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<th>TO: Chair and Members Emergency &amp; Community Services Committee</th>
<th>WARD(S) AFFECTED: CITY WIDE</th>
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<td>COMMITTEE DATE: June 8, 2011</td>
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<td>SUBJECT/REPORT NO: CANUSA Games Letter of Agreement (Renewal) (CS11041) (City Wide)</td>
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<td>SUBMITTED BY: Joe-Anne Priel General Manager Community Services Department</td>
<td>PREPARED BY: Greg Maychak 905.546.2424 ext. 2000</td>
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<td>SIGNATURE:</td>
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**RECOMMENDATION:**

(a) That the City renew the Letter of Agreement for an additional five year term with CANUSA Games, as part the Community Partnership Grant Program in an amount to be determined annually by City Council (attached as Appendix A of Report CS11041).

(b) That the Mayor and Clerk be authorized to execute the Letter of Agreement between the City and CANUSA Games, in a form satisfactory to the City Solicitor.

**EXECUTIVE SUMMARY**

The intent of this report is to recommend the renewal of the CANUSA Games Letter of Agreement for a new 5 year term as outlined in Appendix A to Report CS11041. No other changes to the agreement are required. The grant amount of $41,200 requires Council approval each year through the annual budget process and is administered through the City’s Community Partnership Program.
The Letter of Agreement shall commence November 1, 2011, and shall expire on the 31st day of October, 2015, unless terminated earlier in accordance with the provisions of the Agreement.

Subject to the City’s annual budget, the City issues CANUSA Games an amount of grant funds approved by City Council from year to year. The City also provides CANUSA Games with free use of office space for the purpose of conducting business in relation to the Games, as well as free use of City facilities for the purpose of sports tryouts, practice and competitions for the Games; all upon the rules, regulations and policies established by the City. The provision of funds and use of the office space and City facilities to CANUSA Games is conditional upon CANUSA Games’ organization, administration, promotion and execution of the Games in each and every year of the Term.

Alternatives for Consideration – See Page 3

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The CANUSA Games received $41,200 in funding in 2010 from the Grants Sub-Committee through Corporate Services. Over $200K has been received over the last five years through the Community Partnership Grant to support the program. Future funding is subject to the approval of City Council from year to year.

Staffing: There are no staffing implications.

Legal: Acceptance of the recommendation would commit the City to the agreement for a term of five (5) years, subject to a right of early termination on at least ninety (90) days’ written notice to CANUSA Games.

HISTORICAL BACKGROUND

The CANUSA Games were created in 1958 through the joint efforts of the Canadian and USA Amateur Athletic Unions, and the Mayors’ offices in both Hamilton, Ontario and the “Sister City” of Flint, Michigan. The Games are held annually, alternating between host Cities. This year’s 54th Anniversary will be held in Hamilton, August 5-7, 2011.

Originally, the Games were operated through the Mayor and City Clerk’s offices of both Hamilton and Flint, with 200 athletes in seven sport areas participating in the event. The CANUSA organization has since grown to approximately 1200 athletes competing
in 17 sport areas and is now operated through the CANUSA Board with grant funding from both the City of Hamilton and City of Flint, Michigan.

The goal of the Games is to offer amateur athletes of all ages a chance to take part in a multi-sport, international competition demonstrating goodwill and international friendship. The City has provided funding for the Games for many years and considers renewed funding to be in the interest of the City of Hamilton to promote health, sportsmanship and building international goodwill between two cities.

**POLICY IMPLICATIONS**

There is no policy implications associated with Report CS11041.

**RELEVANT CONSULTATION**

Staff has worked with the executive of the CANUSA Games to review the existing agreement. No further changes were required except to extend the agreement for a 5 year term.

The following Departments were consulted and support the recommendations in Report CS11041:

- Finance & Corporate Services Department, City Treasurer’s Office
- Legal Services, City Manager’s Office

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

The funding for the CANUSA Games was originally part of the Recreation Division’s yearly operating budget. In 2002 the funding for the Games was transferred to the Community Partnership Grant Program requiring a yearly grant application to be completed by CANUSA. On September 28, 2007 the Grants Sub-Committee (Report GRA07011) requested and approved the first 5-year Letter of Agreement between the City of Hamilton and CANUSA.

The Letter of Agreement terminates on October 31st, 2011 and the Grants Sub-Committee requested the agreement be reviewed and extended. This agreement is for a new 5 year term and continues to spell out the terms and conditions on how the funds shall be administered and the terms and conditions for the use of the office space and City facilities.
ALTERNATIVES FOR CONSIDERATION:

The City of Hamilton and the CANUSA Board of Directors could revert back to applying for an annual grant application.

