SUBJECT: The Hamilton Street Railway Company (“HSR”) & Safety Service and Adjusters Limited (“SSAL”) - Corporate Governance (City Wide) Legal Services – LS06009

RECOMMENDATION:

1. That Council, sitting as both representatives of the beneficial Shareholder (City of Hamilton), as well as the Board of Directors of The Hamilton Street Railway Company (“HSR”), authorize the updating of the corporate governance of the HSR as set out in Appendices A and B to Report LS06009;

2. That Council, sitting as both representatives of the beneficial Shareholder (HSR), as well as the Board of Directors of Safety Service and Adjusters Limited (“SSAL”), authorize the updating of the corporate governance of SSAL, and the dissolution of SSAL, as set out in Appendices C and D to Report LS06009; and

3. That Council, in its capacities outlined in Recommendations 1 and 2 herein, ratify and confirm the required documentation in the form attached as Appendices A to D to Report LS06009.

EXECUTIVE SUMMARY:

The Hamilton Street Railway Company (“HSR”) and its subsidiary, Safety Service and Adjusters Limited (“SSAL”), are corporations owned and operated by the City of Hamilton. The corporate governance has not been updated to reflect changes in the composition of the Board of Directors and Officers for each corporation. In conducting contractual work, Legal discovered some inconsistencies in the internal records for each
corporation, which should be addressed in order to maintain the proper corporate governance of the HSR and to properly dissolve SSAL.

The HSR should be maintained due to human resources, legal, contractual, insurance and licensing issues.

The SSAL has not operated since 1993 and has not renewed licences required to enable it to do so. Further, SSAL does not hold title to any assets. There is no supportable reason to maintain this corporation and, accordingly, it should be dissolved to alleviate the burden of its obligations under the Corporations Information Act.

The proposed course of action and the ratification of the attached documentation, will have the following effect:

a. the authorized number of Directors will be set at sixteen, being all of Council including the Mayor, for each of the HSR and SSAL;

b. the Boards of Directors will appoint the Officers of each respective corporation, effective December 1, 2003 as follows:

   President – Larry Dilanni, Mayor
   Vice-President – Scott Stewart, General Manager, Public Works
   Treasurer – Joe Rinaldo, General Manager, Corporate Services
   Secretary – Kevin Christenson, City Clerk
   General Manager – Don Hull, Director of Transit

   as well as the signing authorities for each corporation.

c. the Board of Directors of the HSR will cancel outstanding share certificates for the HSR and issue one replacement share certificate in the name of the City of Hamilton;

d. the Board of Directors of the HSR will adopt the City of Hamilton’s existing purchasing policy;

e. the Board of Directors of the SSAL will cancel outstanding share certificates for the SSAL and issue one replacement share certificate in the name of the HSR;

f. the Board of Directors of the HSR, sitting as representatives of the beneficial Shareholder (HSR) of SSAL will authorize the dissolution of that corporation;

g. the President and Secretary, as signing authorities of the respective corporations, will be authorized to sign each of the necessary By-laws in the form attached hereto; and
h. Legal Services will be authorized to make all necessary filings with the Ministry of Consumer and Business Services as may be required to give effect to the foregoing.

BACKGROUND:

HSR was incorporated by an Act of Parliament in 1873 as a private corporation endowed with certain rights pursuant to the Corporation of the City of Hamilton By-Law No. 63, passed by City Council on December 22, 1873. The purpose of the company’s incorporation was to construct and operate a street railway in the Corporation of the City of Hamilton and the adjoining municipalities.

The ownership and corporate structure of the HSR changed frequently as it passed between private and public sectors until 1960, at which time the City of Hamilton acquired the shares of HSR and began operating it by way of the Hamilton Transit Commission.

In 1977, the shares of HSR and SSAL were transferred to The Regional Municipality of Hamilton-Wentworth (“Region”). There are 398,500 shares outstanding for the HSR, which is a throwback to its previous private ownership.

