THE EMERGENCY & COMMUNITY SERVICES COMMITTEE PRESENTS REPORT 09-009 AND RESPECTFULLY RECOMMENDS:

1. Ice Rates and Times for Non-Affiliated Clubs (CS09039) (City Wide) (Item 5.1)

   (a) That Report CS09039 - Ice Rates and Times for Non-Affiliated Clubs, be received.

   (b) That Item “H” - Ice Rates and Times for Non-Affiliated Clubs, be considered complete and removed from the Emergency & Community Services Committee’s Outstanding Business List.

Council – May 27, 2009
2. **Hamilton Historical Board Report 09-001 (Item 8.1)**

That the wording for the Smith Family Cemetery commemorative plaque, attached as Appendix “A” to Report 09-008, be approved.

3. **Wentworth Lodge Heritage Trust Fund Report 09-001 (Item 8.2)**

(a) That the revised Terms of Reference for the Wentworth Lodge Heritage Trust Fund, attached as Appendix “B” to Report 09-008, be approved.

(b) That the current investment practice for the Wentworth Lodge Heritage Trust Fund (monies will remain in savings account prime less 1.75) be maintained.

(c) That the Wentworth Lodge Heritage Trust Fund Committee review all requests for expenditures, which may be funded from the Heritage Trust Fund by way of accumulated interest plus 5% of principle, if required.

(d) That the following expenditures, attached in Appendix “C” to Report 09-008, in the amount of $73,800, be approved:

   (i) $35,000 for Rose Court and Oak Lane Furnishings, $2,300 for the lobby fish tank, $7,500 for 5 Montessori carts, $24,000 for towel/blanket warmers, $5,000 ongoing funding for Lodge pet expenses.

4. **Request for Free Transit - Rick Hansen Wheels in Motion Event (PW09049) (City Wide) (Item 8.3)**

(a) That staff be authorized and directed to provide free transportation for event volunteers and participants involved in the Rick Hansen - Wheels in Motion charity fund raising event.

(b) That the item relating to the Request from Rick Hansen Wheels in Motion Event for free transit from the Transit Division (HSR) on the day of their event be removed from the Emergency & Community Services Committee Outstanding Business List.

5. **Feasibility of Bidding to Host the 2009/2010 Vanier Cup in Hamilton (PED09126) (City Wide) (Item 8.4)**

(a) That Report PED09126, respecting the Feasibility of Bidding to Host the 2009/2010 Vanier Cup in Hamilton, be received.

Council – May 27, 2009
(b) That any future bidding opportunities for the Vanier Cup, and others sport events, be referred to Tourism Hamilton’s Sport Tourism Advisory Committee.

(c) That the item respecting the “the Feasibility of Bidding to Host the 2009/2010 Vanier Cup in Hamilton” be identified as completed and removed from the Emergency and Community Services Outstanding Business List.

6. 2009 Hamilton Civic Golf Course Rates and Fees Schedule (CS09038) (Wards 1 & 5) (Item 8.5)

(a) That the 2009 Rates and Fees Schedule for the Hamilton Civic Golf Courses, effective May 31, 2009, attached as Appendix “D” to Report 09-008, be approved.

(b) That Item “A” – Fee Waiver Policy: Golf, be considered complete and removed from the Emergency & Community Services Committee’s Outstanding Business List.

7. Beasley Community Centre – Status Update/Approval of Agreements (PW09037/ECS07092(b)) (Ward 2) (Item 8.6)

(a) That the draft Construction Agency Agreement (attached as Appendix “E” to Report 09-008) between the City of Hamilton and the Hamilton-Wentworth District School Board, respecting the design and construction of the Beasley Community Centre/Dr. Edgar Davey Elementary School, be approved.

(b) That the Acting General Manager of the Public Works Department, on behalf of the General Manager of the Community Services Department, be authorized and directed to complete the draft Construction Agency Agreement, with the Hamilton-Wentworth District School Board, for the design and construction of the new Beasley Community Centre; to be located within the new Dr. Edgar Davey Elementary School at 99 Ferguson Avenue, Hamilton, Ontario, in a form satisfactory to the City Solicitor.

(c) That the General Manager of the Community Services Department be authorized and directed to negotiate all necessary agreements with the Hamilton-Wentworth District School Board for the operation of the Beasley Community Centre, including, but not limited to, a Nominal Fee Lease, an Operating Agreement and a Reciprocal Use Agreement, in a form satisfactory to the City Solicitor.

(d) That the Acting General Manager of the Public Works Department, be authorized and directed to negotiate a Shared Use Agreement with the Hamilton-Wentworth District School Board for the use of Beasley Park, in a form satisfactory to the City Solicitor.

Council – May 27, 2009
(e) That the General Manager of the Community Services Department be authorized and directed to negotiate the space requirements, for Wesley Urban Ministries, for the operation of an Ontario Early Years Centre within the Beasley Community Centre, in a form satisfactory to the City Solicitor.

(f) That the Mayor and City Clerk be authorized and directed to execute all necessary documents respecting the design and construction, and the use and operation of the Beasley Community Centre, located at 99 Ferguson Avenue, Hamilton, Ontario, in a form satisfactory to the City Solicitor.

8. Volunteer Firefighters Inclusion in Presumptive Legislation Regulation (9.1)

WHEREAS the Township of Otonabee-South Monaghan had forwarded a copy of their approved resolution, respecting Volunteer Firefighters Inclusion of Presumptive Legislation Regulation, dated March 25, 2009, to Hamilton City Council for its endorsement;

AND WHEREAS in May 2007, Bill 221, being the Workplace Safety and Insurance Amendment Act (Presumptions for Firefighters), 2007, passed into legislation and recognizes workplace safety and insurance entitlement for full-time (career) Firefighters who have incurred certain work-related occupational diseases;

AND WHEREAS it was presumed at that time that such legislation would also apply to Volunteer Firefighters who face the same exposures as their full-time (career) peers;

AND WHEREAS it appears that the extension of this legislation to cover Volunteer Firefighters is now uncertain;

AND WHEREAS the vital service that Hamilton's Volunteer Firefighters provide in protecting the lives and properties of rural citizens must be recognized by treating them and their families fairly and with the same respect and rights as their full-time (career) peers;

AND WHEREAS, the previous full time legislation failed to recognize the financial hardship and impact to the municipal tax base, and amending the legislation to include Volunteer Firefighters without addressing the funding will only increase this hardship.

THEREFORE BE IT RESOLVED:

(a) That the Provincial Government be urged to move as quickly as possible to ensure that Bill 221 protection is extended to include the same level of coverage for Volunteer Firefighters in the amalgamated City of Hamilton and throughout the Province of Ontario.
(b) That the Honourable Premier McGuinty be requested to fund benefits directly associated with Bill 221 for all Firefighters who provide services and protect all Ontarians.

(c) That a copy of the approved resolution be forwarded to the Honourable P. Fonseca, Minister of Labour, the Honourable R. Bartolucci, Ministry of Community Safety and Correctional Services, the Association of Municipalities of Ontario, all local MPP’s., the Firefighters Association of Ontario and the Ontario Association of Fire Chiefs.

9. Improved Safety of Children in the Care of the Child Welfare System (Item 10.1)

WHEREAS the death rate of children in the care of Children’s Aid is approximately thirty (30) times the rate of other children;

AND WHEREAS children in the care of Children’s Aid often have to live independently when they turn 16, support is cut off for the majority of them at the age of 18, and at 21, even high risk youth have no longer supported;

AND WHEREAS 90 children, known to the Ontario’s child welfare system died in 2007, as per a report from the Chief Coroner’s office, and many die each year;

AND WHEREAS disabled youth in the care of the Child Welfare System who are mandated to live independently after the age of 21; regardless of their mental capacity, are more likely to fall into harms way at the hands of those who see them as easy prey;

AND WHEREAS the statistics suggest that we are failing our most vulnerable children;

THEREFORE BE IT RESOLVED:

(a) That the Mayor correspond, on behalf of Hamilton City Council, with the Premier of Ontario and the Minister of Children and Youth Services to request that a significantly improved Transition Plan, for youth in the Ontario Child Welfare system; who are required to live independently, be established and implemented as soon as possible in order to lessen the risks of unnecessary deaths among Ontario’s children.

