise modified from time to time pursuant thereto, the "Leases"), pursuant to which the Lessees agreed to lease from the Lessor, and the Lessor agreed to lease to the Lessees certain properties located at 352 Rymal Road East (Library as lessee) and 356 Rymal Road East (YMCA as lessee), Hamilton, Ontario and the common space located between the Library Facility and YMCA Facility.

**AND WHEREAS** the YMCA and the City are parties to a certain Construction Agency Agreement dated March 1, 2007 to guide their relationship and activities for the development of the Turner Park Community Centre (formerly known as the South Mountain Community Centre).

**AND WHEREAS** this Operations and Maintenance Agreement is intended to describe the responsibilities and obligations of the City, the YMCA and the Library respecting the operations and maintenance of the TPCC located at Turner Park on Rymal Road in the City of Hamilton.

**NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE I - INTERPRETATION**

1.1 **Definitions.** Capitalized words and phrases used herein shall, for all purposes of this Agreement and the schedules hereto (unless there is something in the subject matter or context inconsistent therewith or unless otherwise defined herein), have the meaning set out in Article II.

1.2 **Headings.** Headings, recitals and provisions of a table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 **References.** Unless otherwise expressly stated, references herein to a schedule or an article, section, paragraph, clause or other subdivision is a reference to such schedule to this Agreement or to such article, section, paragraph, clause or other subdivision within this Agreement.

1.4 **Parties.** Reference in this Agreement to the "parties" shall mean the parties to this Agreement, and a reference to a "party" shall mean one of the parties to this Agreement.

1.5 **Number and Gender.** Whenever the context so requires, terms used herein importing the singular number only shall include the plural and vice versa, and words importing any gender shall include all other genders.

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

1.7 **Monetary References.** Whenever an amount of money is referred to herein, such amount shall, unless otherwise expressly stated, be deemed to be Canadian dollars.

1.8 **Accounting Terms and Principles.** Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with GAAP, as defined herein.

**ARTICLE II - DEFINITIONS**

2.1 **Definitions.** In this Agreement, the recitals and in the schedules hereto, unless there is something in the subject matter or context inconsistent herewith, the following terms and expressions shall have the following meanings:

- (a) **"Agreement"** means this Operations and Maintenance Agreement.
- (b) **"Approvals"** means all approvals, authorizations, consents, licenses, permits, qualifications or orders of any Government Authority required by Laws, or any waivers or exemptions from the requirements for any such approvals, authorizations, consents, licenses, permits, qualifications or orders, provided that any such waiver or exemptions are in full force and effect.

- (c) **"Building Systems"** means: (i) the heating, ventilating and air-conditioning equipment and facilities and all other systems, services, installations and facilities from time to time installed in or servicing the TPCC (or any portion thereof) including, but not limited to, the elevators and the following systems, services, installations and facilities: mechanical (including plumbing, sprinkler, drainage and sewage), electrical and other utilities, lighting, sprinkler, life safety (including fire prevention, communications, security and surveillance), BAS computer (including environmental, security and lighting control), ice and snow melting, refuse removal, window washing, and PA System; and (ii) all machinery, appliances, equipment, apparatus, components, Building Automated System (BAS) computer software and appurtenances forming part of or used for or in conjunction with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls and the structures and shafts housing and enclosing any of them.
- (d) **"Business Day"** means a day in which the banks are open for business in the City of Hamilton, Province of Ontario, excluding Saturday and Sunday.
- (e) **"Capital Renewal Reserve Fund"** means the fund established pursuant to Article VII of this Agreement.
- (f) **"Centre"** means the Turner Park Community Centre.
- (g) **"City"** means the City of Hamilton.
- (h) **"Commencement Date"** means the date one (1) months prior to the date the Centre is available for public use, as agreed between the parties.
- (i) **"Common Space"** means those external areas, facilities, utilities, improvements, equipment and installations within, adjacent to or outside the Centre which serve or are for the benefit of the Centre, and which, from time to time, are not designated or intended by the YMCA, the City or the Library exclusive use and which include all corridors, all walkways and sidewalks, all landscaped and planted areas, the roof and exterior walls of the Centre, exterior and interior structural elements and walls of the Centre, parking and entrances and exits thereto and all structural elements thereof, all access ways, truck courts, driveways, delivery passages and related areas, and generally all areas forming part of the Centre which do not constitute rented or rentable premises, save and except the Common Facility. The seating area for the YMCA café is included in the Common Space.
- (j) **"GAAP"** means generally accepted accounting principles which are in effect in Canada, as they may be amended from time to time.
- (k) **"Government Authority"** means any federal, provincial, or municipal government and any political subdivision thereof or any government, quasi-government, judicial, public or statutory instrumentality, administrative agency, authority, body or entity;
- (l) **"Lands"** mean the lands known municipally as 352 and 356 Rymal Road East, and connecting Common Facility and Parking Lot at Turner Park in Hamilton, Ontario as outlined in Schedule "B".
- (m) **"Land Leases"** means the land leases with the YMCA and the Library as lessee (the "Lessees"), and the City as lessor (the "Lessor"), all dated March 1, 2007 (as amended, supplemented or otherwise modified from time to time pursuant thereto, the "Leases"), pursuant to which the Lessees agreed to lease from the Lessor, and the Lessor agreed to lease to the Lessees certain properties located at 352 Rymal Road East (Library

as lessee) and 356 Rymal Road East (YMCA as lessee), Hamilton, Ontario, and the common space located between the now constructed Library Facility and YMCA Facility.

- (n) "**Law**" or "**Laws**" means common law and any statute, regulation, ordinance, standard, code, order, permit, license, rule, by-law, guideline or policy of any Government Authority, as the same may be amended, substituted, replaced or enacted from time to time;
- (o) "**Library**" means the Hamilton Public Library Board.
- (p) "**Parking Lot**" means the City owned parking lot and related grounds that connects to the YMCA Facility, the Library Facility and the Common Facility.
- (q) "**Person**" means a natural person, corporation, partnership, association, business trust, trust, joint venture, company, firm or individual or any federal, provincial or municipal government; or any agency, trustee, executor, administrator or legal representative thereof.
- (r) "**Project Committee**" means one (1) member from the City, two (2) from the YMCA and one (1) from the Library.
- (s) "**Property**" means the development which is comprised of the Lands together with the improvements, buildings, fixtures and equipment (whether chattels or fixtures) on such Lands (but not including tenants' fixtures, improvements or chattels) from time to time.
- (t) "**Proportionate Share**" means the proportional cost allocation to the YMCA and to the Library, which shall be sixty-three percent (63%) allocated to the YMCA and thirty-seven percent (37%) allocated to the Library for all formula and shared payment obligations.
- (u) "**Stakeholders**" means the City, the YMCA, and the Library, the parties to this Agreement.
- (v) "**Tenant**" means the YMCA and the Library.
- (w) "**Term**" means a period of seventy-three (73) years from the Commencement Date.
- (x) "**Turner Park Community Centre**" means the Lands which consists of the Library facility and related grounds located at 352 Rymal Road East (the "Library Facility"), the YMCA facility and related grounds located at 356 Rymal Road East (the "YMCA Facility"), the common area building and related grounds connecting the Library Facility and the YMCA Facility (the "Common Facility"), and the City owned parking lot and related grounds connecting the Library Facility, the YMCA Facility and the Common Facility (the "Parking Lot") all located at Turner Park in the City of Hamilton.
- (y) "**YMCA**" means The Hamilton/Burlington Young Men's Christian Association carrying on business as The Hamilton/Burlington YMCA.