SSAL was incorporated by Letters Patent issued on May 12, 1958. It was set up as a private corporation authorized to issue share capital totalling $40,000.00 in increments of 4,000 shares, with par value set at $10.00 per share. For all intents and purposes, SSAL is considered to be a subsidiary of the HSR, which accordingly owns the shares of the SSAL.

Following the amalgamation of the former Corporation of the City of Hamilton and the Region, responsibility for the HSR and SSAL rested solely with the City of Hamilton. The acquisition of shares from the Region to the City of Hamilton is authorized by the City of Hamilton Act, 1999, which specifies that the City is authorized to hold shares in the HSR and SSAL and to exercise any rights associated with such shares. In addition, the City of Hamilton is mandated to “manage the affairs of both corporations” (s.11.9(2)).

The most recent By-law passed by the Board of Directors of HSR is By-Law No. HSR 01-001 (cross-reference By-law 01-009), being a by-law dated January 16, 2001 to appoint the Officers of the HSR for the period December 1, 2000 through November 30, 2003. There does not appear to be a By-law dealing with the appointment of Officers for the period beginning December 1, 2003. As the HSR is preparing to enter into a long term licence agreement with Eastgate Square Holdings Inc., as well as agreements relating to the Greater Toronto Area Fare Card System, it is imperative that the by-law appointing the Officers be updated so as to authorize the Mayor and Clerk to sign on behalf of the HSR (as the President and Secretary respectively). Further, other outstanding corporate governance issues should be addressed in order to maintain the proper functioning of the HSR.
The SSAL no longer operates and, therefore, will be dissolved if the Recommendation is approved. The corporate governance needs to be updated to reflect the current structure so as to ensure the dissolution of SSAL is properly authorized.

**ANALYSIS/RATIONALE:**

The HSR is a private corporation endowed with attributes similar to that of a municipal corporation. As such, it is subject to the terms of the *Corporations Information Act*, which requires timely filing of Notices of Change advising the Ministry of Consumer and Business Services of changes in the composition of the Board of Directors and Officers. In negotiating a licence agreement, it came to the attention of Legal Services that the filings had been completed over the years, but not always in an accurate manner, prompting an internal review.

There are almost no records pertaining to the corporate governance of the HSR prior to 1977, when the Region acquired the shares. The records of governance under the Region were reflected in a somewhat more comprehensive manner through the various committee reports and by-laws kept on record at the City Clerk’s office.

With respect to the shares of the HSR, there appear to be 398,500 outstanding shares of an undeterminable class. This appears in the records of Clerks in a document dated March 29, 1961. Since that time, no further references have been made to the number or classes of shares. These shares are remnants of a period of governance relating to the private ownership of the HSR, which is no longer applicable. As such, the sole shareholder should be, and for all intents and purposes is, the City of Hamilton.

The corporate records of the HSR as filed with the Ministry of Consumer and Business Services, Companies Branch are out of date with respect to both the Directors and the Officers of that corporation.

Previously, pursuant to Regional By-law No. R80-051, all members of Regional Council were members of the Board of Directors of the HSR. That By-law reads, in part:

1.  *The whole of the Council of The Regional Municipality of Hamilton-Wentworth, being twenty-eight members, are hereby appointed to be the Board of Directors for The Hamilton Street Railway Company, The Canada Coach Lines, Limited and Safety Service and Adjusters Limited for the remainder of the term of this Council, from January 1, 1980.*

This had the effect, for all practical purposes, of enabling the Regional Council to conduct the business of the HSR as part of its usual business.

If this Recommendation is approved, conduct of HSR business will continue to be done in the same manner in which it was carried on previously. The fifteen Councillors and the Mayor will comprise the new Board of Directors of the HSR.
The HSR should be maintained as a separate corporate entity due to the fact that it holds the title to real property, insurance and fleet in its name. Further, the HSR has outstanding contracts in its name, as well as contracts that must be signed in the near future. Further, there are other legal and human resources reasons for keeping this as a separate entity, as opposed to “absorbing” the corporation into the City of Hamilton. City staff intends to conduct ongoing monitoring of the HSR and may, in the future, make other determinations with respect to its viability.