(b) That the new Transition Plan be based on the specific requirements of each individual and go beyond the age of 21, when necessary.

(c) That a copy of the approved resolution and its appendices be forwarded to the Association of Municipalities of Ontario and all local MPP’s.
10. Amendments to the Emergency & Community Services Committee’s Outstanding Business List (Item 11.2)

That the following Items be considered complete and removed from the Emergency & Community Services Committee’s Outstanding Business List:

(a) Item “K” – Artificial Outdoor Ice Rinks

(b) Item “O” – Ancaster Little League – Hosting for 2010 Canadian Little League Championships

(c) Item “Z” – Trunked Radio System Upgrade

(d) Item “JJ” – Affordable Housing Threshold

FOR THE INFORMATION OF COUNCIL:

(a) CHANGES TO THE AGENDA (Item 1)

The Committee Clerk advised of the following changes to the agenda:

(i) Added as Item 4.17 – a Delegation Request by Jim Commerford, on behalf of the YWCA of Hamilton, Burlington & Brantford, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009)

(ii) Added as Item 4.18 – a Delegation Request by Karyn Callaghan, on behalf of Mohawk College, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009)

(iii) Added as Item 10.1 – Notice of Motion respecting the Safety of Children in the Care of the Child Welfare System

The May 20, 2009 agenda of the Emergency & Community Services Committee was approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 2)

There were none declared.
(c) APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING (Item 3)

The Minutes of the April 22, 2009 meeting of the Emergency & Community Services Committee were approved, as presented.

(d) DELEGATION REQUESTS (Item 4)

(i) Paul Johnson, on behalf of the Hamilton Best Start Network, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.1)

(ii) Susan Honeyman, on behalf of Early Words 1ers mots, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.2)

(iii) Janis Webster, on behalf of the Umbrella Family and Child Centres of Hamilton, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.3)

(iv) Mark Chamberlain, on behalf of the Hamilton Roundtable for Poverty Reduction, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.4)

(v) Wanda St. Francois and Ruth Doherty, on behalf of the Affiliated Services for Children and Youth, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.5)

(vi) Judith Bishop, on behalf of the Hamilton-Wentworth District School Board, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.6)

(vii) Merle Parker, on behalf of the Stoney Creek Parents and Caregivers, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.7)

(viii) Domenic Russumanno, on behalf of Kindertown Child Care Centre, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.8)

(ix) Michael MacPherson, on behalf of the Hamilton-Wentworth Catholic Child Care Centres, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.9)

(x) Marni Flaherty, on behalf of Today's Family – Early Learning and Child Care, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.10)
(xi) Patricia Amos, on behalf of the Hamilton-Wentworth Catholic District School Board, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.11)

(xii) Dr. Jean Clinton, on behalf of McMaster University, Offord Centre for Child Studies, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.12)

(xiii) Nicole Olyschlager, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.13)

(xiv) Tanya Brown, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.14)

(xv) Darrel Skidmore, on behalf of the United Way of Burlington and Greater Hamilton, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.15)

(xvi) Jack Maga, on behalf of Wesley Urban Ministries, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.16)

(xvii) Jim Commerford, on behalf of the YWCA of Hamilton, Burlington & Brantford, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.17)

(xviii) Delegation Request by Karyn Callaghan, on behalf of Mohawk College, respecting the Termination of Provincial Best Start Funding as of March 2010 (to appear June 3, 2009) (Item 4.18)

The Committee Clerk was directed to contact all parties who have requested delegation status at the June 3, 2009 meeting of the Emergency & Community Services Committee, respecting the Termination of Provincial Best Start Funding as of March 2010, to request that each person or group consider providing a written submission, rather than a verbal presentation, in order that the submissions may be sent forward to the Province with the approved Council resolution.

Those parties who still wish to speak will be permitted to do so. However, are to be advised that the 5 minute speaking regulation, pursuant to the City of Hamilton Procedural By-law 05-301, will be imposed.

The local MPP’s are to be invited to attend the June 3, 2009 meeting of the Emergency & Community Services Committee with respect to the Termination of Provincial Best Start Funding as of March 2010.
(e) Minutes of Various Advisory Committees

The following Advisory Committee Minutes were received:

(i) Seniors Advisory Committee Meeting Minutes, dated March 6, 2009 (Item 5.2)

(ii) Hamilton Historical Board Meeting Minutes, dated March 10, 2009 (Item 5.3)

(iii) Emergency Medical Services Resource and Deployment Advisory Task Force Meeting Minutes, dated March 10, 2009 (Item 5.4)

(iv) Tenant Advisory Committee Meeting Minutes, dated March 13, 2009 (Item 5.5)

(v) Arts Advisory Commission Meeting Minutes, dated March 24, 2009 (Item 5.6)

(f) Item 4.3: Theatre Waterdown and Memorial Hall, Arts Advisory Commission Meeting Minutes, dated March 24, 2009 (Item 5.6)

Committee directed the Director of Culture to speak with staff, in the Real Estate Division, respecting the status of Theatre Waterdown and Memorial Hall, regarding sale of the property and whether or not the Carnegie Hall model (in Dundas) could be utilized for this site and report back to the Emergency & Community Services Committee.

(g) DELEGATIONS (Item 6)

6.1 Julianne Burgess and Jonathan Restrepo from LINC for Youth Video Project – a Mohawk College ESL program for newcomer youth aged 18 to 25, to raise awareness of issues that affect the lives of newcomer youth in Hamilton

Julianne Burgess, ESL Teacher at Mohawk College, introduced the students from the current ESL program and thanked the E&CS Committee for taking the time to hear from the students ~ and for providing them with a clear example of democracy. The students are from war torn countries such as Rwanda, Sudan, Somalia, Thailand, Colombia and Sudan; countries where voicing their concerns is not an option; noting that it could very well be a death sentence.
The LINC for Youth Video project at Mohawk College is a unique English as a Second Language program for immigrant and refugee youth, which is funded by the Ministry of Citizenship and Immigration.

The program is for students 18-25; most of whom have finished high school in their own countries, whose English skills are not yet strong enough for post-secondary programs.

The students were asked to create a video, which illustrated an issue that affects their lives. The interaction between the students, while preparing this video was a strong aid in strengthening their use of the English language.

After Committee was shown the video – “Lost on a Dead End Street: Newcomer Youth at Work”, Jonathan Restrepo, as student from Colombia currently in the ESL program, elaborated upon the video and the need for immigrant/refugee youth to be able to continue their education and obtain better employment.

The Committee provided the following suggestions were provided to both the teacher and students:

- To investigate available mentorship programs in the area.
- To provide the video presentation to other advisory committees within the City of Hamilton, such as the Hamilton Youth Advisory Committee.
- To have union representatives meet with the students respecting the Right to Know legislation and Ontario labour laws; especially for those who may be taken advantage of in their places of employment.
- Speak to the Jobs Prosperity Collaborative.

The video presentation – “Lost on a Dead End Street: Newcomer Youth at Work”, provided by Julianne Burgess, ESL Teacher and students from the Mohawk College LINC for Youth Video Project, was received and referred to the General Manager of the Community Services Department for review with the Local Immigrant Partnership Council.

The upcoming report respecting the Immigration Strategy should include the following:

(i) The feasibility of establishing a formal and local assessment agency to review the foreign credentials of immigrants, and to provide
options to assist them in being able to utilize those credentials in Ontario, in order to better provide for their families.

(ii) Methods to improve the transition, for immigrant youth, from school in their homeland to a post secondary education and well-paying employment in Hamilton.

(iii) That the Federal and Provincial governments be lobbied to provide interest-free grants and longer term loans to immigrant youth for school tuition, books and food, as well as interest-free, longer term loans for refugee airfare.

