Conditional Grant Agreement between the Province and the City of Hamilton respecting Lister Block

That Motion 10.2 respecting the Conditional Grant Agreement between the Province and the City of Hamilton respecting Lister Block approved by City Council on September 12, 2007 be amended as follows:

1. The Original Agreement is amended by deleting Recitals 4 and 5 and replacing those Recitals with the following:

4. The Municipality has agreed in principle to either enter into a long-term lease of Lister Block with the Landlord (as defined below) or to purchase the Lister Block in order to accommodate departments of the Municipality.

5. To ensure the long term protection and rehabilitation of Lister Block, the Province wishes to assist the Municipality by providing the Grant to fund certain costs incurred by the Municipality in leasing or purchasing the Lister Block, and relocating employees of the Municipality to Lister Block.

2. (1) Section 1.01 of the Original Agreement is amended by adding the following clause:

(a.1) “Agreement of Purchase and Sale” means an Agreement of Purchase and Sale for the sale of the Lister Block to the Municipality which has been executed by both the Municipality and the Landlord.
Section 1.01 is further amended by deleting clauses (d) and (f) and replacing the clauses with the following:

(d) “Landlord” means LIUNA Local 837 Lister Property Corporation or any subsequent owner of the Lister Block or any subsequent owner who is party to or assumes the Lease.

(f) “Lister Block” means the six storey retail-office vacant building erected in 1923, located at 28 James Street North together with associated lands at the rear having frontage on Hughson Street North, in the City of Hamilton, Property Identification No. 171670005.

3. Subsection 1 of Section 3.01 of the Original Agreement is deleted and replaced by the following:

(1) The Municipality shall enter into the Lease or obtain registered title to the Lister Block or terminate this Agreement before June 30, 2008.

4. Article 3 of the Original Agreement is amended by the addition of the following section:

3.02 If the Municipality decides to purchase the Lister Block, the Municipality agrees that the Grant is subject to the following terms:

(1) The Province will disburse the Grant to the Municipality as soon as possible after

(a) The Municipality has delivered to the Province certified copies of the by-laws of the Municipality authorizing its entry into this Agreement, prior to March 27, 2008; and

(b) The Province has obtained all necessary internal approvals.

(2) The Municipality agrees to allow the Province full access to any records or materials which the Province requires related to the subject matter hereof and authorizes the Province to inspect and copy any financial records or any other documents in the possession or under the control of the Municipality.
The Municipality shall provide any information related to the matters contemplated by this Agreement to the Province when requested by the Province.

The Municipality shall not agree to any amendment of the Agreement of Purchase and Sale without the prior written consent of the Province.

5. Article 4 of the Original Agreement is amended by the addition of the following sections:

4.03 The Municipality shall submit a report to the Province before June 30, 2008 indicating that the City:

1) has entered into the Lease of the Lister Block;
2) has purchased the Lister Block; or
3) wishes to terminate this Agreement.

4.04 Commencing on March 31, 2009 the Municipality shall provide the Province with annual reports stating that the Municipality continues to own the Lister Block and outlining the Municipality’s progress in renovating the Lister Block.

4.05 The Municipality shall provide the Province with additional reports if requested by the Province.

6. Section 7.01 of the Original Agreement is amended by the addition of the following clause:

(c) If the Municipality has elected to purchase the Lister Block, in case of a breach of Article 4 or sections 8.09 (6) or 8.09 (7) demand payment by the Municipality of an amount equal to the product of the whole number of months remaining between April 1, 2008 and March 31, 2028 and at the time of termination of the Agreement and $29,166.66.

7. Section 8.09 of the Original Agreement is amended by the addition of the following:

(6) If the Municipality decides to purchase the Lister Block, the Municipality shall deliver on or before March 31, 2012 an executed certificate certifying that the Municipality has taken occupancy of the Lister Block in accordance with this Agreement.
(7) During the period from April 1, 2008 to March 31, 2028 the Municipality agrees not to sell the Lister Block and shall not cease to occupy substantially all of the Lister Block.