2.2 **Operating Agreement.** "This Agreement" or the "Operations and Maintenance Agreement" means this Operations and Maintenance Agreement, inclusive of all recitals, schedules, and all instruments in writing that by their term expressly supplement, amend, waive or vary the provisions of this Agreement.

2.3 **Schedules.** The following Schedule(s) are or will be attached to and form part of this Agreement:

Schedule "A"	Capital Renewal Reserve Fund
Schedule "B"	Plan of Lands
Schedule "C"	Form Of Capital Fund Draw Certificate

### **ARTICLE III – TERM OF AGREEMENT**

3.1 The Term shall be for a period of seventy-three (73) years and shall commence on the Commencement Date, unless terminated earlier pursuant to the provisions of this Agreement.

3.2 The Project Committee will undertake formal reviews on an annual basis of this Agreement for the first five (5) years after the Commencement Date. Subsequent to the first five (5) year term, formal reviews of this Agreement will be undertaken by the Project Committee at not less than five (5) year intervals or sooner if agreed to all the Stakeholders. If the Stakeholders conclude by consensus that the Agreement requires revision, a revised agreement will be drafted by the Project Committee and reviewed by their solicitors. Any revisions to the Agreement must be endorsed by the Stakeholders and remain subject to the necessary Approvals.

### **ARTICLE IV – OPERATING PRINCIPLES**

4.1 This Agreement is intended to provide a framework to define the mutual roles and responsibilities of the Stakeholders. The Stakeholders agree to continue to develop their mutual roles and responsibilities in developing, managing and operating the Centre, and agree that the following principles will apply in relation thereto:

- (a) the Stakeholders recognize and support the independence and the autonomy of each other and their respective mandates including the recognition of their charitable status and principles;
- (b) the Stakeholders shall co-ordinate the development and operation of the Centre as a team;
- (c) the Stakeholders shall strive to share space and programming where possible;
- (d) the Stakeholders shall ensure an inclusive environment that provides a variety of ways to access the programs and services within the Centre;
- (e) the Stakeholders shall share all relevant information and communications as they relate to the Centre;

### **ARTICLE V – PROJECT COMMITTEE**

5.1 **Establishment of the Project Committee and Responsibilities.** The Stakeholders will establish a Project Committee which Committee will be responsible for establishing policies, practices, standards and responsibilities for the shared use of the Common Space, community access and the maintenance and operations of the Centre.

Without limiting the generality of the forgoing, the Project Committee will:

- (a) represent the City, the YMCA and the Library who share accountability for the effective operation of the Centre;

- (b) ensure that the Principles set out in Article IV of this Agreement continue to guide the management and ongoing development of the Centre;
- (c) ensure that the rights, responsibilities and obligations of all agreements between the City, the YMCA and the Library, including this Agreement are met;
- (d) develop and manage an annual budget for shared services, repairs and long term capital planning;
- (e) develop longer term capital and program renewal plans and formulate cost sharing strategies;
- (f) provide reports to the City Council, the YMCA Board and the Library Board;
- (g) establish and oversee the standards and responsibility for operating and maintaining the Centre;
- (h) address issues, problems and disputes that may arise and establish processes in relation thereto; and
- (i) act as a liaison and communications link between the City, the YMCA, and the Library.

**5.2 Composition of the Project Committee.** The Project Committee will consist of four (4) members, two (2) of which will be appointed by the YMCA, and one (1) of which shall be appointed by each of the City and the Library. Each member shall be entitled to one (1) vote. For the Project Committee's first term, the chairperson shall be the representative appointed by the City. Thereafter the Chairperson will rotate annually between the Stakeholders.

**5.3 Project Committee Meetings.** The Project Committee will meet at least twice per year. Meetings will be held at the call of the Chairperson. To ensure an effective decision making process, it is essential that all Project Committee members regularly attend meetings since their absence may defer the resolution of issues and result in no decisions, delays or future disagreements. As required, Project Committee members may request that other representatives from their representative organizations attend the Project Committee meetings to address discussion items on the meeting agenda.

**5.4 Quorum.** A quorum for any meeting of the Project Committee shall be at least four (4) members of the Project Committee consisting of two (2) members from the YMCA, one (1) member from the City and one (1) member from the Library.

**5.5 Project Committee Decision Making.** The Project Committee's decision making process shall recognize that:

- (a) the Project Committee must make decisions that will reflect the views of the Stakeholders and have a basis in an agreed upon action;
- (b) the Project Committee will work diligently to reach a decision on all matters;
- (c) each member has equal and unfettered voting privileges on all matters requiring a decision;

- (d) Project Committee members share common objectives and have a desire to solve all problems that must be addressed to meet the Operating Principles [Article IV] of this Agreement;
- (e) where a matter requires board or council approval, then from time to time, decisions may have to be deferred to allow members to seek direction and Approvals from their Board or Council;
- (f) Project Committee members should review decisions made at subsequent meetings to reflect any further input received by their respective Boards or Council;
- (g) no binding decision(s) will be made without a quorum; and,
- (h) all decisions must be unanimous subject to the Dispute Resolution Mechanism in Article IX – DISPUTE RESOLUTION.

**5.6 Decision Making Process.** The Project Committee's decision making process is described as follows:

- (a) The Project Committee will be fully prepared to address all issues and matters requiring decision. It is essential that all Project Committee members utilize technical information and advice, and communicate positions clearly and concisely. This preparation will go a long way to prevent conflicts and disagreements in making decisions or reaching agreement.
- (b) Project Committee members, to the extent possible, should be provided the necessary guidance (by way of policies or principles) from their operating Boards and City Council, as the case may be, to participate in the decision making process with assurance that any decision made by the Project Committee will be ratified by their respective Board or Council. If a decision is beyond the authority of a member and requires direction or Approval from their Board or City Council, then the member must declare their situation and indicate when (or the process) the decision can be considered.
- (c) Decisions are best made with full agreement. If there is not full agreement, then the Project Committee will undertake to achieve consensus. This process will have full regard for establishing the "position" of the members using the following consensus scale:
  - (i) I can say an unqualified "yes" to the decision. I am satisfied that the decision is an expression of the wisdom of the group.
  - (ii) I find the decision perfectly acceptable.
  - (iii) I can live with the decision although I am not especially enthusiastic about it.
  - (iv) I do not fully agree with the decision and need to register my view about it. However, I do not choose to block the decision. I am willing to support the decision because I trust the wisdom of the group.
  - (v) I do not agree with the decision and feel the need to stand in the way of this decision being accepted.
  - (vi) I feel that we have no clear sense of unity in the group. We need to do more work before consensus can be reached.