The SSAL has not operated since 1993 and has not renewed licences required to enable it to do so. There appears to be no reason to maintain this corporation any longer and, accordingly, it is recommended that it be dissolved to alleviate the burden of its obligations under the Corporations Information Act.

ALTERNATIVES FOR CONSIDERATION:

The HSR could be dissolved and “absorbed” into Public Works. If this consideration were to be explored, it would be necessary to complete a very comprehensive report to evaluate this option with respect to the legal, financial and human resources impacts of doing so. Preliminary discussions with staff suggest that there are a number of advantages to maintaining the HSR as a separate legal entity. Further, if the Recommendation is not followed, certain contracts that must be signed for upcoming projects would need to be put “on hold” for an indefinite period of time until these issues could be sorted out, in order to ensure proper signing authorities are in place.

The SSAL could be maintained as a separate corporate entity; however, in light of the fact that it is no longer in use and/or necessary, the staff and Council time necessary to conduct regular corporate meetings and to comply with legislated filings would not be warranted.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: There are fines which can be imposed by the Ministry of Consumer and Business Services for failing to file in accordance with the terms of the Corporations Information Act. There are no other financial implications involved in the foregoing recommendations.

Staffing: Ongoing administration of the corporate governance of the HSR can be accommodated within the City Clerk’s Office, with assistance from Legal Services when required.

Legal: Legal review of all documentation associated with the HSR will be appropriately reviewed by Legal Services to meet the needs of the HSR while protecting the City’s interests. Further, as the legislative requirements of the governance of the HSR may
change from time to time, staff recommends that Legal Services be authorized to carry out the necessary filings of the HSR on an ongoing basis.

**Policies Affecting Proposal:**

Staff is unaware of any policies affecting the recommendations, or any contravention of existing City policies

**Relevant Consultation:**

- City Manager’s Office;
- Clerks;
- General Manager, Corporate Services;
- General Manager, Public Works; and
- Risk Management

**City Strategic Commitment:**

By evaluating the “Triple Bottom Line”, (community, environment, 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

Environmental Well-Being is enhanced.  □ Yes  ☒ No

Economic Well-Being is enhanced.  □ Yes  ☒ No

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

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  □ Yes  ☒ No
Shareholders' Resolution

The Hamilton Street Railway Company

WHEREAS the Council of the City Of Hamilton are sitting as representatives of the beneficial Shareholder (City of Hamilton) for The Hamilton Street Railway Company (the "Corporation");

WHEREAS by Section 11.9, subsection (1) of the City of Hamilton Act, 1999, S.O. 1999, c.14, the City of Hamilton is authorized to hold the shares in the Corporation and to exercise the rights attributed thereto;

WHEREAS by subsection (2) of the aforesaid subsection of the said Act, the City of Hamilton is mandated to manage the affairs of the Corporation;

NOW THEREFORE the Council of the City of Hamilton, acting in its capacity as representatives of the beneficial Shareholder (City of Hamilton) of the Corporation, RESOLVES AS FOLLOWS:

1. BE IT RESOLVED that all the shares of the Corporation held by The Regional Municipality of Hamilton-Wentworth and all assets and liabilities of the said Regional Municipality in respect of the shares of the Corporation are hereby acquired and vest in the City of Hamilton, effective December 1, 2000.

2. BE IT RESOLVED that the Board of Directors of the Corporation be authorized to enact a by-law to revoke all previously outstanding share certificates and issue a replacement share certificate representing one-hundred percent (100%) of the shares of the Corporation naming the City of Hamilton as shareholder and dated December 1, 2000.