(h) Wentworth Lodge Heritage Trust Fund Report 09-001 (Item 8.2)

Councillor R. Powers, Chair of the Wentworth Lodge Heritage Trust Fund, provided a brief overview of Report 09-001.

(i) Improved Safety of Children in the Care of the Child Welfare System (10.1)

The Rules of Order were waived in order to introduce a motion respecting the Improved Safety of Children in the Care of the Child Welfare System.

(j) Outstanding Business List Items requiring Approval for Proposed New Due Dates (Item 11.1)

The following new due dates were approved:

(a) Item “E” – Farmers’ Market – Implications of Operating the Market by an Independent Operator
   Current Due Date: May 6, 2009
   Proposed New Due Date: December 2, 2009

(b) Item “G” – Adequacy of Ontario Works Social Assistance Rates and the Economic Impact of Ontario Child Benefit Monies
   Current Due Date: May 20, 2009
   Proposed New Due Date: June 17, 2009

(c) Item “AA” – Hamilton & District Injured Workers Group – Social Services Matters
   Current Due Date: May 20, 2009
   Proposed New Due Date: September 23, 2009
(d) Item “BB” – Snow Angel Program Evaluation  
Current Due Date: June 3, 2009  
Proposed New Due Date: June 17, 2009

(e) Item “P” - Call for Action – Recreation, Parks and Sport  
Infrastructure Funding  
Current Due Date: May 209, 2009  
Proposed New Due Date: June 17, 2009

(k) ADJOURNMENT (Item 13)  

There being no further business, the Emergency & Community Services Committee meeting be adjourned at 2:35 p.m.

Respectfully submitted,

Councillor S. Duvall, Chair  
Emergency & Community Services Committee

Stephanie Paparella  
Legislative Assistant  
May 20, 2009
SMITH FAMILY CEMETERY

Jacob Smith (1739–1821) came to Canada from New Jersey in August of 1788 with his wife, Elizabeth (nee Lewis), and 13 surviving children. As a member of the Jersey Volunteers, who fought with the British during the American Revolution, he is considered to be a United Empire Loyalist. Travelling by foot and wagon, the Smith family crossed the Niagara River at Lewiston and became the first settlers in Glanford Township. Their homestead cabin on Lot 4, Concession 1 survived until the 1950s. Over time, the Smith family was granted 3,280 acres of land, mostly in Ancaster, Glanford and Saltfleet townships.

Jacob set aside this cemetery for the burials of his family members and their relatives. His son, Lewis, and grandson, Mathias, both died in the War of 1812. They are buried here with approximately fifty other Smith settlers. Due to the gradual dispersal of the Smith descendants over the years, the cemetery fell into disrepair. Several headstones have been recovered, but most have been destroyed.

Hamilton Historical Board
City of Hamilton
2009

Word Count 176

Sources:
2. Information submitted by Barbara Smith Nelson, UE.
3. Input by Gloria Oakes, UE, Hamilton Branch, UEL Association of Canada.
4. Field research by Jim Green, JPSC member. (He found the missing headstones.)
7. Wentworth County Illustrated 1875 Historical Atlas, p. 73.
8. Internet research by HHB member, Rob Hamilton. (He established that the modern map of New Jersey has no place called Amwell Sussex Co. as claimed in original submissions. E. & W. Amwell appear in Hunterdon County, New Jersey.)
9. JPSC research lead, Robin McKee.

Wording accepted by HHB on Dec. 9, 2008.

R. Williamson
Chairman, JPSC
WENTWORTH LODGE HERITAGE TRUST FUND

TERMS OF REFERENCE

Mission

The Wentworth Lodge Heritage Trust Fund Committee is a decision making body responsible for the Wentworth Lodge Heritage Trust Fund. This includes investments and expenditures.

Philosophy

The Wentworth Lodge Heritage Trust Fund Committee believes that the Residents of Wentworth Lodge should derive maximum benefit from the monies donated to the lodge.

Mandate

The Wentworth Lodge Heritage Trust Fund Committee is empowered by City Council and is responsible to City Council for its activities. It reports to the Emergency and Community Services Committee of the city of Hamilton.

Goals

1. To manage the investment of the fund to ensure maximum returns
2. Where fiscally possible, to respond to needs at Wentworth Lodge, that cannot be met through the normal operating and capital budgets.
3. To evaluate and make decisions concerning fund raising opportunities if they are presented.

Membership

The Wentworth Lodge Heritage Trust Fund Committee will be appointed by City Council. Membership includes, one elected member of Council, one appointee from the Seniors Advisory Committee, an appointee from the Residents and/or Family Council.

Staff Resources:
Community Services
Corporate Services (Finance Division and City Clerk’s Division)

Term of Office

The members of the Wentworth Lodge Trust Fund Committee will be appointed by City Council with each new term of council and will expire with the term of council.

Meeting Times

Contingent on available funds the committee will meet at the call of the chair.
Subject:
Funding Request: Furnishings, Rose Court and Oak Lane Resident Lounge and Common Areas

Description of the Issue:
The 52 bed wing, Rose Court and Oak Lane, was constructed and occupied in 1989. Each area has a resident lounge and an activity/recreation room and the Residents Library is located in Oak Lane. Prior to construction and during the redevelopment phases, these rooms at different times were used for a variety of purposes including office space, meeting rooms and swing space. They were not all available for resident use. Now that the redevelopment is completed, we would like to return these common areas to resident use and bring the furnishings and window coverings up to the standard now enjoyed by residents in the new part of the building. Both lounges and sitting areas at the corridor window alcoves require appropriate, comfortable furniture. The residents’ library needs new shelving and furniture suitable for library functions. Window coverings to complement the new furnishings are also required. We are very concerned that our residents on Rose Court and Oak Lane do not feel that they are being treated inequitably and that they enjoy the same physical surroundings as residents in the new building. Wentworth Lodge Management Team has developed a list of suggested furnishings for review by the Trust Fund Committee.

Financial/Staffing/Other Implications (If Applicable):
During the twenty years since Rose Court and Oak Lane were completed, only routine maintenance has been carried out. In 2006 the life-safety systems (call-bell system and fire system) were updated in these areas in conjunction with the new construction. In recognition of the need to continue updating the physical building, City Council approved 2009 capital funds to replace the resident room doors and the p-traps in the resident bathrooms. A plan is in place for requesting capital funds over the next ten years for the replacement of flooring, baseboards, plumbing fixtures, roof and HVAC system. Wentworth Lodge operating funds are limited to routine maintenance and are not sufficient to allow for the purchase of furnishings. Costs are estimated since City Purchasing Policy will require a Request for Quotations or Tender to determine actual prices. Estimates are as follows:
Furniture: $17,300
Window coverings: $12,010
Total: $29,310 + taxes = $33,413

Affects Other Branches/Departments:
Yes X   No   If yes, which ones?
Purchasing Division
How Does this Initiative Meet our Department Mission, Vision & Values?
We are committed to our people, dedicated to building a strong and healthy community, passionate about making a difference and recognized for our excellence.

Wentworth Lodge seeks to maintain it's excellent reputation for quality resident care in a comfortable attractive facility.

How Does this Initiative Advance our Corporate Strategic Plan?

**Focus area 5: Social Development:**
Everyone has a home they can afford that is well maintained and safe.

**Focus area 7; Healthy Community:**
Plan and manage the built environment.

Recommended Response/Action:

That the Wentworth Lodge Heritage Trust Fund Committee approve the expenditure of up to $35,000 for the purchase of furnishings and window coverings for Rose Court and Oak Lane common areas.

