TO: Chair and Members  
Emergency & Community Services Committee  
WARD(S) AFFECTED: WARD 12

COMMITTEE DATE: September 8, 2010

SUBJECT/REPORT NO:  
Lease Agreement for Tisdale House, 314 Wilson Street, Ancaster - Hamilton Police Services Board (CS10084) (Ward 12)

SUBMITTED BY:  
Joe-Anne Priel  
General Manager,  
Community Services Department

PREPARED BY:  
Anna M. Bradford  
905.546.2424, ext. 3967

SIGNATURE:

RECOMMENDATION

(a) That the Lease Agreement between the City of Hamilton and the Hamilton Police Services Board for the property known as Tisdale House, located at 314 Wilson Street East, Ancaster, attached as Appendix A to Report CS10084, be approved.

(b) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City of Hamilton, the Lease Agreement between the City of Hamilton and the Hamilton Police Services Board, for the property known as Tisdale House, located at 314 Wilson Street East, Ancaster (attached as Appendix A to Report CS10084) and all necessary associated documents, in a form satisfactory to the City Solicitor.

(c) That $100,000 in construction material renovation costs for the Tisdale House, located at 314 Wilson Street East, Ancaster (capital project #7101058002), to be funded from previously approved Capital accounts: $60,000 from Capital Project # 7100858706 (Hammill House Renovation Project), And $40,000 from Capital Project # 4241053050 (Ancaster portion of the Ontario Municipal Partnership Fund Surplus reconciliation funding).
EXECUTIVE SUMMARY

Report CS10084 provides staff with the direction necessary to enter into a Lease Agreement with the Hamilton Police Services Board for the use of Tisdale House located at 314 Wilson Street, as the Ancaster Community Policing Centre (CPC), as well as provide a home for a Hamilton Police Museum and artifact storage. Tisdale House is currently vacant and has been minimally maintained. The term of the Lease Agreement is for a period of 10-years with a nominal fee of two dollars ($2.00)/annum/year, plus HST.

The Hamilton Police Services Board is required to provide staff, at their cost, to operate the facility. In addition, the Hamilton Police Services Board is responsible for, but not limited to, all operation and maintenance costs, future capital costs of the leased premises, realty taxes, capital taxes, local improvements, development charges, sewage and drainage charges, if applicable, and all charges and levies utilized for municipal services of every nature and kind, said municipal services to include, but not to be limited to water, education, sanitary sewers, storm sewers, hydro and gas.

The Hamilton Police Services Board will undertake the construction of the interior and exterior of the building and build an accessible washroom and accessibility ramp. The City will provide for the costs of all construction materials in the amount of $100,000. The Hamilton Police Services Board will be responsible for obtaining and paying for all additional costs associated with construction labour, professional services (i.e. architectural and engineering) and required permits related to the construction, from its own funds. The Hamilton Police Services Board will report back to the City in a timely fashion, at the City’s request, regarding Hamilton Police Services Board’s use of those funds and materials.

The Hamilton Police Services Board passed a resolution at their June 21, 2010 meeting endorsing the approval of the Lease Agreement and authorizing the Chair of the Police Services Board to enter into the Lease Agreement, on behalf of Hamilton Police Service.

Alternatives for Consideration – Not applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial:
In order to fulfill the City’s obligations, as the Lessor under the Lease Agreement, $100,000 will be advanced to the Hamilton Police Services Board upon signing the Lease Agreement to purchase construction materials required for the project. The $100,000 in renovation costs for the Tisdale House (capital project #7101058002) are to
be funded from previously approved Capital accounts: $60,000 from Capital Project # 7100858706 (Hammill House Renovation Project) and $40,000 from Capital Project # 4241053050 (Ancaster portion of Ontario Municipal Partnership Fund Surplus (OMPF) Surplus reconciliation funding).

**Staffing:**
There are no staffing implications associated with the recommendations of Report CS10084.

**Legal:**
Legal Services were involved in the development of a Lease Agreement with the Hamilton Police Services Board (attached as Appendix A to Report CS10084).