CORPORATE STRATEGIC PLAN


Growing Our Economy

- A visitor and convention destination

Healthy Community

- An engaged Citizenry

APPENDICES / SCHEDULES

Appendix A to Report CS11041 - CANUSA Games Letter of Agreement
LETTER OF AGREEMENT

This Letter of Agreement made as of the 18th day of May, 2011.

BETWEEN:

CITY OF HAMILTON
(the “City”)

- and -

CANUSA GAMES
(the “Recipient”)

WHEREAS:

The Recipient is a non-profit organization dedicated to community, youth and sport;

The Recipient hosts a three-day sporting event known as the CANUSA Games (the “Games”) on an annual basis, which is the largest and longest running International Games in North America, between Hamilton, Ontario and Flint, Michigan. The goal of the Games is to offer amateur athletes of all ages a chance to take part in a multi-sport competition to demonstrate goodwill and international friendship;

Section 107 of the Municipal Act, 1991, S.O. 2001, c. 25, as amended, authorizes the City to make grants, on such terms as to security and otherwise as the council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality;

The City has provided funding for the Games for many years and considers continued funding to be in the interests of the municipality of Hamilton;

The City has agreed to provide the Recipient with funds and the use of office space and City facilities in support of the Games, on the terms and conditions herein set forth;

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. The term of this Letter of Agreement shall commence on the 1st day of November, 2011 and shall expire the 31st day of October 2015, unless terminated earlier in accordance with the provisions of this Letter of Agreement (the “Term”). The parties shall discuss the possibility of renewing this Letter of Agreement prior to the expiration of the Term.

2. Subject to the City’s annual budget, the City shall issue to the Recipient an amount of funds approved by City Council from year to year (the “Funds”). If the City is unable to secure the requisite appropriation from City Council for any payment under this Letter of
Agreement, the City shall not be obligated to make any payment under this Letter of Agreement. The City shall provide the Recipient with notice of its inability to secure the requisite appropriation as soon as reasonably practicable after City Council makes its budgetary decision.

3. The provision of Funds to the Recipient pursuant to this Letter of Agreement shall be conditional upon the Recipient’s organization, administration, promotion and execution of the Games in each and every year of the Term. For clarity, the Recipient covenants and agrees to conduct the Games over a period of three (3) days during the second (2nd) weekend of August in each and every year of the Term, alternating the location annually between Hamilton, Ontario and Flint, Michigan. The Recipient reserves the right to move the weekend of the Games to another weekend in the summer and will provide the City with written notice of the move as soon as reasonably practicable after making its decision.

4. The Recipient agrees to administer the Funds in a fair and transparent process and shall ensure that the Funds are used solely for the following expenditures in support of the Games:

   (a) staff salaries, wages and benefits;

   (b) staff expenses, such as those for travel/meetings, staff development and volunteer expenses;

   (c) office supplies;

   (d) facility expenses, such as rent, property taxes, utilities and insurance;

   (e) sports equipment and operating expenses for the Games; and

   (f) such other expenditures which have been approved by the Recipient’s Board of Directors and in writing by the City’s Director Recreation prior to purchase.

5. Should the Recipient use the Funds for expenditures not permitted under this Letter of Agreement, the City may demand from the Recipient the payment of funds equal to those already used by the Recipient for the unauthorized expenditures, which funds shall be immediately due and payable.

6. Within sixty (60) days of the end of each calendar year or the end of the Term, as the case may be, the Recipient shall provide the City with a financial cost summary, in a form satisfactory to the City, with relevant supporting documentation, disclosing the Recipient’s expenditure of the Funds for the year-ended or Term-ended, as the case may be. Should same disclose that the actual costs incurred by the Recipient are less than the amount of the Funds, the Recipient shall pay the difference to the City within thirty (30) days after delivery of said financial cost summary and documentation, unless the City’s Director of Culture and Recreation allows the Recipient to retain the excess Funds for use in the subsequent year’s Games.

7. The Recipient shall maintain financial records and books of accounting respecting the expenditures of the Recipient and disbursements of the Funds and will allow the City or such other persons appointed by the City to inspect and audit said books and records,
upon at least fifteen (15) days’ written notice, both during the Term of this Letter of Agreement and subsequent to its expiration or termination, and shall provide the City with such information as it requests.