Submitted by:

Lynda Secord, Administrator, Wentworth Lodge
## Hamilton Civic Golf Courses
### 2009 Proposed Rates & Fee Schedule

#### MEMBERSHIPS

**King’s Forest:**

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**Chedoke (Beddoe/Martin):**

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**Chedoke (Martin only):**

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- Rates & Fees effective May 31, 2009
- GST not included
Appendix D to Item 6 of E&CS Report 09-008
Page 2 of 3

City Wide:

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**GREEN FEES**

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- Rates & Fees effective May 31, 2009
- GST not included
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### GOLF CART RENTALS

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• Rates & Fees effective May 31, 2009
• GST not included
CONSTRUCTION AGENCY AGREEMENT

BETWEEN:

CITY OF HAMILTON

(the "City")

OF THE FIRST PART

-and-

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

(the "HWDSB")

OF THE SECOND PART
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. DEFINITIONS</td>
<td>5</td>
</tr>
<tr>
<td>1.01 Defined Terms</td>
<td>5</td>
</tr>
<tr>
<td>II. SCOPE OF PROJECT</td>
<td>6</td>
</tr>
<tr>
<td>2.01 Overall Control of Project</td>
<td>6</td>
</tr>
<tr>
<td>III. APPOINTMENT OF CONSTRUCTION AGENT</td>
<td>7</td>
</tr>
<tr>
<td>3.01 Appointment</td>
<td>7</td>
</tr>
<tr>
<td>3.02 Acceptance</td>
<td>7</td>
</tr>
<tr>
<td>3.03 Commencement and Completion of Construction</td>
<td>7</td>
</tr>
<tr>
<td>3.04 Term</td>
<td>7</td>
</tr>
<tr>
<td>3.05 Construction Documents and Related Agreements</td>
<td>8</td>
</tr>
<tr>
<td>3.06 Scope of Authority</td>
<td>8</td>
</tr>
<tr>
<td>3.07 Covenants of the City and HWDSB</td>
<td>9</td>
</tr>
<tr>
<td>IV. SCHEDULING</td>
<td>9</td>
</tr>
<tr>
<td>4.01 Schedule</td>
<td>9</td>
</tr>
<tr>
<td>V. AMENDMENTS AND MODIFICATIONS</td>
<td>9</td>
</tr>
<tr>
<td>5.01 Amendments and Modifications</td>
<td>9</td>
</tr>
<tr>
<td>VI. PROJECT FUNDING</td>
<td>9</td>
</tr>
<tr>
<td>6.01 Funding of Project Costs</td>
<td>9</td>
</tr>
<tr>
<td>6.02 Cost Allocation</td>
<td>11</td>
</tr>
<tr>
<td>6.03 Project Proportion Costs</td>
<td>11</td>
</tr>
<tr>
<td>6.04 Use of Escrow Account</td>
<td>11</td>
</tr>
<tr>
<td>6.05 Use of Holdback Account</td>
<td>12</td>
</tr>
<tr>
<td>6.06 Exception</td>
<td>12</td>
</tr>
<tr>
<td>VII. COMMUNICATIONS</td>
<td>12</td>
</tr>
<tr>
<td>7.01 Project Communication</td>
<td>12</td>
</tr>
<tr>
<td>VIII. EVENTS OF DEFAULT</td>
<td>12</td>
</tr>
<tr>
<td>8.01 Construction Agency Agreement Event of Default</td>
<td>12</td>
</tr>
<tr>
<td>8.02 Damages</td>
<td>13</td>
</tr>
<tr>
<td>8.03 Remedies</td>
<td>13</td>
</tr>
<tr>
<td>IX. NO CONSTRUCTION AGENCY FEE</td>
<td>13</td>
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<tr>
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<td>X. NO OBLIGATION CURE EVENT OF DEFAULT</td>
<td>14</td>
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<tr>
<td>XI. LIENS AND ENCUMBRANCES</td>
<td>14</td>
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<td>11.01 Construction Liens</td>
<td>14</td>
</tr>
<tr>
<td>XII. OPERATIONS, MAINTENANCE AND INSURANCE</td>
<td>15</td>
</tr>
</tbody>
</table>
12.01 Operations and Maintenance .................................................. 15
12.02 Insurance ................................................................................. 15

XIII. SECURITY .................................................................................. 15
13.01 Security .................................................................................. 15

XIV. NOTICES .................................................................................. 16

XV. DISPUTE RESOLUTION .............................................................. 17

XVI. TURNOVER ................................................................................ 17

XVII. CITY ACCESS TO PROJECT .................................................... 18

XVIII. SHOP DRAWINGS AND OTHER SUBMITTALS ...................... 19

XIX. MISCELLANEOUS .................................................................... 19

SCHEDULE “A” PROJECT SCHEDULE ........................................... 22
SCHEDULE “B” COST ESTIMATE ..................................................... 23
SCHEDULE “C” HARD COST ALLOCATION ................................... 24
SCHEDULE “D” DRAFT DRAW CERTIFICATE ................................ 25
SCHEDULE “E” ADDITIONAL SOFT COST ALLOCATION .............. 27
CONSTRUCTION AGENCY AGREEMENT

THIS AGREEMENT made in sixuplicate this 1th day of May, 2009

BETWEEN:

CITY OF HAMILTON  
(the "City")  
OF THE FIRST PART  

-and-

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD  
(the "HWDSB")  
OF THE SECOND PART  

WHEREAS the Hamilton-Wentworth District School Board has confirmed their plans to rebuild the Dr. Edgar Davey Elementary School located at 99 Ferguson Avenue North Hamilton, Ontario (the “School Facility”) on its present site adjacent to Beasley Park.

AND WHEREAS the City staff from the Planning and Economic Development and Community Services Department have met with representatives from the HWDSB to investigate opportunities to build a new Beasley Community Centre (the “BCC Facility”) attached to or adjacent to the School Facility.

AND WHEREAS construction of the BCC Facility would provide the City and other community groups an opportunity to offer needed programs and services in this inner-city neighbourhood, and support current community efforts that address challenges that exist in the poorest neighbourhood in Hamilton. Extension of existing reciprocal use agreements between the City’s Recreation Division and HWDSB would allow after-hour use of the school gym in return for specified school uses of City recreation facilities, further leveraging these important community assets for mutual and community benefit.

AND WHEREAS designing the BCC Facility within the timetable and on the site provided by HWDSB will provide operating efficiencies and program opportunities beyond what a separate centre could provide in this underserved community, in addition to considerable savings in facility construction.

AND WHEREAS the City and HWDSB are focused on providing solutions to recreational facility needs in Hamilton. Accordingly, both organizations are entering into this Construction Agency Agreement that will guide their relationship and activities for the development of the School Facility and the BCC Facility (hereinafter called the “Project”).

AND WHEREAS the Project will consist of an approximately <<insert>> square foot School Facility and an approximately six thousand (6,000) square foot BCC Facility located within the School Facility.

AND WHEREAS the School Facility will consist of <<insert>>. The BCC Facility will be <<insert>>.

AND WHEREAS the HWDSB as lessor (the "Lessor"), and the City as lessee (the “Lessee”), are parties to that certain Lease (as amended, supplemented or otherwise modified from time to time pursuant thereto, the "Lease"), pursuant to which the Lessee
has agreed to lease from Lessor, and Lessor has agreed to lease to Lessee certain
leased properties located at 99 Ferguson Avenue North, Hamilton, Ontario.

AND WHEREAS the Stakeholders have an important role in the provisions and approval
of the final budget, schedule and quality of the end product. They are to be involved in
the preliminary stages of design throughout the final design stages. After signing-off on
the final design, Stakeholders will be invited to monthly Stakeholder meetings and will be
updated on the overall progress of the Project.

AND WHEREAS subject to the terms and conditions hereof, (i) the City desires to
appoint the HWDSB as its sole and exclusive agent for the design and construction of
the Project; and (ii) the HWDSB desires, for the benefit of the City, to cause Project to be
designed and constructed in accordance with and pursuant to this Agreement, in
accordance with the terms herein set forth.

AND WHEREAS at its meeting of _______ **, 2009, City Council did approve of Item **
of the joint Public Works Department and Community Services Department Report
PW09037/ECS07092(b) and did thereby authorize the Project, on the terms and
conditions set out herein.