8. All other terms and conditions of the Original Agreement shall continue to be in effect except as amended by this Amending Agreement.
THIS AMENDING AGREEMENT made in triplicate this 1 day of March, 2008.

BETWEEN:

HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING
(referred to as “the Province”)

OF THE FIRST PART

AND:

CITY OF HAMILTON
(referred to as “the Municipality”)

OF THE SECOND PART

WHEREAS the parties entered into a Grant Agreement dated September 7, 2007 (hereinafter called the “Original Agreement”);

AND WHEREAS the Original Agreement required the Municipality to enter into a twenty (20) year lease of the Lister Block building prior to receiving the grant;

AND WHEREAS the Municipality has asked the Province that the Original Agreement be amended to allow the Municipality the choice to lease or purchase the Lister Block;

AND WHEREAS the Minister of Municipal Affairs and Housing has been given the provincial responsibility for the Original Agreement.

AND WHEREAS the parties hereto wish to amend the Original Agreement.

NOW THEREFORE the Parties agree as follows:

1. The Original Agreement is amended by deleting Recitals 4 and 5 and replacing those Recitals with the following:

   4. The Municipality has agreed in principle to either enter into a long-term lease of Lister Block with the Landlord (as defined below) or to purchase the Lister Block in order to accommodate departments of the Municipality.

   5. To ensure the long term protection and rehabilitation of Lister Block, the Province wishes to assist the Municipality by providing the Grant to fund certain costs incurred by the Municipality in leasing or purchasing the Lister Block, and relocating employees of the Municipality to Lister Block.

2. (1) Section 1.01 of the Original Agreement is amended by adding the following clause:

   (a.1) "Agreement of Purchase and Sale" means an Agreement of Purchase and Sale for the sale of the Lister Block to the Municipality which has been executed by both the Municipality and the Landlord.

   (2) Section 1.01 is further amended by deleting clauses (d) and (f) and replacing the clauses with the following:
(d) "Landlord" means LIUNA Local 837 Lister Property Corporation or any subsequent owner of the Lister Block or any subsequent owner who is party to or assumes the Lease.

(f) "Lister Block" means the six storey retail-office vacant building erected in 1923, located at 28 James Street North together with associated lands at the rear having frontage on Hughson Street North, in the City of Hamilton, Property Identification No. 171670005.

3. Subsection 1 of Section 3.01 of the Original Agreement is deleted and replaced by the following:

(1) The Municipality shall enter into the Lease or obtain registered title to the Lister Block or terminate this Agreement before June 30, 2006.

4. Article 3 of the Original Agreement is amended by the addition of the following section:

3.02 If the Municipality decides to purchase the Lister Block, the Municipality agrees that the Grant is subject to the following terms:

(1) The Province will disburse the Grant to the Municipality as soon as possible after

(a) The Municipality has delivered to the Province certified copies of the by-laws of the Municipality authorizing its entry into this Agreement, prior to March 27, 2008; and

(b) The Province has obtained all necessary internal approvals.

(2) The Municipality agrees to allow the Province full access to any records or materials which the Province requires related to the subject matter hereof and authorizes the Province to inspect and copy any financial records or any other documents in the possession or under the control of the Municipality.

(3) The Municipality shall provide any information related to the matters contemplated by this Agreement to the Province when requested by the Province.

(4) The Municipality shall not agree to any amendment of the Agreement of Purchase and Sale without the prior written consent of the Province.

5. Article 4 of the Original Agreement is amended by the addition of the following sections:

4.03 The Municipality shall submit a report to the Province before June 30, 2008 indicating that the City:

1) has entered into the Lease of the Lister Block;

2) has purchased the Lister Block; or

3) wishes to terminate this Agreement.

4.04 Commencing on March 31, 2009 the Municipality shall provide the Province with annual reports stating that the Municipality continues to own the Lister Block and outlining the Municipality's progress in renovating the Lister Block.

4.05 The Municipality shall provide the Province with additional reports if requested by the Province.
6. Section 7.01 of the Original Agreement is amended by the addition of the following clause:
   (c) If the Municipality has elected to purchase the Lister Block, in case of a breach of Article 4 or sections 8.09 (6) or 8.09 (7) demand payment by the Municipality of an amount equal to the product of the whole number of months remaining between April 1, 2008 and March 31, 2028 and at the time of termination of the Agreement and $29,166.66.

