RECOMMENDATION:

(a) That the draft Construction Agency Agreement (attached as Appendix A to Report PW09037/ECS07092(b)) 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.

(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.

____________________________________    _______________________
Joe-Anne Priel     Gerry Davis, CMA
General Manager,   Acting General Manager,
Public Works Department   Community Services Department

EXECUTIVE SUMMARY:

At its meeting of December 12, 2007, Council approved Item 10 of the Emergency & Community Services Committee Report 07-015, which read as follows:

10. **Beasley Community Centre (ECS07092) (Ward 2) (Item 8.3)**

That the General Manager of Community Services be authorized and directed to draft, in partnership with the Hamilton-Wentworth District School Board, an Agreement respecting the design and build of a City owned community centre that is to be joined to the new school building, which is scheduled to be constructed on the existing site of the Dr. Edgar Davey Elementary School, and to report back to the Emergency & Community Services Committee.

Subsequently, staff from the Planning & Economic Development, Community Services, and Public Works Departments have been in discussions with the Hamilton-Wentworth District School Board (HWDSB) regarding the joint design and construction of the new Dr. Edgar Davey Elementary School (the School) and the Beasley Community Centre (BCC), located at 99 Ferguson Avenue, Hamilton, adjacent to Beasley Park.

The HWDSB has begun the process of rebuilding the School at its present location, as per their original schedule, in order to maintain a September 2010 opening. The HWDSB is currently including approximately 6,000 ft.² of ground floor space, within their
new School design, in order to accommodate the new BCC. Design is near completion and the site plan has been received and conditionally approved by the City of Hamilton (the City).

The overall structure of the partnership will involve the School incorporating the BCC into its design and within its property limits. The City will be responsible for the payment of their share of all design and construction costs related to the BCC on a pro-rata square foot basis. This space will be leased to the City of Hamilton on a long-term basis for a nominal amount and the City will pay its share of all ongoing operations and maintenance costs, as agreed upon between the two parties.

Staff are requesting Council approval to finalize the negotiations necessary to implement this project; in partnership with the HWDSB, on a schedule that does not adversely affect their tender process. All agreements will be developed and reviewed by the City Solicitor, prior to presentation to the Mayor and City Clerk for signing. A draft copy of the Construction Agency Agreement is attached as Appendix A to Report PW09037/ECS07092(b).

**BACKGROUND:**

This joint venture has been in discussion since 2004 when Council directed City staff to investigate an exchange of a portion of Beasley Park with the HWDSB in order to facilitate the construction of a new School, avoid student displacement and improve park and/or recreation assets in the adjoining Beasley Park. Discussions have since taken place that resulted in the current design, which places the BCC within the School building in a fashion, which facilitates after hours community access to various areas within the School. In addition to providing the much needed community centre for the Beasley community, this approach maximizes current and future efficiencies with minimal cost impacts to the HWDSB and the City.

The constrained school site, and decision to locate the 6000 ft.² community centre within the new school on HWDSB property, resulted in the decision to fund construction of the BCC and structure a long term, nominal fee lease, which will protect both the City's investment and ongoing interest in the BCC. Key interests of the City that will be protected through lease provisions include:

- The City’s lease, with the HWDSB, would be for a period of not less than a twenty-five year period, with rights to renew.

- Financial protection of the City’s capital investment to construct the BCC portion of the project. It is envisioned that the investment would be protected on a straight line, declining balance basis over a lease period of not less than twenty-five years. Should HWDSB need to cancel the lease for some unforeseen reason, it would be required to repay the City the remaining balance.

- City would be among the parties with a first right of purchase in the event that the school was sold, in accordance with the Education Act.
The constrained site and decision to allocate the limited HWDSB space for City use puts further pressure on remaining space for school playgrounds. The current design provides exclusive, school day use of approximately 6,000 ft.\(^2\) of park land immediately adjacent to the school playground. This area will be fenced in to ensure the security and control of the students during school hours, and will have gates held open outside of regular school hours. The HWDSB is planning on installing a multi-purpose court in this area for use by students during school hours and residents of the area during off-school time.

**ANALYSIS/RATIONALE:**

The project direction, outlined in Report PW09037/CS09092(b), and supporting agreements being negotiated will provide the best overall solution to providing community centre space, within this constrained site.

**ALTERNATIVES FOR CONSIDERATION:**

None.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:**

This project is expected to be completed within the Council approved budget, in the amount of $3.0 million, and is to be funded through project account #7100854811. Current estimates for construction costs are $1.4 million plus GST, subject to HWDSB tender results. Some additional costs for furniture and equipment will also be incurred before completion.

**Staffing**

Staff from various departments will be involved in this project during all stages of planning, design, and construction in order to ensure that the City's needs are met. The amount of staff time required will be significantly reduced, as the City will be benefiting from the HWDSB resources during this project. The HWDSB will be in full control of the project during all stages and the City will be a stakeholder on the project until completion, at which time we will become a tenant of the HWDSB. The HWDSB will be responsible for all planning, procurement, project management, design, construction and their legal costs, during the execution of this project.
Legal:

Legal Services will be involved in all stages of the planning and negotiation of this project. The following agreements are being negotiated and drafted:

1. A Construction Agency Agreement, defining all cost-sharing and payment structures during planning, design and construction of the School/BCC. It is important that this Agreement (a draft copy is attached as Appendix A to Report PW09037/ECS07092(b)) is executed, prior to the HWDSB tendering for the general contractor in order to ensure a complete understanding between the partners, prior to construction. The Legal Services Division will complete this Agreement in partnership with City staff and the HWDSB’s legal counsel.