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 – DEFINITIONS

1. Defined Terms
1.01 In this Agreement (as hereafter defined), the following terms shall have the
meanings indicated:
   (a) “As-Built Drawings” means the drawings and specifications revised by the
       Contractor during the work, showing any and all changes or variations to the
       work from the requirements of the drawings and specifications.
   (b) “Architect” means The Ventin Group.
   (c) “BCC Facility” means the City’s Beasley Community Centre facility.
   (d) “City” means City of Hamilton.
   (e) “Constructor” means a person who undertakes a project for an owner and
       includes an owner who undertakes all or part of a project by himself or by more
       than one employer.
   (f) “Contractor” means a person contracting with or employed directly by the
       HWDSB to supply services or materials to the Project.
   (g) “Cost Over-Runs” means related additional Project Costs that exceed the
       approved Project Construction Budget.
   (h) “Final Completion” means the date after issuance of the certificate of
       Substantial Performance for the Project, and all lien periods have expired, all
deficiencies and incomplete work are completed and certified by the Architect, and Turnover is achieved.

(i) “Final Payment” means the last payment from the City to the HWDSB, of the City’s proportion of the entire unpaid balance of the Project Costs as adjusted by any approved change orders.

(j) “HWDSB” means the Hamilton-Wentworth District School Board.

(k) “Lease” means the future negotiated lease agreement between the City as lessee and the HWDSB as lessor, for space located in the School Facility for the BCC Facility.

(l) “Project” means the School Facility, the BCC Facility and all related and ancillary lands forming part of the facilities.

(m) “Project Committee” means a member from each respective Stakeholder.

(n) “Project Construction Budget” means the target cost figure covering the construction of the Project.

(o) “Project Consultant” means the City’s representative and the HWDSB’s representative, or a representative jointly selected by the City and the HWDSB.

(p) “School Facility” means the HWDSB’s Dr. Edgar Davey Elementary School facility.

(q) “Shop Drawings” are drawings, diagrams, illustrations, schedules, performance charts, brochures, product data, and all other submittals which are required for any part of the finished work, including drawings for false-work, forms, or other incidental details of construction that are required in the construction but not as part of the finished work.

(r) “Site Works” means on-site and off-site work, including, but not limited to, walks, water, storm sewer, sanitary sewer, gas, hydro, storm management pond, sidewalks, ramps, curbs, curb ramps, parking facilities, stairs, planting areas, pools, promenades, exterior gathering or assembly areas and raised or depressed paved areas.

(s) “Stakeholder” means the HWDSB and the City.

(t) “Substantial Performance” means the definition provided in the Construction Lien Act (Ontario).

(u) “Turnover” shall be as defined in Article XVI of this Agreement.

ARTICLE II – SCOPE OF PROJECT

2.01 Overall Control of Project.
(a) The HWDSB shall manage and control the process throughout the construction of the Project, subject to the final approval of the City on items dealing exclusively with the BCC Facility.

(b) The HWDSB’s policies and procedures shall be used throughout the course of the Project to the extent they do not contradict this Agreement.

(c) The City of Hamilton’s Barrier-Free Design Standards (2006), are to be implemented where possible for the accessible design of all areas of the Project. This is a mandatory requirement for the BCC as a public facility.

(d) The HWDSB shall draft, finalize, have control of and execute all contracts, subject to the City’s approval, and will distribute to the Project Committee.

(e) The HWDSB shall utilize its own procurement procedures including but not limited to tendering, contract administration, and any evaluation criteria and prequalification of contractors unless otherwise agreed to in writing by all the Stakeholders.

(f) The City is considered a Stakeholder and joint owner of the Project, and thus will have input throughout all stages of design and construction, providing sign-off on all contract documents, and changes to project scope, budget, and schedule.

(g) The HWDSB and City hereby acknowledge that the City of Hamilton’s Public Works Department shall have a right of ingress and egress at all times for its respective uses at the adjacent site.

ARTICLE III - APPOINTMENT OF CONSTRUCTION AGENT

3.01 Appointment.

Pursuant to and subject to the terms and conditions set forth herein, the City hereby designates and appoints the HWDSB as its exclusive agent for the construction of the Project with this Agreement.

3.02 Acceptance.

The HWDSB hereby accepts such designation and appointment.

3.03 Commencement and Completion of Construction.

The HWDSB hereby agrees for the benefit of the City, to complete or cause to be completed the design and construction of the BCC Project.

3.04 Term.

This Agreement shall commence on the date hereof and shall terminate upon the first to occur of:

(a) termination of this Agreement pursuant to Article VIII hereof; or
(b) termination of the Lease; or

(c) the date of Final Completion is achieved and Final Payment is received.

3.05 Construction Documents and Related Agreements.

(a) Subject to the approval of the City, the HWDSB may execute any of its duties under this Agreement by or through agreements with any contractor (the "Contractor") for the design, construction and completion of the Project pursuant hereto (collectively the "Construction Agreements").

(b) The HWDSB shall direct the Contractor to prepare, or cause to be prepared, those additional technical, commercial, and administrative documents and agreements (the "Construction Documents") deemed reasonably necessary and desirable by the City, and which are otherwise permitted by the Construction Agreements, for the design, construction of the Project. The Construction Documents shall include, but not be limited to, plans, drawings, sketches, schematics, studies, reports, calculations, specifications, bids, bid evaluations, purchase orders, subcontracts, drawdown schedules, payment requisitions and construction schedules, change orders, contemplated change orders and site instructions.

(c) The City shall have the right to review all Construction Agreements and Construction Documents for the purpose of advising the Project Committee of methods of improving the design and operation of the Project based on the City's experience in developing, designing, constructing, and operating similar facilities. With respect to Construction Agreements and Construction Documents the City shall indicate its approval or amended provisions thereto within five (5) business days of its receipt in writing thereof and its approval or disapproval to change orders or design amendments within three (3) business days of its receipt in writing thereof. Should no response be received from the City within the respective period stated above, then the City shall be deemed to have given authority to Project Committee and/or the HWDSB, as the case may be, unless City Council approval is necessary.

(d) All Construction Agreements and Construction Documents shall be subject to the City's approval as provided for above.

3.06 Scope of Authority.

(a) The City hereby expressly authorizes the HWDSB, or any agent or contractor of the HWDSB, and the HWDSB agrees, for the benefit of the City and for its own benefit (which HWDSB benefit the City specifically acknowledges), to take all action necessary or desirable for the performance and satisfaction of all of the HWDSB's obligations hereunder, including, without limitation:

(i) subject to the provisions of this Agreement and the approval of the City, all design and supervisory functions and other services relating to the construction of the Project;

(ii) subject to the provisions of this Agreement and the approval of the City, negotiating and entering into all contracts or arrangements to procure
the equipment, materials and facilities necessary so that the Project will be designed and constructed with the care and skill expected of design professionals and contractors with experience and expertise in completing the Project;

(iii) subject to the provisions of this Agreement, obtaining all necessary permits, licenses, consents, approvals and other authorizations, including those required under applicable law;

(iv) subject to the provisions of this Agreement, performing any other acts and providing all other materials, labour and services necessary in connection with the design, construction and completion of the Project;

(v) subject to the terms and conditions of this Agreement and the approval of the City, the HWDSB and/or the Contractor shall be deemed the Constructor of the Project; and

(vi) subject to the terms and conditions of this Agreement and the approval of the City, the HWDSB shall have management and control over the design and all construction means, methods, sequences, techniques and procedures with respect to the construction of the Project.

3.07 Covenants of the City and the HWDSB

The HWDSB and the City hereby mutually covenant and agree that each will notify the other of relevant approvals within seventy-two (72) hours or as agreed upon between the parties.

ARTICLE IV - SCHEDULING

4.01 Schedule.

The Project schedule is hereby jointly approved by the City and the HWDSB at as provided in Schedule “A” of this Agreement, subject to any modifications agreed to in writing by the HWDSB and City at the time of tender.

ARTICLE V – AMENDMENTS AND MODIFICATIONS

5.01 Amendments and Modifications.

The HWDSB and the City shall be copied on all contemplated change orders and actual change orders on this Project. The HWDSB and the City’s approval of change orders will be required and requested on all changes to the Project in accordance with Section 3.07 hereof.