**HISTORICAL BACKGROUND**

In late winter of 2009 Fieldcote Memorial Park and Museum hosted an exhibit called *Arrested in Time*. The exhibit explored the history of policing in Ancaster and Hamilton and celebrated Hamilton Police Service’s 175th anniversary and 50 years of women in policing in Hamilton. The response from the public was enthusiastic. Members of the Hamilton Police Services Board expressed their wish to establish a permanent museum honouring Hamilton’s law enforcement history using materials from the exhibit.

During the same period, Ancaster Community Policing was looking for a larger home for their offices. Residing in one room of the Ancaster Municipal Centre they had determined that additional space was required to perform their function adequately. The idea to combine the Ancaster Community Policing function with a permanent exhibit on policing in the empty Tisdale House was initiated by the Ward 12 Councillor. Consultation with the Hamilton Police Services Board and Culture Division staff confirms that the proposal was an appropriate use for the building.

**POLICY IMPLICATIONS**

There are no policy implications associated with the recommendations in Report CS10084. However, it should be noted that the Tisdale House is on the Municipal Registry of Property of Cultural/Heritage Interest.
RELEVANT CONSULTATION

- Capital Budget Section, Financial Planning and Policy Division, Corporate Services Department
  Staff from Capital Planning provided the wording and confirmed the procedure for funding transfer between capital accounts as outlined in Recommendation C to Report CS10084.

- Facility and Capital Projects Section, Culture Division, Community Services Department
  Staff from the Culture Division, Capital Projects Section confirmed the feasibility of the Tisdale House renovation and has added the project to the 2010/2011 Work Plan.

- Legal Services Division, City Manager's Office
  Solicitors from the Legal Services Division prepared the Lease Agreement between the City of Hamilton and The Hamilton Police Services Board (attached as Appendix A to Report CS10084).

- Councillor Ward 12
  Ward Councillor initiated project and supports the recommendations in Report CS10084.

- Hamilton Police Services Board
  Hamilton Police Services Board approved the Lease Agreement between the City of Hamilton and the Hamilton Police Services Board (attached as Appendix A to Report CS10084) at their June 21, 2001 public meeting.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The Tisdale House was moved from 413 Wilson Street, Ancaster to its present location circa 2000. Although the exterior of the house is almost entirely made of new material, dating from a volunteer driven restoration effort, it was done to approximate the original exterior appearance. As part of this same restoration campaign, the interior of the house was gutted of most of its 20th century layers to reveal an intact circa 1825 interior, although repairs are required and some minor features are missing.

The first written description of this house, as a Tisdale family house and the oldest house in the village, is from the late 19th century. Architecturally, the style and details of the house suggest that it was built sometime between the end of the War of 1812 and the latter 1820s - the same time period when many similar houses were built in the village, a number of them by the Tisdale family. One possible explanation for this house
being called the ‘oldest’ may hinge on the fact that the present building does not contain
the period kitchen that must have existed originally. Therefore, it is possible that the
existing house was built against an earlier house that contained the kitchen and became
the rear wing.

With the loss of Fountainhall and the Loder House from the village in the 1970s, both
believed to date from about 1820, and the loss of the Vansickle House from Jerseyville
in the 1980s and the original 1817 Book House2 a few years ago the Tisdale House may
have become the oldest house in Ancaster by default.1

The re-adaptive use of a vacant heritage facility offers many benefits to the City. Well-
conserved and interpreted heritage places add to the social infrastructure and cultural
identity of their local community. The Canadian Heritage Foundation provides several
arguments such as:

- Curb landfill – re-adaptive use helps reduce Canada’s annual 10 million
  tonnes of construction and demolition waste;
- Reduction of emissions and energy consumption from new construction – re-
  adaptive construction uses less than half the energy of new construction;
- Re-adaptive use optimizes existing infrastructure by avoiding new road,
  sewer, and hydro infrastructure; and,
- Re-adaptive use saves our heritage – Canada has lost over 20% of its pre-
  1920 buildings in the last 30 years. The preservation of heritage buildings is
  an important principle in Hamilton becoming a Creative City.2

In addition, the Tisdale House forms part of the unique Ancaster Square, which is
composed of a number of both heritage and modern structures used by the municipality
for community purposes. The renovation of the Tisdale House and the renovation of the
historic Hammill House will complete this picturesque square in Ancaster.