8. The Recipient shall deliver to the City the following:

(a) as soon as practicable and in any event within one hundred and twenty (120) days after the end of each fiscal year, the annual audited financial statements of the Recipient and a balance sheet of the Recipient as of the end of that year, setting forth in each case in comparative form, corresponding figures from the preceding annual audit, together with the auditor’s report, all in reasonable detail and satisfactory in scope and substance to the City;

(b) promptly on receipt, copies of any formal detailed reports submitted to the Recipient by independent chartered accountants in connection with each annual or interim audit of the books of the Recipient; and

(c) with reasonable promptness, other financial data as the City may reasonably request.

9. The Recipient shall ensure the safe use, maintenance and storage of the goods purchased and the safety of all persons in all activities conducted in connection with this Letter of Agreement. All goods and services purchased pursuant to this Letter of Agreement shall be at the sole risk of the Recipient, and the City shall have no liability with respect to claims of any kind arising from the goods and services purchased and activities performed.

10. Should the Recipient cease organizing, administering, promoting and/or executing the Games, the Recipient shall notify the City of such cessation immediately and shall immediately return any unspent Funds, as of the commencement of the Term, to the City.

11. As long as the Recipient is not in default of any of the terms of this Letter of Agreement and is diligently performing all the covenants in this Letter of Agreement, the City shall provide the Recipient with free use of City facilities for the purpose of sports tryouts, practices and competitions for the Games. All days and times for the use of such facilities shall require the prior approval of the City, having regard to other users of the facilities. The Recipient shall complete the City’s standard rental form for the subject City facilities and the Recipient shall adhere to all policies, rules and regulations established by the City for the City facilities, it being understood that only the basic fee for the City facilities shall be waived.

12. As long as the Recipient is not in default of any of the terms of this Letter of Agreement and is diligently performing all the covenants in this Letter of Agreement, the City shall provide the Recipient, at no cost, with the use of office space, a maximum of two (2) telephone lines, a fax machine, meeting space and a computer (collectively the “Office Space”) for the purposes of conducting business in relation to the Games, all upon such rules, regulations, policies and procedures which the City may impose from time to time. In addition, and without limiting the generality of the foregoing, the Recipient acknowledges and agrees:
(a) to not permit or suffer to be permitted any damage or injury to the Office Space and shall not do or omit to do or suffer to be done or omitted anything upon or in respect of the Office Space which shall be or result in a nuisance;

(b) to keep the Office Space in a safe, clean and well-ordered condition and to repair any damage or injury caused by the acts, omissions or negligence of the Recipient and those for whom it is responsible at law;

(c) to not make any alterations, repairs or installations to the Office Space without the City’s prior written consent, which may be unreasonably withheld;

(d) to not register this Letter of Agreement or any notice or reference in respect of this Letter of Agreement against title;

(e) at the expiration or earlier termination of this Letter of Agreement, to peaceably surrender and yield up the Office Space to the City in a safe, clean and well-ordered condition;

(f) that the City shall be responsible for maintaining the Office Space in a state of good repair, save and except where damage or injury is caused by the acts, omissions or negligence of the Recipient or those for whom it is responsible at law;

(g) that, save and except where caused by the City’s negligence, the City is not liable for any damages, whether direct, indirect or consequential, or for damages for the personal discomfort, illness or inconvenience of the Recipient or the Recipient’s officers, employees, agents, invitees or others by reason of failure of the Office Space or any other equipment, facilities or systems servicing the Office Space, or by reason of delays in the performance of any repairs, replacements and maintenance for which the City is responsible, and no such delay shall entitle the Recipient to any compensation whatsoever;

(h) that the City shall have the right, at any time, to enter into the Office Space for inspection and/or to undertake any work or alterations to the Office Space or the building in which the Office Space is located;

and if the Recipient breaches any of the provisions of this section, the City may remedy or attempt to remedy the breach at the cost of the Recipient, and the City shall not be liable for any loss or damage caused by the acts of the City in remedying or attempting to remedy any breach.

13. The parties agree to participate, on at least an annual basis, in periodic meetings and formal evaluations of the Games during the Term of this Letter of Agreement. The City shall provide at least thirty (30) days’ written notice of such evaluation and the evaluation template/format. The parties agree, however, that no formal evaluation shall take place during June, July or August, being the Recipient’s peak operating period.

14. The City shall have one (1) non-voting seat on the Recipient’s board of directors and shall be entitled to attend and participate in all meetings of the Recipient.
Recipient shall provide the City with reasonable prior notice of the date, time, location and purpose of all meetings and shall do or cause to be done all such further acts, deeds, assurances and things as may be reasonably required in order to give full effect to this provision.

15. The City, without liability, cost or penalty, may in its sole discretion terminate this Letter of Agreement:

   (a) immediately if the Recipient ceases organizing, administering, promoting and/or executing the Games or breaches any other term or condition of this Letter of Agreement or of any other agreement which the Recipient has with the City; and/or
   
   (b) at any time upon at least ninety (90) days' written notice to the Recipient.