ARTICLE VI - PROJECT FUNDING

6.01 Funding of Project Costs.

(a) The project costs of the 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 construction of, which includes but not limited to, the Site Works, School Facility and BCC Facility.

(b) Unless otherwise specified in sub-sections (c) and (d) below, Project Costs shall be divided proportionally between the City and the HWDSB (the “Cost Contribution Percentage”).

(c) Soft Costs are to be divided as per the division of services using the pre-tender estimate proportions or as provided in Schedule “E”.

(d) Hard Costs are to be divided and paid for as agreed by all parties, using the pre-tender estimate proportions for the School Facility, the BCC Facility, and the Site Works or as provided in Schedule “C”.

(e) During the course of the construction of the Project and upon the receipt of a draw down certificate from the Contractor, Architect and/or all other trades, sub-trades and other contractors providing material, labour and service to the Project (the "General Draw Certificate"), the HWDSB shall request, pursuant to a draw down certificate in the form attached hereto as Schedule "D" (the "Contribution Draw Certificate"), that the City advance funds for the payment of its share of the Project Costs in accordance with the terms of this Agreement and, in particular, out of the funds to be contributed by the City pursuant to sections 6.02(a) and 6.03(a). The City shall comply with such request by depositing such funds into the Escrow Funding Account as defined below within twenty-five (25) business days of its receipt of the Contribution Draw Certificate.

(f) A Contribution Draw Certificate shall be issued by the HWDSB for an amount representing the HWDSB’s Cost Contribution Percentage of any amount due under a General Draw Certificate.

(g) A Contribution Draw Certificate shall be issued by the City for an amount representing the City’s Cost Contribution Percentage of any amount due under a General Draw Certificate.

(h) The HWDSB will manage and control the Project Construction Budget once it has been approved in accordance with this Agreement and authorize all spending on the Project in accordance with such budget, subject to the City’s approval as provided for herein.

(i) The Cost Contribution Percentage shall be based on an agreed upon cost estimate as provided in Schedule “B” and the stipulated funds shall be applied in accordance with Section 6.02 until depleted. Upon depletion of the
funds stipulated in 6.02, then the prorated formula in section 6.03 shall apply for any outstanding balances.

6.02 **Cost Allocation.**

(a) The City agrees to pay **<insert>>** DOLLARS ($0.00) towards the Project Costs.

(b) The HWDSB agrees to pay **<insert>>** DOLLARS ($0.00) towards the Project Costs.

6.03 **Project Proportion Costs.**

Subject to 6.03(c) below, if the Project funding requirements exceed the aggregate sum stipulated in 6.02, and the City has approved such Cost Over-Runs, then the parties shall forward additional funds proportioned between the parties. The following calculation details an illustration utilizing the Pre-Tender estimate dated ____________, 2009 for the final Project Costs.

(a) The City agrees to pay a percentage no less than,

\[
\frac{6.02(a)}{6.02(a) + 6.02(b)}
\]

\[= \frac{$0.00}{($0.00 + $0.00)} = \text{_______}\%
\]

(b) The HWDSB agrees to pay a percentage no less than,

\[
\frac{6.02(b)}{6.02(a) + 6.02(b)}
\]

\[= \frac{$0.00}{($0.00 + $0.00)} = \text{_______}\%
\]

(c) In keeping with the values above, notwithstanding the foregoing subsections 6.03(a) and (b) above, should the final cost estimation based on final tender amounts made by the jointly retained professional estimate be different, then the parties hereby agree to accept and adopt such estimate as a final and binding determination of the matter.

(d) For further clarification the percentages provided in subsections 6.03(a) and (b) above include a **<insert>>** percent (0%) split allocated to the HWDSB and a **<insert>>** percent (0%) split allocated to the City for the Site Works.

6.04 **Use of Escrow Account.**

The parties agree that the HWDSB shall open and maintain during the construction of the Project a bank account at a major Canadian Chartered Bank (the “Escrow Funding Account”) into which all sums advanced by the City and/or the HWDSB under any Contribution Draw Certificate shall be deposited solely for the purposes of satisfying payment under any General Draw Certificate. Both the HWDSB and the City agree that the sums representing their respective Cost Contribution Percentages shall be deposited into the Escrow Funding Account and the Holdback Account within twenty-five (25) days after the receipt of the General Draw Certificate. All interest shall be prorated in accordance with the
Cost Contribution Percentages and the HWDSB agrees to hold all sums in the Escrow Funding Account for the benefit of it and the City pro rata to the Cost Contribution Percentages.

6.05 **Use of Holdback Account**

The parties agree that the HWDSB shall withhold from the sums advanced under any the General Draw Certificate all sums for statutory holdback necessary to comply with the provisions of the *Construction Lien Act (Ontario)* and any other applicable law, in a bank account at a major Canadian Chartered Bank (the “Holdback Account”). All interest shall be prorated in accordance with the Cost Contribution Percentages and the HWDSB agrees to hold all sums in the Escrow Funding Account for the benefit of it and the City pro rata to the Cost Contribution Percentages.

6.06 **Exception.**

(a) Despite any other provision in this Agreement, changes to the HWDSB’s program, requested by the HWDSB after final sign-off, are expected to be fully funded by the HWDSB with respect to any additional costs or scheduling delays affecting the Project.

(b) Despite any other provision in this Agreement, changes to the City’s program, requested by the City after final sign-off, are expected to be fully funded by the City with respect to any additional costs or scheduling delays affecting the Project.

(c) Despite any other provision in this Agreement, if the City does not approve any Cost Over-Runs as provided in 6.03, the City shall have no obligation whatsoever to fund any portion of the Cost Over-Runs.

(d) Despite any other provision in this Agreement, if the HWDSB does not approve any Cost Over-Runs as provided in 6.03, the HWDSB shall have no obligation whatsoever to fund any portion of the Cost Over-Runs.

**ARTICLE VII - COMMUNICATIONS**

7.01 **Project Communication.**

All communications on the Project are to be directed through the Project Consultant for distribution to the Project Committee as required.

**ARTICLE VIII - EVENTS OF DEFAULT**

8.01 **Construction Agency Agreement Events of Default.**

If any one or more of the following events (each an "Event of Default") occurs as a result of Party’s actions (“Defaulting Party”), the non-Defaulting Party shall have a right, but not an obligation to terminate this Agreement upon fifteen (15) days written notice to the Defaulting Party:
(a) failure by the HWDSB to apply any funds advanced by the City to the construction of the Project as provided herein; or

(b) failure by the HWDSB to withhold from the sums advanced under any the General Draw Certificate all sums for statutory holdback necessary to comply with the provisions of the Construction Lien Act (Ontario) as and any other applicable law provided herein; or

(c) failure by the City to advance and pay the required funds to the HWDSB for the construction of the Project as provided herein; or

(d) failure by a party to observe or perform any term, covenant or condition of this Agreement and such failure shall remain uncured for a period of thirty (30) days after receipt of written notice thereof from the non-Defaulting Party; provided that, if such failure to perform is not capable of being cured within such period, immediately initiate the actions necessary to cure such failure, diligently prosecute such actions until cure is effectuated and effectuate such cure within ninety (90) days of such the non-Defaulting Party’s notice.

8.02 Damages.

The termination of this Agreement pursuant to Section 8.01 shall in no event relieve a Defaulting Party of its liability and obligations hereunder which accrued or arise out of actions, or events or omissions occurring prior to such termination, all of which shall survive any such termination.