**ALTERNATIVES FOR CONSIDERATION**

Not applicable.

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2 Adapted from Heritage Canada Foundation Web Site http://www.heritagecanada.org/eng/services/advocacy.html
CORPORATE STRATEGIC PLAN


Financial Sustainability
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Intergovernmental Relationships
- Maintain effective relationships with other public agencies

Growing Our Economy
- An improved customer service

Social Development
- Residents in need have access to adequate support services

Environmental Stewardship
- Reduced impact of City activities on the environment

Healthy Community
- An engaged Citizenry

APPENDICES / SCHEDULES

Appendix “A” to Report CS10084 – Lease Agreement with the Hamilton Police Services Board
LEASE AGREEMENT

THIS LEASE AGREEMENT made in quadruplicate as of the day of October, 2010.

BETWEEN:

HAMILTON POLICE SERVICES BOARD
(Hereinafter referred to as the “HPSB” or “Lessee”)

OF THE FIRST PART;

- and -

CITY OF HAMILTON
(Hereinafter referred to as the “City” or “Lessor”)

OF THE SECOND PART.

WHEREAS the City is the owner of certain lands and premises in the City of Hamilton, known municipally as 413 Wilson St., Ancaster and referred to as Tisdale House, hereinafter to be referred to as the “Leased Premises” which is more particularly described in Schedule “A” attached hereto;

AND WHEREAS the Leased Premises, while not a property designated as Heritage under the Ontario Heritage Act, has been determined by the City to have some historic and architectural value and interest worth preservation. It is therefore, the intention of the parties that, while conforming to the Building Code Act and Accessibility for Ontarians with Disabilities Act (OADA), those Heritage Features which are more particularly described in the Historic Structures Report prepared by Craig Sims attached hereto as Schedule “B”;

AND WHEREAS the City has agreed to lease to HPSB, and HPSB has agreed to lease from the City, the Leased Premises in accordance with the terms and conditions herein contained;

AND WHEREAS the terms of this Agreement have been approved by the City of Hamilton pursuant to Item No. , Report No. Emergency and Community Services Committee, passed by City Council on , 2010.

NOW THEREFORE in consideration of the Leased Premises, construction, rents and the mutual covenants and agreements, the HPSB and the City, hereto agree as follows:

1. TERM

(a) The term shall be for ten (10) years, commencing on October 1, 2010, and ending on September 30, 2020.
(b) At the expiry of the Term or of any extension thereof or other sooner termination, HPSB agrees to quit the Leased Premises and surrender, yield and deliver up the Leased Premised and any fixed improvements which may be on the Leased Premises at that time and all equipment, machinery, fixtures and other facilities used in connection therewith (save such fixtures as are herein specifically excepted) free and clear of all encumbrances, and in a state of good repair, order and condition, subject only to reasonable wear and tear to the Leased Premises commensurate with its age and permitted use hereunder and all the right, title and interest thereto of the HPSB shall cease and thereupon vest in the City.

2. **RENT**

(a) The HPSB shall pay to the City rent (the “Rent”), in Canadian funds, of Two dollars ($2.00) per annum, plus HST, payable upon the execution of this Lease Agreement and on or before the anniversary date of execution thereafter.

(b) It is the intention of the parties hereto that this shall be a net lease and that the Rent provided to be paid to the City hereunder shall be absolutely net to the City and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Leased Premises shall be paid by the HPSB, including but not limited to all operation and maintenance costs, future capital costs of the Leased Premises, realty taxes, capital taxes, local improvements, development charges, sewage and drainage charges, if applicable, and all charges and levies utilized for municipal services of every nature and kind, said municipal services to include, but not to be limited to water, education, sanitary sewers, storm sewers, hydro and gas.

3. **USE OF PREMISES**

The Premises shall be used as a Police Museum, Community Policing Centre and for storage associated with these activities only and not for any other purpose without the prior written consent of the City, which consent may be withheld at the discretion of the City.