- (d) If consensus cannot be reached to allow a decision to go forward, Article IX – DISPUTE RESOLUTION shall apply.
- (e) In regards to clauses 5.6(c) and (d), Project Committee members must realize the difficulty of decision making outside the Project Committee structure. Conflict resolution is a positive approach, mediation and, directly arbitration result in win/lose situations and do not take advantage of the diverse resources within the Project Committee.

#### **ARTICLE VI – COST SHARING**

6.1 The City, the YMCA and the Library shall, at its own expense and cost, operate, maintain and keep their designated areas of the Centre in good and substantial repair and where possible implement preventative maintenance practices. The YMCA shall ensure that tenants under its contract also comply with the requirement to keep their leased area of the Centre in good and substantial repair. The following outlines the cost-sharing allocation of costs related to the operations and maintenance of the Centre:

- (a) **Building Life Safety Systems.** The Centre has a common system to monitor and detect fire, smoke and carbon dioxide. The YMCA will be responsible for the regular inspection and maintenance of the Building Life Safety Systems. Access to the Building Life Safety Systems will be provided by the YMCA to the City and the Library, if required for inspection and maintenance purposes. The costs to maintain Building Life Safety Systems will be allocated based on the Proportionate Share.
- (b) **Cleaning.** The YMCA and the Library shall be responsible for cleaning and maintaining their designated areas of the Centre, unless the Library requests the YMCA to clean and maintain the Library Facility. The YMCA shall then be responsible for cleaning and providing minor maintenance for the Library Facility to Library approved cleaning and maintenance standards. The Library shall be responsible for paying the YMCA for the service. Either party shall maintain the right to cancel the cleaning agreement upon three (3) months notice to the other Stakeholders.

The YMCA will be responsible for cleaning of the Common Facility with the cleaning costs to be allocated based on the Proportionate Share. Cleaning of the Common Facility will meet the YMCA approved cleaning standards.

- (b) **Electricity and Outdoor Lighting.** Each Stakeholder will be required to pay their respective electrical utility bill. If not separately metered, the allocation of outdoor lighting costs which includes their allocated electrical costs for driveways, roadways and internal roadways will be shared on a fifty percent (50%) responsibility to the YMCA and fifty percent (50%) to the Library cost allocation.

Operating hours for outdoor lighting will be dependent on visibility and seasonal daylight variations, any variations to be decided on a daily basis by the YMCA. The YMCA and the Library will be responsible for operations of outdoor lighting to meet the mutually agreed operating schedule.

The YMCA will be responsible for the regular inspection and maintenance of the outdoor lighting. The inspection and maintenance costs for the outdoor lighting will be shared based on the Proportionate Share.

- (c) **Heating and Cooling.** The YMCA and the Library have separately metered heating, ventilating, and air conditioning systems ("HVAC Systems") with vents into the Common Facility. The YMCA and the Library will pay their respective utility bills which include their responsibility to heat and cool the Common Facility. Access to the HVAC Systems will be provided by the YMCA to the City and the Library, if required for inspection and maintenance purposes.

The YMCA and the Library will pay their respective allocation of inspection and maintenance costs.

- (d) **Landscaping.** The landscaping including landscape design, landscape hardscaping, landscape planting, landscape lighting and landscape maintenance and grounds keeping will be responsibility of the YMCA and maintained to the level of service required by the Stakeholders. The costs for landscaping will be allocated based on the Proportionate Share.

- (e) **Parking Lot Repair and Maintenance.** The Parking Lot repair and maintenance including line marking, snow plowing, salting and grounds keeping will be responsibility of the YMCA and maintained to the level of service required by the Stakeholders. The level of service shall at a minimum comply with the City's minimum standards for snow removal on parking lots and walkways. The allocation of Parking Lot repair and maintenance costs will be allocated based on the Proportionate Share.

- (f) **Pylon Sign.** The YMCA will be responsible for the regular inspection and maintenance of the pylon sign. Operations, inspection and maintenance costs for the pylon sign will be shared equally by the Stakeholders.

The pylon sign shall be illuminated, comply with all Laws, provide the name of all Stakeholders and their respective facility.

- (g) **Refuse and Recycling.** The YMCA and the Library will be responsible for management and costs for refuse removal and recycling services for their designated areas of the Centre. The YMCA will be responsible for refuse removal and recycling services for the Common Facility. The YMCA and the Library will equally share the costs of refuse removal and recycling services for the Common Facility. The YMCA will include the Library's share of refuse and recycling costs to be allocated based on the Proportionate Share.

- (h) **Security.** The Library and the YMCA will each be responsible for maintenance and operations costs for their individual security systems. The cost of maintenance and repair for exterior doors to the Common Facility will be allocated based on the Proportionate Share.

The YMCA shall secure the Common Facility and its exterior doors to the Common Facility. The exterior doors to the Common Facility shall be unlocked no earlier than five (5) minutes prior to the first Stakeholders' opening in the morning, and shall be secured no later than five (5) minutes after the last Stakeholders' closure in the evening.

6.2 Adjustments to the shared costs formulas may be required once the Centre is in operation. A review of the cost formulas shall be included in the scope of Project Committee review meetings. Cost formulas identified in 6.1 shall be revised by the Project Committee if the Stakeholders unanimously agree that adjustments may be necessary to the formulas for shared operations and

maintenance costs. The Stakeholders recognize and agree that there may be cost benefits and savings which may be achieved through the co-ordination of operations, maintenance and repair of systems. The Stakeholders also agree that they will continue to work together to define the Stakeholders respective obligations and contributions to such costs.

6.3 Should the need for major Centre expansion or renovation be identified, the Stakeholders agree to collaboratively plan and, as warranted, develop additional cost sharing arrangements where identified initiatives have mutual benefit.

6.4 The YMCA and the Library covenant and agree that at all times to keep and maintain the sidewalks, area ways and rights of way to the Centre and adjacent to the Centre, clean and free from rubbish, ice, snow and the like.

6.5 **Construction Liens.** All Construction Liens arising shall be governed by the rights and obligations as outlined in the Land Leases.

6.6 **Routine Upkeep and Maintenance.** Nothing herein shall remove from the occupier of any space its respective obligations to carry out day to day routine upkeep and maintenance of a non-substantive nature.

#### **ARTICLE VII – CAPITAL RENEWAL RESERVE FUND**

7.1 A Capital Renewal and Reserve Fund will be established by the Stakeholders to pay for major maintenance, repairs, upgrades and replacements to the TPCC.