3. BE IT RESOLVED that the number of Directors comprising the Board of Directors of the Corporation be set at sixteen (16) and be comprised of the following persons:

Mayor Larry DiIanni
Councillor Bernie Morelli
Councillor Sam Merulla
Councillor Chad Collins
Councillor Tom Jackson
Councillor Bill Kelly
Councillor David Mitchell
Councillor Murray Ferguson
Councillor Dave Braden
Councillor Margaret McCarthy
Councillor Brian McHattie
Councillor Terry Whitehead
Councillor Phil Bruckler
Councillor Maria Pearson
Councillor Bob Bratina
Councillor Art Samson
Appendix A - The Hamilton Street Railway Company ("HSR") & Safety Service and Adjusters Limited ("SSAL") - Corporate Governance (City Wide) (LS06009) - Page 2 of 2

4. BE IT RESOLVED that the President and Secretary of the Corporation are hereby authorized and directed to sign this Special Resolution of Shareholders in writing formalizing the items contained therein.

RESOLVED at Hamilton, this day of June, 2006

______________________________
Larry Dilanni
President

______________________________
Kevin C. Christenson
Secretary
THE HAMILTON STREET RAILWAY COMPANY

BY-LAW NO. HSR 05-001

Being a By-law to appoint the Officers of the Company for the period commencing December 1, 2003, ending November 30, 2006, to revoke all outstanding share certificates and re-issue a replacement certificate to the City of Hamilton and to adopt purchasing policies

That the Council of the City Of Hamilton, sitting as the Board of Directors for The Hamilton Street Railway Company, hereby enacts as follows:

1. That the following persons be appointed to the following positions as Officers of the Company concurrent with the term of Council commencing December 1, 2003, ending November 30, 2006:

   President                  Larry DiLanni
   Vice-President             Scott Stewart
   Secretary                 Kevin C. Christenson
   General Manager           Don Hull
   Treasurer                 Joseph Rinaldo

2. That the Legal Services Division of the City of Hamilton is authorized to act as Solicitor for the Company and, as such, is authorized and directed to prepare and file any and all documents as may be required by the Ministry of Consumer and Business Services and any governing legislation, to give effect to the foregoing.

3. a. That the signing officers of the Company for the purposes of signing contracts shall be the President and Secretary.
   b. That every contract to be signed for the Company shall be initialed by the General Manager and Solicitor of the Company before being signed by the signing officers.
   c. That subject to 3 (a) and (b) hereof, the Purchasing Policies adopted by the Transition Board for the City of Hamilton, any successor Purchase Policies that may be adopted by the City of Hamilton and any amendments thereto that may from time to time be made, shall apply in their entirety to the Company.

4. That all outstanding share certificates of the Company are hereby revoked and are to be replaced with a share certificate naming the City of Hamilton as the sole shareholder effective December 1, 2000, in accordance with the provisions of City of Hamilton Act.

5. That the Legal Services Division of the City of Hamilton is authorized and directed to prepare any such corporate minutes, registers, share certificates and any other documentation as may be required to give effect to the foregoing and to create an up-to-date corporate minute book for the Company.
6. That the Secretary of the Company be authorized and directed to maintain the corporate minute book for the Company and to retain the same at the City Clerk's Office of the City of Hamilton.

7. That By-law HSR01-001 and any amendments thereof are hereby repealed.

PASSED AND ENACTED the day of June, 2006

__________________________________________
Larry Dilanni
President

__________________________________________
Kevin C. Christenson
Secretary
Shareholders' Resolution

Safety Service and Adjusters Limited

WHEREAS the Board of Directors of The Hamilton Street Railway Company, is sitting as the representative Shareholder for Safety Service and Adjusters Limited (the "Corporation");

NOW THEREFORE the Board of Directors of The Hamilton Street Railway Company, acting in its capacity as the representative Shareholder of the Corporation, RESOLVES AS FOLLOWS:

1. BE IT RESOLVED that all the shares of the Corporation held by The Regional Municipality of Hamilton-Wentworth and all assets and liabilities of the said Regional Municipality in respect of the shares of the Corporation are hereby acquired and vest in The Hamilton Street Railway Company, effective December 1, 2000.