7. Section 8.09 of the Original Agreement is amended by the addition of the following:
   (6) If the Municipality decides to purchase the Lister Block, the Municipality shall deliver on or before March 31, 2012 an executed certificate certifying that the Municipality has taken occupancy of the Lister Block in accordance with this Agreement.
   (7) During the period from April 1, 2008 to March 31, 2028 the Municipality agrees not to sell the Lister Block and shall not cease to occupy substantially all of the Lister Block.

8. All other terms and conditions of the Original Agreement shall continue to be in effect except as amended by this Amending Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

Her Majesty the Queen in Right of Ontario as represented by the Minister of Municipal Affairs and Housing

Witness

The Honourable Jim Watson
Minister of Municipal Affairs and Housing
Date:

City of Hamilton

Witness

Name: Fred Eisenberger
Position: Mayor
Date:

Witness

Name:
Position: City Clerk
Date:
CONDITIONAL GRANT AGREEMENT

THIS AGREEMENT (the “Agreement”), made in triplicate as of the 7th day of September, 2007

BETWEEN:

HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO, as represented by
the Minister of Public Infrastructure Renewal and
the Minister of Municipal Affairs and Housing
(referred to as the “Province”)

AND

CITY OF HAMILTON
(referred to as the “Municipality”)

RECITALS:

1. Lister Block (as defined below) is designated as an historic site by the Municipality and deemed provincially significant by the Ontario Heritage Trust which advises the Minister of Culture on historic significance under the Ontario Heritage Act.

2. The re-use and rehabilitation of Lister Block would contribute significantly to the revitalization of the Municipality’s downtown.

3. The parties believe that Lister Block could be rehabilitated and used to accommodate departments of the Municipality.

4. The Municipality has agreed in principle to enter into a long-term lease of Lister Block with the Landlord (as defined below) in order to accommodate departments of the Municipality.

5. To ensure the long term protection and rehabilitation of Lister Block, the Province wishes to assist the Municipality by providing the Grant to fund certain costs incurred by the Municipality in leasing, and relocating employees of the Municipality to, Lister Block.

NOW THEREFORE, in consideration of their respective agreements set out below, the parties covenant and agree as follows:

(1)
ARTICLE 1     DEFINITIONS

1.01 In this Agreement the following words shall have the following meanings:

(a) "Agreement" means this agreement entered into between the Province and the Municipality, as amended and/or restated from time to time;

(b) "Business Day" means any day which is not a Saturday, Sunday or a day observed as a statutory holiday in the Province of Ontario under the laws of the Province of Ontario or the federal laws of Canada applicable therein;

(c) "Grant" has the meaning ascribed thereto in Article 2;

(d) "Landlord" means the Laborers International Union of North America as owner of Lister Block, or any subsequent owner who is party to or assumes the Lease;

(e) "Lease" means a binding and enforceable premises lease between the Municipality and the Landlord for substantially all of Lister Block for a period of not less than twenty (20) years, which shall be in form and substance satisfactory to the Province acting reasonably (and, which for greater certainty and without limiting the generality of the foregoing, will reflect the objective of the parties hereto that Lister Block be restored and rehabilitated in a manner which preserves its heritage and historical features); and

(f) "Lister Block" means the six storey vacant commercial building located at 28—50 James Street North and 5-21 King William Street in the City of Hamilton.

ARTICLE 2     CONDITIONAL GRANT

2.01 Subject to the terms and conditions of this Agreement, the Province shall make a single payment to the Municipality of $7,000,000.00 (Seven Million Dollars) (the "Grant").

ARTICLE 3     CONDITIONS OF THE GRANT

3.01 The Municipality agrees that the Grant is subject to the following conditions:

(1) The Municipality shall enter into the Lease before March 15, 2008.