7.2 Contributions to the Capital Renewal Reserve Fund will be made by the YMCA and the Library on an annual basis on or before January 15<sup>th</sup> commencing with the 2010 calendar year, as provided in Schedule "A". Contributions are based on the square foot basis based on the total rentable area of the Centre including the Common Facility.

7.3 The YMCA and the Library shall make their respective Capital Renewal Reserve Fund payments to the City on an annual basis. Payments shall be sent to:

City of Hamilton  
City Hall  
71 Main Street West  
Hamilton, ON L8P4Y5  
**Attention: Senior Financial Analyst - Reserves**

7.4 The City will be responsible for administering the Capital Renewal Reserve Fund. The City will deposit, and hold upon trust, the Capital Renewal Reserve Fund payments in an interest bearing account and provide annual statements to the beneficiaries, who are the Stakeholders.

7.5 Contribution and draws from the Capital Renewal Reserve Fund will be itemized. Draws will be allocated all or in part to the YMCA or the Library dependent on the required repair or replacement. The Capital Renewal Reserve Fund will be monitored and draws and contributions reviewed annually by the Project Committee to ensure sufficient funds are available for major maintenance, repairs, upgrades and replacements.

7.6 In the event that this Agreement is terminated, any funds remaining in the Capital Renewal Reserve Fund will be distributed to the YMCA and the Library pro rata to their individual contributions and draws from the fund, less any amounts for outstanding repairs.

7.7 A condition assessment by the City's Facilities staff shall set out the results of a full physical inspection of the TPCC and provide recommendations of

capital repairs items and related timing thereof. The first condition assessment will be completed at the beginning the fifth (5<sup>th</sup>) year after the Date of Commencement. The Project Committee shall use the first condition assessment to guide the planning and funding of capital repair and replacement activities to ensure that Capital Renewal Reserve Fund budget is consistent with the condition assessment's findings. If deemed appropriate by the parties, the condition assessment may be updated from time to time. Irrespective of the frequency of the updates, a second full condition assessment will be performed at the beginning of the tenth (10<sup>th</sup>) year after the Date of Commencement, the results of which will be used as the basis for any capital repair and replacement activities required to be completed prior to the expiration or termination of this Agreement.

7.8 All Stakeholders must consent to the removal of funds for necessary maintenance, repairs and replacements as approved by the Project Committee. The City shall require dual signatures from both the YMCA and the Library for removing funds, on the form provided in Schedule "C". The YMCA and the Library shall withhold from the sums advanced all sums for statutory holdback necessary to comply with the provisions of the *Construction Lien Act* or any other Law.

7.9 In the event that the Capital Renewal Reserve Fund is inadequate to cover the required maintenance, repairs and replacements, the YMCA and Library shall be responsible for the remaining balance based on their proportionate use of space.

#### **ARTICLE VIII – USE OF COMMON SPACE**

8.1 Special events may be scheduled by the Stakeholders in the Common Facility from time to time. Stakeholders are required to consult with the YMCA and the Library of upcoming events to address scheduling issues, use of parking spaces, exterior and interior traffic considerations and post-event clean up requirements.

8.2 The café is located within YMCA and café seating will be located in the Common Facility. The YMCA will be responsible for all matters relating to the operation and cost of the café

8.3 The YMCA covenants and agrees to indemnify, defend and save the other Stakeholders harmless against any and all liabilities, claims, actions, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever (including, without limitation, counsel and solicitor's fees on a substantial indemnity basis, reasonable costs of professional advisors, consultants and experts) arising from the operation of the café.

#### **ARTICLE IX – DISPUTE RESOLUTION**

9.1 The City, the YMCA and the Library shall jointly have final determination in any matter pertaining to the TPCC. However, it is the preference of the City, the YMCA and the Library that should disputes arise in connection with this Agreement that cannot be resolved by the parties that such disputes be resolved quickly, with convenience to all parties, and the Project Committee shall attempt to resolve the dispute.

9.2 Unless stated otherwise in this Agreement, if any dispute arises which cannot be resolved by the parties, either the City, the YMCA, the Library shall be entitled to submit the dispute to dispute resolution in the manner described in this Agreement. The following provisions in this Agreement shall govern resolution of disputes which arise during the currency of this Agreement or at any time thereafter which touch upon the validity, meaning or effect of this Agreement or of terms or provisions contained in this Agreement or the rights and liabilities of any Stakeholder or any matter arising out of this Agreement.

9.3 Every dispute shall be submitted by a party for resolution as follows:

- (a) if the City, the YMCA, the Library desires to submit a matter to dispute resolution, the desirous party shall provide written notice of such intent to the members of the Project Committee which notice shall describe the dispute to be submitted for resolution;
- (b) if the Stakeholders do not reach agreement to resolve the dispute, the Project Committee shall, if no notice has been received as per section 9.4, decide upon a resolution of the dispute which shall be final and binding upon the parties, which shall not be subject to appeal and which shall be enforceable in any court of competent jurisdiction in the same manner as any other judgment of the court. The decision may adopt the position of one of the parties. Reasons for the decision shall be given in writing;
- (c) the Project Committee shall not be entitled to resolve the dispute by terminating this Agreement nor shall the Project Committee be entitled to award damages or equitable relief such as a claim for mandatory order in respect of or arising from a provision of this Agreement which shall be the subject matter of a court proceeding if sought by the City, the YMCA or the Library.

9.4 **Arbitration.** By giving notice in writing to the other parties, not later than ten (10) Business Days after the failure of the Project Committee to reach a resolution under this Article IX, any Stakeholder may refer the dispute to be resolved by final, conclusive and binding arbitration by a single arbitrator under the *Arbitration Act* of Ontario. In the event a matter arises which requires the assistance of such an arbitrator, the parties agree that, within five (5) days of notification thereof, they shall appoint a mutual acceptable arbitrator to act in respect of the particular matter to be arbitrated. In the event the parties are unable to agree upon an acceptable arbitrator, either party may apply to have a court of competent jurisdiction appoint an arbitrator.

9.5 **Costs of Dispute Resolution.** Subject as is hereinafter provided, each party shall bear its own costs in connection with matters referred to dispute resolution; provided that the costs of the arbitrator shall be paid in accordance with the decision of the arbitrator.

#### ARTICLE X - DEFAULT

10.1 The City may, at its option, terminate this Agreement, subject to the provisions of sections 10.3, 10.4 and 10.5, if the Defaulting Party:

- (a) files a petition commencing a voluntary liquidation, reorganization, or an arrangement pursuant to any bankruptcy law, or shall be adjudicated insolvent or be declared bankrupt or insolvent under any law relating to bankruptcy, insolvency, winding up or adjustment of debts, or shall make an assignment for the benefit of creditors under such laws, or shall admit in writing its inability to pay its debt generally as they become due, or if a petition commencing an involuntary case proposing its liquidation or reorganization pursuant to any bankruptcy law shall be filed in any court and the Defaulting Party shall consent to or acquiesce in the filing thereof, or such petition or answer shall not be discharged or denied within thirty (30) days of the filing thereof; or if a custodian, receiver, trustee or liquidator (i) of the Defaulting Party or (ii) for all or substantially all of the assets of the Defaulting Party is appointed and is not discharged within thirty (30) days after such appointment or if the Defaulting Party consents to or acquiesces to such appointment; or

- (b) if the Defaulting Party fails to observe or violates any material provision of this Agreement and the failure or violation has a material adverse effect on the operation of the TPCC; or
- (c) if the Defaulting Party fails to comply with Laws and such failure has a material adverse effect on the operation of the TPCC.