8.03 Remedies.

No failure to exercise and no delay in exercising, on the part of the HWDSB or the City, any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

ARTICLE IX - NO CONSTRUCTION AGENCY FEE

9.01 Agency Fee.

All obligations, duties and requirements imposed upon or allocated to the HWDSB shall be performed by the HWDSB at the HWDSB's sole cost and expense, and the HWDSB will not be entitled to, and the City shall have no obligation to pay any agency fee, and the HWDSB shall not be entitled to, and the City shall have no obligation to make or pay, any reimbursement therefore, it being understood that this Agreement is being entered into as consideration for and as an inducement to the City and the HWDSB entering the Lease and the construction of the Project. The foregoing is subject, in all respects, to the City's performance of its payment obligations set forth in Article VI.
9.02 **Hold Harmless.**

(a) The HWDSB does hereby agree to waive, release absolutely, defend, indemnify and save harmless the City, its employees, officials, successors, contractors and agents from against all claims, demands, awards, judgments, actions, causes of action proceedings by whomsoever made or brought in respect of any personal or bodily injury (including death) to any person, and any loss of or damage to any property caused directly or indirectly by or as a result of the City fulfilling its obligations under this Construction Agency Agreement except to the extent that same are caused by the negligent acts, errors, or omissions of the City.

(b) The City does hereby agree to waive, release absolutely, defend, indemnify and save harmless the HWDSB, its employees, officials, successors, contractors and agents from against all claims, demands, awards, judgments, actions, causes of action proceedings by whomsoever made or brought in respect of any personal or bodily injury (including death) to any person, and any loss of or damage to any property caused directly or indirectly by or as a result of the HWDSB fulfilling its obligations under this Construction Agency Agreement except to the extent that same are caused by the negligent acts, errors, or omissions of the HWDSB.

**ARTICLE X - NO OBLIGATION CURE EVENT OF DEFAULT**

10.01 **Default.**

Either party to this agreement may without waiving or releasing any obligation or Event of Default and subject to any limitations remedy any Event of Default for the account of and at the sole cost and expense of the other party (the “Defaulting Party”). All reasonable out of pocket costs and expenses so incurred (including reasonable fees and expenses of counsel), together with interest thereon at the rate of the Bank of Canada’s prime rate then in effect, plus two percent (2%) per annum of any outstanding amount due from the date on which such sums or expenses are to be paid by the Defaulting Party, shall be paid by the Defaulting Party on demand.

**ARTICLE XI – LIENS AND ENCUMBRANCES**

11.01 **Construction Liens.**

HWDSB shall promptly pay all its contractors or materialmen when due all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of, repairs, alterations or additions to the Project and do all things necessary in order to prevent any construction, mechanics or other liens or orders for the payment of money to be registered against the lands or buildings, if applicable, and should any lien be made or filed to discharge same forthwith at the HWDSB’s sole expense.

If the HWDSB shall fail to cause any such lien to be discharged as aforesaid, then, in addition to any other right or remedy of the City, the City may (but shall not be so obligated) discharge same by paying the amount claimed to be due into Court or directly to any such lien claimant and the amount so paid by the City
and all costs and expenses (including solicitors' fees, on a substantial indemnity basis) incurred for the discharge of such lien, shall be due and payable by the HWDSB to the City on demand and shall bear interest at ten percent (10%) per annum on the unpaid balance (calculated monthly).

This shall not prevent the HWDSB from retaining any amounts claimed due which the Architect has not certified to be due, or which are properly and reasonably retained to secure the performance of any work or the correction of any defect or which, in the opinion of the Architect, are reasonably retained in anticipation of damages arising from any contractor's default, or which are required to be retained under the provisions of the Construction Lien Act (Ontario) or any other applicable law.

**ARTICLE XII – OPERATIONS, MAINTENANCE AND INSURANCE**

12.01 Operations and Maintenance.

The operations and maintenance of the Project is to be as set out and agreed upon in the Lease.

12.02 Insurance.

Throughout the term of this Agreement (including any renewal thereof), each party shall 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 and personal injury liability, property damage, and non-owned automobile and having an inclusive limit of not less than $2,000,000 per occurrence and in the aggregate and endorsed to include the other party as additional insured.

(b) Each party shall deposit with the other a certificate of insurance which shall provide that at least thirty (30) days prior written notice shall be given to the other party by the Insurer before the Insurer or Insured takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

**ARTICLE XIII – SECURITY**

13.01 Security.

(a) The individual Stakeholders may have separate keyed systems for the overall security of their respective facility in the Project. However, the HWDSB shall have access to the BCC Facility upon prior written request not to be unreasonably withheld, if necessary due to the location of services including but not limited to water, hydro and gas meters.

(b) In the case of an emergency, immediate access shall be granted to the City to the School Facility.
(c) If the Stakeholders desire, the facilities of the Project may be secured using an electronic card reader system.

ARTICLE XIV - NOTICES

14.01 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
Public Works Department
77 James Street North, Suite 320,
Hamilton, ON L8R 2K3

Attention: General Manager of Public Works

Fax: 905.546.2086

with a copy to:

City of Hamilton
Hamilton City Centre
77 James Street North, Suite 220
Hamilton ON L8R 2K3

Attention: City Clerk

Fax: 905.546.2095

(b) If to the HWDSB:

Hamilton-Wentworth District School Board
Education Centre (Main Office)
100 Main St. West
Hamilton, Ontario L8P 1H6

Attention: Mr. Don Hall

Tel: 905-527-5092
Fax: 905.521.2545
Email: don.hall@hwdsb.on.ca

14.02 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.

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

ARTICLE XV – DISPUTE RESOLUTION

15.01 The City and the HWDSB shall jointly have final determination in any matter pertaining to the Project. However, it is the preference of the City and the HWDSB 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 both parties, and the Project Committee shall have final determination of the dispute.

15.02 Unless stated otherwise in this Agreement, if any dispute arises which cannot be resolved by the parties, either the City or the HWDSB 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 the City and the HWDSB or any matter arising out of this Agreement.

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

(a) if the City or the HWDSB 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 parties do not reach agreement to resolve the dispute, the Project Committee shall 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 judgement 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 or the HWDSB.
ARTICLE XVI - TURNOVER

16.01 Although Substantial Performance of the Project may have been achieved by the Contractor, HWDSB shall ensure that the mandatory conditions of Turnover be met by the Contractor prior to the Stakeholders assuming responsibility or acceptance or occupancy of the Project.

16.02 It is the discretion of the Stakeholders to approve that the mandatory requirements have been satisfied and that Turnover has been achieved and the School Facility and BCC Facility are fit for use/occupancy by the respective Stakeholder.

16.03 The following mandatory conditions are required to obtain Turnover:

(a) Construction work is completed;
(b) All ceiling, wall and floor finishes have been completed;
(c) Deficiencies pertaining to the Project have been identified and noted by the Contractor and the Stakeholders;
(d) The completion of all/any remaining deficient work will not cause the Stakeholders any operational impacts or health and safety concerns in assuming control of the Project;
(e) All HVAC and electrical lighting systems have been commissioned and fully operational;
(f) The Contractor has provided the Stakeholders with required training on all equipment;
(g) The Contractor has provided to the Stakeholders all completed maintenance manuals (previously approved by the Project Consultant);
(h) The Contractor has provided a complete design package, including drawings and specifications in accordance with the construction documents to each Stakeholder;
(i) The Contractor has completed cleaning of the part or portion of the Project as approved by the Stakeholders; and
(j) All regulatory permits, certificates and approvals have been received including but not limited to: building/fire department approval, fire and life safety certificates, utility and hydro permits, elevator certificates, consultant and sub-consultant review certificates.

ARTICLE XVII - CITY'S ACCESS TO PROJECT

17.01 The City shall have the right to enter and occupy the Project in whole or in part, for the purpose of placing fittings and equipment or for other uses before the issuance of the certificate of the Substantial Performance of the Project, where in the opinion of the Architect and Project Consultant, such entry and occupancy
will not interfere unreasonably with the Contractor.

17.02 Notwithstanding 17.01, the parties agree that during the term of this Agreement, the City may inspect any and all aspects of the Project, at all reasonable times, for the purpose of ensuring that the Contractor and HWDSB are carrying out the work and other obligations in accordance with this Agreement.

ARTICLE XVIII - SHOP DRAWINGS AND OTHER SUBMITTALS

18.01 HWDSB shall provide one (1) set of reproducible originals of all drawings upon which it, the Architect, the Contractor, and all of its subcontractors, shall indicate all changes which are made during the actual construction which deviate from the original drawings and specifications and/or the work.