2. BE IT RESOLVED that the Board of Directors of the Corporation be authorized to enact a by-law to revoke all previously outstanding share certificates and issue a replacement share certificate representing one-hundred percent (100%) of the shares of the Corporation naming The Hamilton Street Railway Company as shareholder and dated December 1, 2000.

3. BE IT RESOLVED that the number of Directors comprising the Board of Directors of the Corporation be set at sixteen (16) and be comprised of the following persons:

   Mayor Larry DiIanni
   Councillor Bernie Morelli
   Councillor Sam Merulla
   Councillor Chad Collins
   Councillor Tom Jackson
   Councillor Bill Kelly
   Councillor David Mitchell
   Councillor Murray Ferguson
   Councillor Dave Braden
   Councillor Margaret McCarthy
   Councillor Brian McHattie
   Councillor Terry Whitehead
   Councillor Phil Bruckler
   Councillor Maria Pearson
   Councillor Bob Bratina
   Councillor Art Samson

4. BE IT RESOLVED that the Board of Directors of the Corporation be authorized to enact a by-law to direct and authorize the Legal Services Division of the City of Hamilton to file Articles of Dissolution of the Company.
5. BE IT RESOLVED that the President and Secretary of the Corporation are hereby authorized and directed to sign the Special Resolution of Shareholders in writing formalizing the items contained therein.

RESOLVED at Hamilton, this day of June, 2006

________________________________________
Larry DiIanni
President

________________________________________
Kevin C. Christenson
Secretary
SAFETY SERVICE AND ADJUSTERS LIMITED

BY-LAW NO. SSA 05-001

Being a By-law to appoint the Officers of the Company for the period commencing December 1, 2003, ending with dissolution, to revoke all outstanding share certificates and re-issue a replacement certificate to The Hamilton Street Railway Company, and to authorize dissolution of the Company.

That the Council of the City Of Hamilton, sitting as the Board of Directors for Safety Service and Adjusters Limited, hereby enacts as follows:

1. That the following persons be appointed to the following positions as Officers of the Company concurrent with the term of Council commencing December 1, 2003, ending November 30, 2006:

   President                  Larry Dilanni
   Vice-President             Scott Stewart
   Secretary                  Kevin C. Christenson
   General Manager            Don Hull
   Treasurer                  Joseph Rinaldo

2. That the Legal Services Division of the City of Hamilton is authorized to act as Solicitor for the Company and, as such, is authorized and directed to prepare and file any and all documents as may be required by the Ministry of Consumer and Business Services and any governing legislation, to give effect to the foregoing.

3. a. That the signing officers of the Company for the purposes of signing contracts shall be the President and Secretary.
     b. That every contract to be signed for the Company shall be initialed by the General Manager and Solicitor of the Company before being signed by the signing officers.
     c. That subject to 3 (a) and (b) hereof, the Purchasing Policies adopted by the Transition Board for the City of Hamilton, any successor Purchasing Policies that may be adopted by the City of Hamilton and any amendments thereto that may from time to time be made, shall apply in their entirety to the Company.

4. That all outstanding share certificates of the Company are hereby revoked and are to be replaced with a share certificate naming The Hamilton Street Railway Company as the sole shareholder effective December 1, 2000, in accordance with the provisions of City of Hamilton Act.

5. That the Legal Services Division of the City of Hamilton is authorized and directed to prepare any such corporate minutes, registers, share certificates and any other documentation as may be required to give effect to the foregoing and to create an up-to-date corporate minute book for the Company.
6. That the Legal Services Division of the City of Hamilton is authorized and directed to prepare and file Articles of Dissolution to wind-up the Company effective immediately.

7. That By-law SSA01-001 and any amendments thereof are hereby repealed.

PASSED AND ENACTED the day of June, 2006

________________________________________
Larry DiIanni
President

________________________________________
Kevin C. Christenson
Secretary