10.2 Without limiting or restricting in any way any other right the City may have under this Agreement, in law or in equity, including but not limited to the provisions contained in section 10.1, Hamilton, at its option, may terminate this Agreement, subject to the provisions of sections 10.3, 10.4 and 10.5, upon written notice to the YMCA and/or the Library if the YMCA and/or the Library:

- (a) fails to observe or violates a material provision of this Agreement; or
- (b) fails to pay amounts due and owing to the City within ninety (90) days;
- (c) makes an assignment of this Agreement without the written consent of the City except as authorized herein; or
- (d) fails to comply with the Laws and such failure subjects the City to legal liability of a material nature or the risk thereof or the potential for the imposition of criminal or quasi-criminal sanctions, including imprisonment, a non-monetary penalty, or a material fine, costs, or damages; or
- (e) fails to carry out, observe or violates any material direction, standard, policy or requirement of the Project Committee; or
- (f) removes or attempts to remove fixtures, chattels and/or equipment from the TPCC without the prior written consent of the City; or
- (g) fails to comply with and maintain in good standing insurance policies as required by this Agreement or any other agreement, or commits any acts or omissions that jeopardizes or may jeopardize the City's insurance; or
- (h) has made a material misrepresentation in this Agreement.

**10.3 Notice of Default and Permitted Cure.** In the event of a default, written notice ("Default Notice") shall be given to the Defaulting Party. If the Defaulting Party has commenced to remedy such default in an expeditious manner, and the default is remedied to the satisfaction of the other party within fifteen (15) days of delivery of the Default Notice or if a greater period of time is required to remedy such default, provided the Defaulting Party is diligently and continuously proceeding, as determined in the discretion of the other party acting reasonably, to remedy the default and such default is cured within a reasonable time thereafter, then the default specified in the Default Notice shall be deemed to be remedied and such notice will be of no further force or effect.

**10.4 Right to challenge Default Notice.** If a Default Notice is delivered under section 10.1 or 10.2, the Defaulting Party may, within ten (10) days of delivery of such Default Notice, deliver a notification of dispute ("Dispute Notification") to the other party and the default identified in the Default Notice shall be resolved in accordance with the resolution provisions under Article IX provided the Defaulting Party continues to perform its obligations hereunder. If a determination ("Determination") is made under Article IX at any time during the dispute resolution process which requires the Defaulting Party to remedy the default,

then the Defaulting Party shall have the time period identified in the Determination to remedy same.

**10.5 Remedies.** If the Defaulting Party fails to remedy a default in accordance with sections 10.3 or 10.4, as the case may be, the other party may terminate in whole or in part the rights or obligations of the Defaulting Party under this Agreement.

**10.6 Obligations of the YMCA or Library on Termination.** Following a Default by the YMCA or the Library, where the City has terminated this Agreement and the City has, directly or indirectly, taken possession of the Centre, or the respective portion thereof, the YMCA and/or the Library shall:

- (a) quit and surrender possession and control of their respective portion of the TPCC;
- (b) deliver to the City all records, drawings and specifications related to the TPCC, its operations and maintenance;
- (c) transfer to the City all records of ownership, warranties, guarantees and of any benefits under any contract for the acquisition of structures, equipment, machinery, supplies and the like acquired for the benefit of the TPCC pursuant to this Agreement and do all acts necessary to effect the transfer of all such property and rights to the City;
- (d) transfer to the City all records pertaining to any contract for the lease, licence, supply or otherwise of goods, services, supplies, materials, equipments, machinery and other things for the TPCC pursuant to this Agreement and do all acts necessary to effect the transfer, where required by the City, of all such agreements or rights to the City;
- (e) transfer to the City all records pertaining to any contract for the lease or licence of the TPCC or any portion thereof and do all acts necessary to effect the transfer, where required by the City, of all such agreements or rights thereunder to the City; and
- (f) upon the request of the City, do all such acts and execute all such further documents, instruments, assignments, transfers, assurances, certificates, and the like as may be necessary or desirable, in the opinion of the City, acting reasonably, to effect the purpose of this section, whether before or after the date of termination.

**10.7 Obligations of the City upon Termination.** Upon termination of this Agreement for any reason and subject to any rights the City may have under the Laws or this Agreement, the City shall forthwith pay to the YMCA and/or the Library any amounts owing to them under this Agreement. Upon the request of the YMCA and/or the Library, the City shall do all such other acts and execute such further documents, instruments, assignments, transfers, assurances, certificates, releases, and the like as may be necessary or desirable, in the opinion of the YMCA and/or the Library, acting reasonably, to effect the purpose of this section 10.7, whether same are requested before or after termination of this Agreement.

#### **ARTICLE XI - FORCE MAJEURE**

11.1 In this Article, "Force Majeure" means a delay in or failure in the performance of any party in its obligations under this Agreement occurring other than as a result of the deliberate act or negligence of any party respectively, and which (a) could not have been reasonably foreseen, and (b) was caused by an event beyond the reasonable control of each party respectively, and for the sake

of greater certainty shall include but not be limited to any one or more of the following:

- (a) acts of God, the Queen or Her enemies;
- (b) civil war; insurrections or riots;
- (c) fires; floods; explosions; earthquakes or serious accidents;
- (d) unusually severe weather; epidemics or quarantine restrictions;
- (e) governmental priorities or allocation regulations or orders affecting materials, labor, equipment and facilities;
- (f) fuel shortages or freight embargoes; and
- (g) strikes or labour troubles causing cessation, slowdown, interruption of work or other similar events.

11.2 In the event of the occurrence of a Force Majeure,

- (a) the time for a party to complete an obligation or portion thereof under this Agreement, which has been delayed by reason of the Force Majeure, shall be extended by a period equal to the delay so caused;
- (b) the date for the payment of any costs or fees shall be adjusted accordingly, without adjustment of the price; and

but subject to the foregoing, each party shall be excused from performance so long as the Force Majeure persists, and shall not be considered to be in default under this Agreement, if and to the extent that its failure of, or delay in performance is due to that Force Majeure.