18.02 HWDSB shall ensure as the work progresses that the Contractor keeps a complete and accurate record of all changes or deviations from the contract documents and Shop Drawings, indicating the work as actually installed.

18.03 At the completion of the Project, HWDSB shall ensure that the Contractor has certified by endorsement thereof, that each of the revised prints of the drawings and specifications are complete and accurate. Prior to the Contractor's application for final payment, the record drawings and specifications, arranged in proper order, indexed and endorsed, and in the following form, shall be delivered to each Stakeholder, namely:

(a) one (1) complete set of reproducible final versions of the As-Built Drawings; and

(b) the final version of the As-Built Drawings stored on the most recent version of AutoCAD.

ARTICLE XIX - MISCELLANEOUS

19.01 This Agreement may be executed in counterparts, and each counterpart so executed and delivered shall be deemed an original.

19.02 No amendment, variation, or other modification to this Agreement shall be valid or binding upon the parties unless the same is in writing.

19.03 No waiver by a party to this Agreement of any breach, failure or default in performance by the other party shall be valid unless given in writing by the waiving party, and no failure, refusal or neglect by the party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations hereunder, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach, failure or default and shall not constitute a waiver by the party of its right at any time or thereafter to require strict compliance with the provisions hereof.

19.04 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto, and each party irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario.
19.05 All dollar amounts expressed herein shall be payable in Canadian currency.

19.06 Time is of the essence hereof.

19.07 All provisions of this Agreement shall be severable and no provision hereof shall be affected by the invalidity of any other provision except to the extent that such invalidity also renders such other provision invalid. In the event that any provision hereof is contrary to any law or found to be unenforceable by any Court of competent jurisdiction, the parties agree to observe and perform all other provisions of this Agreement as if such provision were not contained herein.

19.08 This Agreement, the documents incorporated by reference herein, and any Schedules hereto constitute the entire agreement between the parties and all prior negotiations, commitments, conditions, representations, warranties and undertakings are merged herein. Except as herein provided, there are no oral or written representations to the Shareholder relating to the subject matter hereof, whether direct, indirect, collateral, expressed or implied.

19.09 Whenever a personal pronoun is used herein, it is understood that such usage shall include both singular and plural, masculine and feminine, and shall refer in appropriate cases to corporations or other legal entities as well as to individuals.

19.10 Neither party shall be responsible to the other for any non-performance or delay in performance occasioned by any causes beyond its reasonable control, including without limitation any acts or omissions of the other party, acts of civil or military authority, embargoes, insurrections or acts of God. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the length of the delay, provided that the party affected makes reasonable efforts to correct the cause or reason for such delay and gives the other party prompt notice of such delay.

19.11 This Agreement shall inure to the benefit of and be binding upon the parties hereto and, as permitted herein, their respective heirs, administrators, personal representatives, executors, successors and assigns.

19.12 The headings and table of contents contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

19.13 Unless otherwise provided in this Agreement, neither party shall not assign, transfer or encumber, in any manner or part, this Agreement or any right or obligation thereunder without the prior written consent of the other party. Such consent may not be arbitrarily or unreasonably withheld. Any attempt to assign, transfer or encumber any of the rights, duties or obligations of this Agreement without such consent of the other party is void.

19.14 Upon the termination, expiration or lapse of this Agreement for whatever reason, the obligations of either party remaining unperformed or unsatisfied, including all of the indemnities given in this Agreement, shall nevertheless continue and be binding on said party.

19.15 The following schedules are attached to and form a part of this Agreement in the
same manner and with the same effect whether or not they are included in the body hereof:

Schedule “A” – Project Schedule  
Schedule “B” – Cost Estimate  
Schedule “C” – Hard Cost Allocation  
Schedule “D” – Form of Contribution Draw Certificate  
Schedule “E” – Additional Soft Cost Allocation

***************

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.

HAMPTON-WENTWORTH DISTRICT SCHOOL BOARD  
Signed for and on behalf of the Hamilton-Wentworth District School Board by:

Signed ___________________________ Signed ___________________________
Name: ___________________________ Name: ___________________________
c/s: ___________________________ c/s: ___________________________
Title: ___________________________ Title: ___________________________

Date__________________________ Date__________________________
“ I have the authority to bind the Board”

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. PW09037/ECS07092(b),  
Item X.X of the Emergency & Community Services Committee adopted by the Council of the City of  
Hamilton on the XXth day of May, 2009.

File Number:
SCHEDULE “A”
PROJECT SCHEDULE

Construction Timeline

- **Legal Agreements** - April 2009
- **Site Plan Approval** – approved - April 2009
- **Building Permit** – application submitted – April 15, 2009
- **Building Permit Awarded** – response within 20 business days – May 2009
- **Issue for Tender** – 3 week process May 2009 (concurrent to the award of building permit) – June 1, 2009
- **Tender Awarded** – 2 week partner evaluation period, value engineering & confirmation of price – June 1, 2009
- **Kick off Meeting with General Contractor** – Early June 2009
- **Mobilization of General Contractor** – Mid June 2009
- **Construction Period** - (consultants have proposed 1 year, but the General Contractor will recommend timing) – June 2010
- **Grand Opening** – August/September 2010
SCHEDULE “B”
COST ESTIMATE

See attached Pre-Tender Estimate, from Hanscomb Ltd., dated __________ __, 200__.
Final amounts are as follows:

City - $________ (consists of the original $________ less $_______ from list of potential cost savings.)

HWDSB - $________ (consists of the original $________ less $_______ from list of potential cost savings.)

Therefore, the final proportions for hard cost allocations are as follows:

City = ($______/$/______)100 = _____% 

HWDSB = ($______/$/______)100 = _____%
SCHEDULE “D”
FORM OF CONTRIBUTION DRAW CERTIFICATE

HWDSB
100 Main St. West
Hamilton, ON L8P 1H6

DATE

To: City of Hamilton
City Hall
71 Main Street West
Hamilton, ON L8P4Y5

We refer to the Construction Agency Agreement entered into between the City of
Hamilton and the HWDSB on ____________, 2009 (the "Agreement"). In full
satisfaction of the terms and conditions of payment set out in the Agreement, enclosed
with this Contribution Draw Down Certificate is a copy of the General Draw Certificate
submitted to the HWDSB by [INSERT NAME OF GENERAL CONTRACTOR]. In
addition, we attach hereto a schedule showing draws received to date and amounts
received from the City.

We hereby request that you remit to us the amount of $__________, that amount to be
credited to us by deposit into the Escrow Funding Account and the necessary deposit to
the Holdback Account [INSERT BANKING INFORMATION FOR HWDSB]. We confirm
that upon receipt of this certificates such funds shall be paid within twenty-five (25) days
of the General Draw Certificate.

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

Per: ____________________________

Name: _______________________
Title: ________________________
Schedule to Contribution Draw Down Certificate #____

Date:

Contract Price: $_____________________

Amounts Drawn Down on Certificates to Date: $_____________________

Amount of Holdback on Certificates to Date: $_____________________

Pro Rata Contribution of the City to Draws: $_____________________

Amounts Received to Date against Draw, if any: $_____________________

Amount due under this Contribution Draw $_____________________

Amount of Holdback under this Contribution Draw $_____________________
SCHEDULE “E”  
ADDITIONAL SOFT COST ALLOCATIONS  

Regarding Soft Costs to the Project, the City and the HWDSB further agree on the following:

- Building Permit/Site Plan Approval fees to be divided as per the Pre-Tender Estimate percentages as shown in section 6.03;

- All costs for testing/inspections are to be divided with <<insert>> percent (%) allocated to the City and <<insert>> percent (%) allocated to the HWDSB; and

- Due diligence documentation (Geotechnical Reports, Environmental Reports, Archeological Surveys, Legal Surveys, etc.) are to be divided with <<insert>> percent (%) allocated to the City and <<insert>> percent (%) allocated to the HWDSB.