4. **COVENANTS OF THE HPSB**

The HPSB covenants with the City:

(a) To pay rent.

(b) To pay and discharge as they become due, all taxes (including local improvement rates), rates, duties and assessments that may be assessed against the Leased Premises or any part of them and every other tax, charge, rate, assessment or
payment which may become a charge or encumbrance upon or levied or collected upon or in respect of the Leased Premises or any part of them, whether charged by any municipal, parliamentary or other body during the Term, excepting only from them taxes on the income of the City; provided that the City shall not petition for or consent to additional improvements without the consent of the HPSB. The HPSB to pay, as they become due, all charges for public utilities, including water, gas, electrical power, telephone, security, energy, steam and hot water, used in the Leased Premises and for fittings, machines, apparatus, meters or other things leased in respect of them, and for all work or services performed by any corporation or commission in connection with the public utilities; provided further that the HPSB shall have the right to contest by appropriate legal proceedings the validity of any tax, rate (including local improvement rates) assessment or other charges may legally be held in abeyance without subjecting the City or the HPSB to any liability for failure to pay, the HPSB may postpone such payment until the final determination of any proceedings, provided that such proceedings shall be prosecuted with due diligence and dispatch.

(c) Subject to subsection (d) and (k) herein, to maintain the Leased Premises, including the walks and grounds and every part of them, in good order and condition and promptly make all needed repairs and replacement (reasonable wear and tear and damage by fire, external explosion, impact by aircraft or vehicles not belonging to the HPSB, lightning, riot, smoke, windstorm and hail or the Queen’s enemies only excepted) and to keep the Leased Premises well painted, clean and in good condition.

(d) Subject to subsection (k) herein, to repair, as a result of normal wear and tear, major structural components of any buildings and structures, including but not limited to, outer walls, the roof, main electrical service, heating apparatus and other capital costs associated with the Leased Premises.

(e) To keep the Leased Premises and every part of them in a clean and tidy condition and not to permit garbage, ashes or waste or objectionable material to accumulate on them, and at its own expense, to keep the driveways, walks, grounds, sidewalks and curbs forming part of or adjoining the Leased Premises clean and free of snow and ice.

(f) To permit the City at all reasonable times to enter the Leased Premises to inspect the condition of them and (subject to subsection (d) and (k) herein, where such inspection reveals that repairs are necessary, to repair in a good and workmanlike manner within three calendar months from the date of delivery of notice from the City requiring repair.

(g) Not to bring upon the Leased Premises machinery, equipment, articles or things that by reason of their weight, size or use might damage the Leased Premises and not at any time to overload the floors of the Leased Premises and if damage is caused to the Leased Premises by machinery, equipment, articles or things or by
overloading or by any act, neglect or misuse on the part of the HPSB, its servants, agents or employees or any person having business with the HPSB, forthwith to repair or pay to the City the cost of making good the damage.

(h) To heat the Leased Premises in a reasonable manner at its own expense.

(i) To comply, subject to subsection (d) and (k) herein, at its own cost and expense, with the requirements of every applicable by-law, statute, law or ordinance, and with every applicable regulation or order with respect to the condition, equipment, maintenance, use and occupation of the Leased Premises.

(j) Not to do or omit to do or permit to be done or omitted anything on or in respect of the Leased Premises the doing or omission of which (as the case may be) shall be or result in a nuisance.

(k) In recognition of the special heritage significance and notwithstanding the lack of any designation as a protected heritage building, to seek out and obtain the consent and approval from the City's Director of Culture or his/her designate with respect to any construction or changes proposed to the Leased Premises.

(l) To undertake the construction of a washroom and accessibility ramp in accordance with the May 30, 2008 Report prepared by Their + Curran Architects Inc., attached as Schedule “B”, and all other City requirements including compliance with the Building Code Act and OADA, at the Leased Premises. The costs of all construction materials to be paid for by HPSB out of those funds provided by the City to HPSB as outlined in Section 5 below. HPSB to be responsible for obtaining and paying for all additional costs associated with construction labour, professional services (i.e./ architectural and engineering) and required permits related to the construction, from its own funds.