Upon the expiration or earlier termination of this Letter of Agreement, the Recipient shall return any unspent Funds to the City.

The rights and remedies given to the City in this Letter of Agreement are distinct, separate and cumulative, and none of them, whether exercised by the City or not, shall be deemed to be in exclusion of any other rights or remedies provided in this Letter of Agreement or by law or in equity.

16.  **INSURANCE AND INDEMNITY**

   (a) The Recipient shall obtain and maintain, during the Term of this Letter of Agreement, Commercial General Liability Insurance with a limit of not less than $2,000,000 per claim and in the aggregate, naming the City as additional insured. The Recipient covenants and agrees to provide the City with proof of such insurance prior to receiving the Funds and at any other time forthwith upon request by the City.

   (b) The Recipient shall at all times defend, indemnify and save harmless the City, its officers, employees, agents, invitees, successors and assigns (collectively the “City Indemnities”) from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by or imposed on the City Indemnities or their property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, constituent partners, employees, agents and property of the City Indemnities) directly or indirectly arising out of, resulting from or sustained as a result of the Recipient’s performance of or failure to perform this Letter of Agreement, including without limitation claims of any kind arising from the goods and services purchased and activities performed. This covenant shall survive the termination of this Letter of Agreement.

17.  **MISCELLANEOUS**

   (a) The Recipient shall comply at its own expense with, and conform to, all applicable statutes, laws, by-laws, regulations, ordinances, notices, rulings and orders of the federal, provincial or municipal government from time to time in effect during the Term of this Letter of Agreement and any renewal
thereof. Without limiting the foregoing, the Recipient, at its own expense, shall obtain all necessary municipal, provincial, federal or other governmental approvals, permits and licenses to conduct its business, operations and/or activities, including without limitation, those with respect to the Games.

(b) All notices, or any other thing to be given or delivered pursuant to this Letter of Agreement, unless otherwise specified, shall be given in writing and delivered personally or by prepaid registered mail, and addressed to the City at:  

City of Hamilton  
City Hall, 71 Main Street West  
Hamilton, Ontario  
L8P 4Y5  

Attention: City Clerk  

with a copy to:  

City of Hamilton  
Recreation Division  
77 James Street North, Suite 400  
Hamilton, ON  
L8R 2K3  

Attention: Manager, Sport and Community Development  

and to the Recipient at:  

CANUSA Games  
c/o City of Hamilton  
City Hall, 71 Main Street West  
Hamilton, Ontario  
L8P 4Y5  

Attention: CANUSA Games President c/o Administrator  

or such other address as the City or Recipient may, from time to time, advise each other by notice in writing. All notices mailed hereunder shall be deemed to have been given and received by the addressee seventy-two (72) hours following mailing, or in the case of personal delivery, upon delivery. In the event of actual or threatened postal interruption, all notices shall be delivered personally.

(c) Neither this Letter of Agreement nor the Funds shall be assigned in whole or in part by the Recipient without the prior written consent of the City.

(d) This Letter of Agreement and all terms, covenants, conditions and provisions herein reserved shall be binding upon and shall enure to the benefit of the City and Recipient and their respective successors and permitted assigns.

(e) No term or provision of this Letter of Agreement shall be deemed waived and no breach consented to, unless such waiver or consent is in writing and signed by an authorized representative of the party claimed to have waived or consented.
(f) The headings to each section are inserted for convenience of reference only and do not form part of the Letter of Agreement.

(g) Time is of the essence for this Letter of Agreement and for every part hereof.

(h) This Letter of Agreement shall not be construed to constitute an agency, partnership or joint venture between the parties hereto.

(i) This Letter of Agreement embodies the entire agreement of the parties hereto and no understandings or agreements, collateral, verbal or otherwise exist between the parties except as expressly set out herein or as may hereafter be agreed to, in writing, by the parties.

(j) This Letter of Agreement shall be construed in accordance with and governed by the laws, and subject to the jurisdiction of the courts, of the province of Ontario and the federal laws applicable therein.

IN WITNESS WHEREOF the parties hereto have duly executed this Letter of Agreement by its officers duly authorized in that behalf.

CITY OF HAMILTON

Per: ______________________________

Mayor – R. Bratina

Per: ______________________________

City Clerk – R. Caterini

I/We have authority to bind the City.

_______________________________
Date

CANUSA GAMES

Per: ______________________________

Brad Maxwell, President

Per: ______________________________

Dave Tonin, Treasurer

I/We have authority to bind the Recipient.

_______________________________
Date