2. A long-term Lease Agreement, between the HWDSB (owner) and the City (tenant), for not less than a 25-year renewable term for the nominal amount of one dollar per year. This Agreement will be reviewed by the Legal Services Division, prior to being executed by the Mayor and City Clerk. Other provisions to be included within the terms of the Lease Agreement include, but are not limited to, the following:
   
   • Financial protection of the City’s capital investment to construct the BCC portion of the project. City staff anticipates that the investment will be protected on a straight line, declining balance basis over a twenty-five year period. Should the HWDSB need to cancel the lease for some unforeseen reason, it would be required to repay the City the remaining balance.
   
   • The City would possess the first right of purchase in the event that the School was sold, in accordance with the Education Act.
   
   • The City will include the right to sub-lease the property. Wesley Urban Ministries is currently planning on leasing space, within the BCC long-term, in order to provide services to the community.

3. The real estate sale and road closure of Kelly Street with an easement in favour of the City of Hamilton sidewalk. Legal Services is currently coordinating this with the HWDSB.

4. The road closure of Elgin Street with an easement in favour of the HWDSB and Hamilton Hydro. Legal Services is currently coordinating this with the HWDSB.

5. The existing Reciprocal Use Agreements between the City and the HWDSB will be updated to ensure all parties are able to mutually benefit from this partnership. Shared facilities will include the use of City pools in exchange for the use of the school gymnasium, as agreed upon between the HWDSB and the City.
6. A Shared-Use Agreement will be required between the City and the HWDSB for the use of Beasley Park by the HWDSB. Legal Services are currently preparing this agreement with City Staff and the HWDSB.

7. A Sub-Lease Agreement between the City and Wesley Urban Ministries, for the ongoing operation of the Ontario Early Years Centre, will be prepared by Legal Services in conjunction with staff.

**POLICIES AFFECTING PROPOSAL:**

1. Reciprocal Use Agreement with the HWDSB for existing Combined Sites;
2. Purchasing Policy 4.12: Policy for Cooperative Purchasing; and,
3. All procurement will be conducted by the HWDSB with proportionately shared costs by the City, for the design, construction and ongoing operation of the BCC.

**RELEVANT CONSULTATION:**

City Staff have been in consultation with senior management at the HWDSB regarding this project. City Departments/Divisions consulted on this project include the following:

- Corporate Services Department
  - Legal Services Division
  - Purchasing Section
- Community Services Department
  - Strategic Services Division
  - Recreation Division
- Planning & Economic Development Department
  - Real Estate Division
- Public Works Department
  - Capital Planning & Implementation Division
  - Operations & Maintenance Division

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.**  ☑ Yes  ☐ No

The Beasley Community Centre will provide necessary services and programming for adults and children in the community. The partnership with the HWDSB and with
Environmental Well-Being is enhanced. ☑ Yes ☐ No

Shared use of facilities such as the gymnasium and park improvements reduce the need to build a larger community centre, thereby minimizing use of park space for built structures.

Economic Well-Being is enhanced. ☑ Yes ☐ No

Partnerships such as this enhance the economic well-being of the City by leveraging the school site to its maximum potential. In partnership with the HWDSB, the City will now be able to provide a necessary service to the local community with minimal impact on capital costs. All costs for planning, design, construction, management, procurement, etc, are to be borne by the HWDSB and shared with the City on a pro-rata square foot basis, reducing overall costs to Hamilton taxpayers. The City will lease the facility from the Board in the long-term for a nominal amount in lieu of the capital costs of construction incurred.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

This partnership is a definite advantage for all parties involved including the City, the residents of Beasley community, the HWDSB and Wesley Urban Ministries. Much efficiency has been realized while providing vital services to the community including improved park land, new school facilities, and a new community centre including an OEYC.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No

Partnerships such as this illustrate the willingness of the City to develop innovative and creative solutions that provide important and much needed services to the public in a cost effective manner.
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
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CONSTRUCTION AGENCY AGREEMENT

THIS AGREEMENT made in sixtuplicate this ___th day of May, 2009

BETWEEN:

CITY OF HAMILTON

(of the "City")

OF THE FIRST PART

-and-

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

(of 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 $0.00 towards the Project Costs.

(b) The HWDSB agrees to pay $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 percent (0%) split allocated to the HWDSB and a 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 of 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.

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

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

Date ____________________________  Date ____________________________

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

CITY OF HAMILTON  
Signed for and on behalf of the City of Hamilton by:

Signed ___________________________  Signed ___________________________
Name: Fred Eisenberger  Name: Kevin C. Christenson
Title: Mayor  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_.

DRAFT
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 = _____%
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:

<table>
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<tr>
<td>Amounts Drawn Down on Certificates to Date</td>
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<tr>
<td>Amount of Holdback on Certificates to Date</td>
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<tr>
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<tr>
<td>Amounts Received to Date against Draw, if any</td>
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<td>Amount due under this Contribution Draw</td>
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</tr>
<tr>
<td>Amount of Holdback under this Contribution Draw</td>
<td>$____</td>
</tr>
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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.