#### **ARTICLE XII – NOTICE OF ACCIDENT, INJURY OR HARM**

12.1 The YMCA or the Library shall give immediate notice, as soon as is practical, to the City of Hamilton, with a written report containing complete details thereof, of any critical accident, injury or harm to any person on or using the Turner Park Community Centre or of any serious damage, loss or defect in or to any part of the Turner Park Community Centre or any serious damage or loss of any property of any person using Turner Park Community Centre or any damage or loss of any property of the City of Hamilton on or at the Turner Park Community Centre which comes to the attention of the YMCA or the Library, its officers, employees, members, servants or contractors, notwithstanding that the City of Hamilton may not have any obligation with respect to same. In addition, the City shall receive on a regular and periodic basis the Report Summary generated by the YMCA and Library in the normal course of their own respective risk management programs and submitted to any third party insurer.

12.2 **Indemnification.**

- (a) The City, the YMCA and the Library (the "Indemnifying Party" as the case may be) shall indemnify and shall defend and save the other parties, their elected officials, officers, and employees (the "Indemnified Parties") harmless from and against any claims, proceedings, fines, penalties, expenses and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, any of them or to which any of them may be liable by reason of the Indemnifying Party's negligence in carrying out or its failure or omission to carry out or in carrying out any obligation or part thereof to which it is subject under Laws or this



Agreement, or in exercising any right to which it is entitled, under the Agreement, except to the extent that the same are caused by the negligence of the said party or other person entitled to indemnification under this section in carrying out or its failure or omission to carry out or in carrying out any obligation or part thereof to which it is subject under Laws or this Agreement.

- (b) The right of indemnification granted to Indemnified Parties or other person entitled to indemnification under subsection (a) shall extend to any amount paid by that person in the settlement of any claim against it, and in entering into any such settlement, that person may exercise its reasonable discretion as to the amount to be paid, but that person shall serve prior notice of any intended settlement on the indemnifying party, at least five (5) Business Days prior to agreeing to any such settlement.
- (c) The Indemnified Parties may enforce the rights of indemnity conferred on the elected officials, officers, and employees under subsection (a) on their behalf and to the same extent as if they were parties to the Agreement.
- (d) The rights to indemnity provided for in this section shall survive the expiration or any termination of the Agreement.

#### **ARTICLE XIII - NOTICES**

13.1 Any notice or other documents required or permitted to be given under this Agreement shall be in writing and shall be delivered, mailed by prepaid, registered mail, electronic mail or sent by facsimile addressed to the party to whom it is to be given at the address shown below or at such other address or addresses as the party to whom such writing or document is to be given shall have last notified the other party in accordance with the provisions of this paragraph:

- (a) If to the City:  
City of Hamilton  
City Hall  
71 Main Street West  
Hamilton, ON, L8P4Y5  
**Attention: City Clerk**

Fax: 905.546.2095

with a copy to:

General Manager (Public Works Department)  
City of Hamilton  
77 James Street North, Suite 320,  
Hamilton, ON L8R 2K3  
**Attention: Director of Energy, Fleet Facilities and Traffic**

Fax: 905.546.4481

- (b) If to the YMCA:  
YMCA  
79 James Street South  
Hamilton, ON, L8P 2Z1  
**Attention: President**

Fax: 905.529.6682

- (c) If to the Library:  
Hamilton Public Library Board  
55 York Boulevard, P.O. Box 2700  
Hamilton, ON L8N 4E4  
**Attention: Chief Librarian**

Fax: 905.546.3202

13.2 Any such notice or other document shall:

- (a) if delivered, to be deemed to have been given and received at the place of receipt on the date of delivery, provided that if such date is a day other than a Business Day in the place of receipt, such notice or document shall be deemed to have been given and received at the place of receipt on the first Business Day in the place of receipt thereafter;
- (b) if transmitted by facsimile, be deemed to have been given and received at the place of receipt on the next Business Day in the place of receipt following the day of sending;
- (c) if mailed, be deemed to have been given and received at the place of receipt, three (3) days after mailing; and
- (d) if emailed, be deemed to have given and received at the place of receipt, one (1) day after sending.

13.3 In the event of a postal disruption, such notice or documents must be delivered personally or sent by facsimile or email.

#### **ARTICLE XIV - PROHIBITION ON DISPOSITION**

14.1 **Prohibition.** No sale, transfer, assignment, mortgage, charge or disposition of part or all of a Stakeholders' common interest in the Turner Park Community Centre shall be made, except with the express prior written consent of the other Stakeholders, which consent may be unreasonably withheld.

14.2 **Reversion of YMCA and the Library's interest upon Termination.** Subject only to any rights of compensation provided for herein, upon the expiration or sooner termination of this Agreement or the Land Leases, the right, title and interest in the Premises shall be transferred, assigned and conveyed *ipso facto* to the City of Hamilton.

#### **ARTICLE XV - INSURANCE**

15.1 **Insurance.** Throughout the term of the Agreement (including any renewal thereof), the YMCA and the Library shall each obtain and maintain at its own expense, including the cost of any applicable deductibles, the following policies of insurance

- (a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, products liability, completed operations liability, non owned automobile liability, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation and contingent employer's liability coverage, having an inclusive limit of not less than \*\*\$5,000,000 per occurrence and \$10,000,000 in the aggregate. Coverage shall be included for injury/loss/damage, due to pollution arising from "hostile fires". The policy shall be endorsed to include the other parties to this Agreement as additional insureds.

Notwithstanding the foregoing, the YMCA shall also include coverage for Sexual Abuse or Molestation coverage under its policy of Commercial General Liability Insurance with inclusive limits of \$1,000,000.00. The City acknowledges and accepts a limit of \$2,000,000 on 'Hostile Fire' coverage in relation to Pollution coverage under the YMCA's policy of Commercial General Liability insurance policy;

- (b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \*\*\$2,000,000 per occurrence; for Third- Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the City, the YMCA and the Library.
- (c) Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits for coverages indicated by double asterisks (\*\*). Certificate(s) of insurance must specify the underlying policies (\*\*) to which the umbrella/excess coverages apply and indicate any applicable aggregates.

15.2 Throughout the term of the Agreement (including any renewal thereof), the Library and the YMCA shall each obtain and maintain in respect of their own property (including the buildings), and at their own expense, including the cost of any applicable deductibles, Property Insurance All Risk to insure property of every description (including the building). Coverage shall include but not be limited to Earthquake, Flood and Sewer Backup and shall include extra costs related to applicable bylaws. Such insurance shall add the City of Hamilton as an additional insured as their interest may appear. Coverage to be computed upon a replacement cost basis.

15.3 The YMCA and the Library shall each deposit with the Stakeholders a certificate of insurance at the time of execution of this Agreement and thereafter during the term of the Agreement, no later than twenty (20) Business Days following the renewal date of each applicable policy. The Certificate of Insurance shall be signed by an authorized insurance representative. Certificate shall provide that at least thirty (30) days prior written notice (fifteen (15) days, in the case of automobile liability insurance, and ten (10) days in the event of non-payment of premiums) shall be given to the other parties by the Insurer before the Insurer or Party takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof. At the City's election, City may request a certified copy of the insurance policy or policies required under this section. Certificates provide to the City will show the Certificate Holder as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address to the attention of Public Works.