(2) The Province shall disburse the Grant to the Municipality as soon as possible after:
a. The Municipality has delivered to the Province:

   i. a notarized copy of the fully executed Lease, and

   ii. by-laws of the Municipality authorizing its entry into this
       Agreement and the Lease, and

b. the Province has obtained all necessary internal approvals.

(3) The Municipality agrees to allow the Province full access to any records or
    materials which the Province requires related to the subject matter hereof
    and authorizes the Province to inspect and copy any financial records or
    any other documents in the possession or under the control of the
    Municipality.

(4) The Municipality shall provide any information related to the matters
    contemplated by this Agreement to the Province when requested by the
    Province.

(5) The Municipality shall not agree to any amendment of the Lease without
    the prior written consent of the Province.

ARTICLE 4    REPORTS

4.01 The Municipality shall submit to the Province on or before February 28, 2011 a
    report, detailing the expenditure of the Grant as of December 31, 2010. The
    Municipality shall submit to the Province such further reports as the Province
    may request from time to time thereafter.

4.02 All reports submitted shall:

   (a) be signed by the treasurer and include the treasurer's representation as to
       compliance by the Municipality with this Agreement;

   (b) be supported by a resolution of council of the Municipality; and

   (c) be audited by the municipal auditor.

ARTICLE 5    NOTICES

5.01 Notices and other documentation required by this Agreement shall be in writing
    and shall be delivered by postage-prepaid envelope, personal delivery or
    facsimile and shall be addressed to, respectively:
ARTICLE 6 TERMINATION BY THE PROVINCE

6.01 The Province may, in its sole discretion (acting reasonably), without liability, cost or penalty, and without prejudice to any other rights or remedies of the Province under this Agreement or at law or in equity, terminate this Agreement immediately upon giving notice to the Municipality if in the opinion of the Province:

i) the Municipality has knowingly provided false or misleading information to the Province pursuant to this Agreement; or

ii) any term or condition of this Agreement is breached.
6.02 If the Province, in its sole discretion (acting reasonably), considers the nature of the breach to be such that it can be remedied and that it is appropriate to allow the Municipality the opportunity to remedy the breach, the Province may give the Municipality an opportunity to remedy the breach by giving the Municipality written notice

(a) of the particulars of the breach;
(b) of the period of time within which the Municipality is required to remedy the breach; and
(c) that the Province shall terminate this Agreement:
   i) at the end of the notice period provided for in the notice if the Municipality fails to remedy the breach within the time specified in the notice, or
   ii) prior to the end of the notice period provided for in the notice if it becomes apparent to the Province that the Municipality cannot completely remedy the breach within that time or such further period of time as the Province considers reasonable, or the Municipality is not proceeding to remedy the breach in a way that is satisfactory to the Province.

6.03 If the Province has provided the Municipality with an opportunity to remedy the breach pursuant to section 6.02, and

(a) the Municipality does not remedy the breach within the time period specified in the notice; or
(b) it becomes apparent to the Province that the Municipality cannot completely remedy the breach within the time specified in the notice or such further period of time as the Province considers reasonable; or
(c) the Municipality is not proceeding to remedy the breach in a way that is satisfactory to the Province acting reasonably;

the Province shall have the right to immediately terminate this Agreement by giving notice of termination to the Municipality.

6.04 In the event of termination pursuant to this Article, the effective date of termination shall be the last day of the notice period, the last day of any subsequent notice period or immediately, whichever applies.
ARTICLE 7  GRANT FUNDING UPON TERMINATION

7.01 If this Agreement is terminated by the Province pursuant to Article 6, the Province shall:

(a) demand the repayment of any Grant funds remaining in the possession or under the control of the Municipality; and

(b) in the case of a breach of Article 4 or sections 8.09(4) or 8.09(5), demand payment by the Municipality of an amount equal to the product of the number of whole months remaining on the Lease at the time of termination of this Agreement and $29,166.66.

7.02 If the Province makes a demand under section 7.01, the amount demanded shall be deemed to be a debt due and owing to the Province and the Municipality shall pay the amount to the Province immediately.

7.03 The Province reserves the right to demand interest on any amount owing by the Municipality at the then current rate charged by the Province on accounts receivable.