#### **ARTICLE XVI - GENERAL**

16.1 **Authority.** Where reference is made to a consent, approval, notice or other communication of a party that is required or that may be done, performed or carried out by the party pursuant to this Agreement, it may be so done, performed or carried out by:

- (a) the YMCA Board or such other Person as may be delegated the authority by the Hamilton/Burlington YMCA to do so, in case of the YMCA; and
- (b) the City Council or such other Person as may be delegated the authority by the City Council to do so, in case of the City of Hamilton; and

- (c) the Library Board or such other Person as may be delegated the authority by the Hamilton Library Board to do so, in case of the Library; and

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

**16.3 Waiver.**

- (a) Any waiver by any party of all or any part of the provisions or the breach of any provision of this Agreement shall be in writing and shall:
  - (i) affect only the matter specifically identified in the waiver and shall not extend to any other provisions or breach; and
  - (ii) extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach shall not prejudice the rights of any other party from insisting upon performance of such provisions.
- (b) The failure of a party to give notice to the other parties or to take any other steps in exercising any right in respect of any provision or breach or any provision of this Agreement shall not operate as a release or waiver of that right or as a release of the other parties from its obligation and liabilities, or shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
- (c) Unless otherwise expressly stated, the acceptance of a party of the payment or performance of any obligation after the breach of non-fulfillment by another party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.
- (d) The rights of a party under this Agreement shall not in any manner be prejudiced even if a party has overlooked or condoned any non-compliance, breach or default with the terms, covenants and conditions of this Agreement by another party, and neither shall a party's rights in any way be limited or restricted by any other right or privilege that another party may have under this Agreement or provided by law. Upon default by a party under any term, covenant or condition of this Agreement, and at any time after the default, the non-defaulting party shall have all rights and remedies provided by law and by this Agreement. For greater certainty, no payment subsequent to any breach or default shall be taken to operate as a waiver or condoning of any term, condition or covenant of this Agreement nor in any way to defeat or affect the rights of any party hereunder.
- (e) No delay or omission by a party in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Furthermore, any party may remedy any default by another party in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default

by such party. The failure of a party to insist upon strict performance of any of the covenants, terms or conditions of this Agreement, in any one or more instances, shall not be construed as a waiver of such party's right to insist on compliance with same or any other covenant, term or condition at any time. All rights and remedies of either party granted or recognized in this Agreement are cumulative and may be exercised at any time from time to time independently or in combination.

**16.4 Enurement.** This agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors, heirs, administrators, personal representatives, executors and permitted assigns.

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

**16.6 Governing Law.** This Agreement shall be governed by the Laws in force in the Province of Ontario and the laws of Canada applicable thereto. The parties hereto submit to the exclusive jurisdiction of the courts of Ontario with respect to all claims and proceedings arising out of or related to this Agreement.

**16.7 Assignment.** This Agreement may not be assigned by any party except with the prior written consent of all parties which may not be unreasonably withheld. Provided, however, that it shall be reasonable for the City of Hamilton to withhold its consent to an assignment of this Agreement in circumstances where the City of Hamilton reasonably determines that such assignment is not in the best interests of the City of Hamilton. Notwithstanding the foregoing, the YMCA shall be entitled to assign this Agreement to an Affiliate of YMCA as defined by the *Business Corporations Act* (Ontario) provided that it gives prior notice of such assignment to the City of Hamilton and that such Affiliate is owned or controlled by substantially the same board members and management as the YMCA.

**16.8 No Partnership, Joint Venture or Agency.** Except as expressly stated herein, nothing in this Agreement or in any other agreement or otherwise, nor in the conduct of any party, shall in any manner whatsoever, constitute or be intended to constitute any party as the agent or representative or fiduciary of the other parties, nor constitute or be intended to constitute a partnership or joint venture between the parties. Each party shall be severally responsible, liable and accountable for its own obligations under this Agreement or otherwise or any conduct arising there-from and for all claims, demands, actions and costs of actions arising directly or indirectly there-from. No party shall have the authority to make nor shall it make any statements, representations or comments of any kind, or take any actions that would bind the other party except as expressly provided in this Agreement or as otherwise authorized in writing.

**16.9 Further Assurances.** Each of the parties shall, from time to time, at its own expense and costs, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Agreement.

**16.10 Entire Agreement.** This Agreement embodies the entire agreement between the parties with respect to the operation and management of the Turner Park Community Centre and comprises all matters relating to the provision of management services provided herein. Unless as otherwise expressly stated herein this Agreement supersedes the Memorandum of Understanding and all other prior agreements, understandings or writings among the parties, whether

written or oral and whether legally enforceable or not in respect of the subject matter hereof. Subject to the applicable Laws, neither party shall be bound by or be liable for any statement, representations, promise, warranty, inducement, agreement, obligation, or understanding or any kind or nature not set forth in this Agreement.

**16.11 Time.** Time shall be the essence of this Agreement.

**16.12 Extension to Business Day.** Where the time limit for the doing of anything hereunder expires or falls upon a day that is not a Business Day, the time so limited extends so that the things may be done on the day first following that is a Business Day.

**16.13 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered, shall be deemed to be an original and all of which taken together shall constitute one in the same instrument.

**16.14 Accrued Rights and Obligations.** All accrued rights and obligations of the parties hereto shall survive notwithstanding the termination or expiration of this Agreement.

**16.15 Parking Access.** During the Term, the City hereby grants to the YMCA and the Library, and their agents, servants, contractors, invitees, employees, licensees, tenants and the general public using the Turner Park Community Centre from time to time the non-exclusive use and enjoyment, in common with others having a similar right, of all parking areas which the City of Hamilton may establish from time to time within the Turner Park Community Centre at no cost to the other parties or the users thereof. This grant of access shall extend to, and include, any access lanes or rights of way for the purpose of ingress, egress and passage to such parking areas.

The grant of access to parking is a non-exclusive license only and does not, and shall not be construed as, granting any claim, demand, easement, title, interest or property to or in favour of the YMCA or the Library in or to the Turner Park or any parking areas contained within the Turner Park Community Centre.

**16.16 Observance of Laws, Statutes and Regulations.** All parties shall comply with, and conform to, all applicable statutes, laws, by-laws, regulations, ordinances, notices, rulings and orders of the federal, provincial or municipal government ("governmental authority or authorities") from time to time in effect during the Term of this Agreement. Without limiting the foregoing, all parties, unless otherwise provided in this Agreement, shall obtain all necessary municipal, provincial, federal or other governmental approvals, permits and licences to conduct its operations, maintenance and/or activities in or upon the Turner Park Community Centre prior to commencing operations and maintenance.

**16.17 Alterations and Additions.** After the completion of the construction of the Turner Park Community Centre, the YMCA and the Library agree that they shall not make any material, structural alterations whatsoever to the Turner Park Community Centre without the prior written approval of the City of Hamilton. Without limiting the generality of the foregoing, the YMCA and the Library shall not excavate or drill or pave on the Turner Park Community Centre nor, in any material way, construct, renovate, install or erect any buildings, structures, fixtures, improvements or other facilities without first obtaining the written approval of the City of Hamilton for such works. The YMCA and the Library shall submit, in advance of conducting any works on the Turner Park Community Centre, a proposed building plan and shall not commence any works until such plan is approved by the City of Hamilton. City of Hamilton acknowledges that the second floor of the YMCA has been constructed in a fashion that makes it expansion ready.

All buildings, structures, installations, alterations, additions, partitions and fixtures of the Centre constructed, installed or placed at, in or upon the Turner Park Community Centre are, immediately upon construction, installation or placement, the City of Hamilton's property without compensation therefor to the YMCA or the Library, except as otherwise provided in the Leases and shall not be removed from the Turner Park Community Centre at any time either during or after the Term without the prior written consent of the City.

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**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

**THE HAMILTON/BURLINGTON YOUNG MEN'S CHRISTIAN ASSOCIATION  
cob as THE HAMILTON/BURLINGTON YMCA**

Signed for and on behalf of The Hamilton/Burlington YMCA by:

Signed \_\_\_\_\_  
Name: Jim Commerford  
Title: President and CEO

Signed \_\_\_\_\_  
Name: Brian Posavad  
Title: Vice President, Capital  
Development & Membership Centres

Date \_\_\_\_\_

Date \_\_\_\_\_

"I have the authority to bind the Corporation"

"I have the authority to bind the Corporation"

**HAMILTON PUBLIC LIBRARY BOARD**

Signed for and on behalf of the Hamilton Public Library Board by:

Signed \_\_\_\_\_  
Name: Ken Roberts  
Title: Chief Librarian

Signed \_\_\_\_\_  
Name: William Guise  
Title: Director, Finance & Facilities

Date \_\_\_\_\_

Date \_\_\_\_\_

**CITY OF HAMILTON**

Signed for and on behalf of the City of Hamilton by:

Signed \_\_\_\_\_  
Name: Fred Eisenberger  
Title: Mayor

Signed \_\_\_\_\_  
Name: Kevin C. Christenson  
Title: City Clerk

Date \_\_\_\_\_

Date \_\_\_\_\_

Authorized by Report No. 07-002, Item 6 of the Public Works Committee adopted by the Council of the City of Hamilton on the 15<sup>th</sup> day of February, 2007.  
  
File Number: \_\_\_\_\_

**APPROVED AS TO FORM**

\_\_\_\_\_  
LEGAL SERVICES

\_\_\_\_\_  
**APPROVED AS TO CONTENT  
PUBLIC WORKS DEPARTMENT**



**SCHEDULE "A"**  
**CAPITAL RENEWAL RESERVE FUND**

<b>YEAR Commencing on the Lease Year End December 31<sup>st</sup></b>	<b>Annual Contribution Rate For Rentable Area (cents/ft<sup>2</sup>)</b>	<b>YMCA Contribution - (50,182 ft<sup>2</sup>) + (2,174.5 ft<sup>2</sup>) = 52,356.5 ft<sup>2</sup></b>	<b>Library Contribution (23,681 ft<sup>2</sup>) + (2,174.5 ft<sup>2</sup>) = 25,855.5 ft<sup>2</sup></b>
1	\$0.50	\$26,178.25	\$12,927.75
2	\$1.05	\$54,974.33	\$27,148.28
3 - 25	\$1.50	\$78,534.75	\$38,783.25
26-50	\$1.75	\$91,623.88	\$45,247.13
51-75	\$2.00	\$104,713.00	\$51,711.00

**SCHEDULE "B"**  
**PLANS OF LANDS**

Those Parts on Reference Plan 62R-18546 as denoted and described below and being part of PIN#16905-0027(LT), Part Lot 8, Concession 1 (geographic Township of Glanford) in the City of Hamilton.

Reference Plan Part	Description and Purpose	Description Among Parties	C-Tenant (Tenant)	Acreage
1	Access Way and Driveway	Access Way	N/A	2,799 m <sup>2</sup>
2	Library Breezeway	Library Facility	Library	1,479 m <sup>2</sup>
3	Parking Lot	City Parking Lot	N/A	11,254 m <sup>2</sup>
4	YMCA Perimeter Corridor	YMCA Facility	YMCA	743 m <sup>2</sup>
5	YMCA Perimeter Corridor	YMCA Facility	YMCA	1,067 m <sup>2</sup>
6	Garbage and Recycling Area	Common Area	N/A	40 m <sup>2</sup>
9	Common Area Perimeter	Common Area (North Entrance)	YMCA and Library	173 m <sup>2</sup>
10	Common Area Perimeter	Common Area (South Entrance)	YMCA and Library	58 m <sup>2</sup>
11	Common Area	Common Area Facility	YMCA and Library	482 m <sup>2</sup>
12	Library Main Area	Library Facility	Library	2,200 m <sup>2</sup>
13	YMCA Main Area	YMCA Facility	YMCA	2,678 m <sup>2</sup>
14	North Stairwell	Stairwell Access	YMCA (City and Library)	14 m <sup>2</sup>
15	South Stairwell	Stairwell Access	YMCA (City and Library)	13 m <sup>2</sup>
16	Mechanical Access Area	Basement	YMCA (City and Library)	34 m <sup>2</sup>

[see attached plans]

**SCHEDULE "C"**  
**FORM OF CAPITAL FUND DRAW CERTIFICATE**

Date

Senior Financial Analyst - Reserves  
City of Hamilton  
City Hall  
71 Main Street West  
Hamilton, ON L8P4Y5

**RE:           TURNER PARK COMMUNITY CENTRE**  
**CAPITAL FUND DRAW CERTIFICATE # \_\_\_\_\_**

We refer to the Operations and Maintenance Agreement entered into between the City of Hamilton, the YMCA and the Hamilton Public Library Board on May 1st, 2009 (the "Agreement"). We hereby request that you remit to us the amount of \$\_\_\_\_\_. We confirm that upon receipt of such funds, we covenant to pay all contractors and suppliers within twenty-five (25) days of the completion and acceptance of the work.

YMCA

Hamilton Public Library Board

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

cc: Project Committee Representatives

**Schedule to Capital Fund Draw Down Certificate #\_\_\_\_\_**

**Date:**

**Contract Price:** \$ \_\_\_\_\_

**Location of Work:**

**Scope of Work:**

**Anticipated Commencement of Work:**

**Anticipated Completion of Work:**

**Pro Rata Allocation to YMCA for Draw:** \$ \_\_\_\_\_

**Pro Rata Allocation to Library for Draw:** \$ \_\_\_\_\_