7.04 If the Municipality fails to pay any amount owing to the Province under this Agreement, including interest, the Municipality acknowledges and agrees that the Province may deduct any unpaid amount from any money payable to the Municipality by the Province, or may exercise any other remedies available to the Province to collect the unpaid amounts.

ARTICLE 8  GENERAL TERMS

8.01 The Municipality's Power to enter into this Agreement

The Municipality represents and warrants that it has the full right and power to enter into this Agreement and that it is not party to any other agreement that would in any way interfere with the rights of the Province under this Agreement. The parties represent that their respective representatives have the authority to legally bind them.

8.02 The Municipality Not a Partner or Agent

Nothing in this Agreement shall have the effect of creating a partnership or agency relationship between the Province and the Municipality.
8.03 Indemnity

The Municipality shall indemnify the Province, its officers, elected officials, employees and agents from and against all costs, losses, damages or expenses directly or indirectly incurred by such persons in connection with matters contemplated by, or in any way related to, this Agreement, unless caused by the negligence or willful act of such persons.

8.04 Agreement Binding

This Agreement shall operate to the benefit of and be binding upon the parties and their successors and permitted assignees.

8.05 Waiver

Any failure by the Province to insist in one or more instances upon strict performance by the Municipality of any of the terms or conditions of this Agreement shall not be construed as a waiver by the Province of its right to require strict performance of any such terms or conditions, and the obligations of the Municipality with respect to such performance shall continue in full force and effect. A waiver of any failure to comply with any term of this Agreement must be written and signed by the Province.

8.06 Changes By Written Amendment Only

Any changes to this Agreement shall be by written amendment signed by all of the parties.

8.07 Entire Agreement

This Agreement embodies the entire agreement between the parties with regard to the matters addressed herein and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties.

8.08 Severability

If any term or condition of this Agreement, is to any extent invalid or unenforceable, the remainder of the Agreement shall not be affected thereby.

8.09 Document/Funds Retention, Audit and Occupancy

(1) For six (6) years after the date upon which any amount paid under Article 2 of the Agreement is expended, the Municipality shall maintain all relevant records to substantiate (a) the payment to the Municipality and all disbursements made by the Municipality under this Agreement and (b) that they were made in accordance with this Agreement and applicable law.
For six (6) years after the date upon which any amount paid under Article 2 of this Agreement is expended, the Municipality shall permit and assist the Province in conducting audits of the operations of the Municipality to verify (a) and (b) above.

(2) The Province shall provide the Municipality with at least ten (10) Business Days prior notice of its requirement for such audit.

(3) The Municipality shall keep the Grant funds, and any part thereof, in a segregated interest bearing account until required for purposes contemplated hereby.

(4) The Municipality shall deliver on or before December 31, 2010 an executed certificate certifying that the Municipality has taken occupancy of Lister Block in accordance with the Lease.

(5) During the initial 20 year term of the Lease, the Lease shall not be terminated and the Municipality shall not cease to occupy substantially all of Lister Block.

8.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.11 Assignment of Agreement or Grant Funds

The Municipality shall not assign this Agreement or the Grant funds or any part of either without the prior written consent of the Province.

8.12 Governing Law

This Agreement and the rights, obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario.

8.13 Further Assurances

The parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
8.14 Survival

The provisions in sections 3.01(3) and (4), Article 4, Article 7, section 8.03 and section 8.09, shall survive termination of this Agreement indefinitely unless otherwise specified herein.
IN WITNESS WHEREOF the parties hereto have executed this Agreement.

Her Majesty the Queen In Right of Ontario as represented by the Minister of Public Infrastructure Renewal

Witness

The Honourable David Caplan
Minister of Public Infrastructure Renewal

Date:

Her Majesty the Queen In Right of Ontario as represented by the Minister of Municipal Affairs and Housing

Witness

The Honourable John Gerretsen
Minister of Municipal Affairs and Housing

Date: Oct 16, 2007

City of Hamilton

Witness

Mayor

Date: Sept 13, 2007

CITY CLERK

Date: Sept 13, 2007