(m) To account for and report back to the City in a timely fashion, at the City's request, regarding HPSB's use of those funds and materials referred to above and in Section 5 below.

5. COVENANTS OF THE CITY

The City covenants with the HPSB as follows:

(a) For quiet enjoyment and exclusive use of the Leased Premises.

(b) That if its consent is required in connection with the granting of easements for water, gas, steam, electricity, telephone, sewers or storm drains, such consent will not be unreasonably withheld.

(c) To observe and perform all the covenants and provisos of this Lease Agreement on the part of the City.
(d) To provide construction materials and funds in the amount of $100,000 (One hundred thousand dollars) to the HPSB for the construction of a washroom and accessibility ramp in accordance with Section 4 above.

6. **OWNERSHIP OF HPSB’S IMPROVEMENTS**

   (a) The City and the HPSB agree that any fixed improvements to the Leased Premises which the HPSB may construct upon the Leased Premises from time to time are and shall be fixtures to the Leased Premises and are intended to be and become the absolute property of the City upon the expiration or termination of this Lease Agreement, but shall be deemed as between the City and the HPSB during this Lease Agreement, to be the separate property of the HPSB and not of the City but subject to and governed by all the provisions of this Lease Agreement applicable thereto notwithstanding such right of the HPSB; PROVIDED ALWAYS that the City’s absolute right of property in any fixed improvements to the Leased Premises which will arise upon the termination of this Lease Agreement shall take priority over any other interest in the said fixed improvements which may now or hereafter be created by the HPSB, and all dealings by the HPSB with the said fixed improvements which in any way affect title thereto shall be made expressly subject to this right of the City, and the HPSB shall not assign, encumber or otherwise deal with the said improvements separately from any permitted dealing with the leasehold interest under this Lease Agreement.

   (b) If the HPSB is not in default hereunder, the HPSB may at or immediately before the expiration of the Term of this Lease Agreement, remove its furniture, chattels and including kiosks, any other fixtures not forming any part of the fixed improvements, such as light standards, etc., which structural items may not be removed, and the HPSB may from time to time, subject to Subsection 4(k) above, remove such HPSB fixtures in the ordinary course of its business or in the event of any reconstruction, changes and alterations of the Leased Premises.

7. **USE AND OPERATION OF LEASED PREMISES**

   (a) The HPSB covenants that the Leased Premises and all fixed improvements from time to time erected upon the Leased Premises, shall be used in compliance with all applicable municipal by-laws and policies pertaining to its use of the Leased Premises, and that the HPSB shall not commit or permit any waste or any nuisance thereon, or permit any part of the said Leased Premises to be used for any dangerous, noxious or offensive trade, occupation or business.

   (b) In addition to performing all of its other covenants under this Lease Agreement, the HPSB shall operate, manage and maintain the Leased Premises in a good and proper manner, shall adequately supervise the operation of the Leased Premises,
shall keep the Leased Premises and all improvement thereon neat and clean and shall impose and enforce regulations relating to the use and occupancy of space in the Leased Premises consistent with that of other HPSB facilities and buildings.

(c) Throughout the Term of this Lease Agreement, the HPSB shall, without cost or expense to the City, comply with all laws, by-laws, regulations and requirements of all government, municipal and other authorities having jurisdiction. The HPSB shall likewise observe and comply with the requirements of insurers under policies of public liability, fire and any insurance at any time covering the Leased Premises, unless such requirements are unreasonable or involve a breach of any provision of this Lease Agreement.

(d) Notwithstanding Section 7(c) hereof, the HPSB shall have the right to contest the application or validity of any law, by-law, regulation or requirement affecting the Leased Premises without expense to the City, and may defer compliance with any such requirement provided that the delay is lawful, that it does not subject the City to any penalty for failure to comply, and that it does not otherwise constitute a breach of this Lease Agreement. The HPSB shall prosecute any proceedings taken by it to contest the application or validity of any law, by-law, regulation or requirement affecting the Leased Premises with due diligence.

(e) The HPSB may, at its expense, erect signage subject to the City’s prior written approval as to the design and location of any such signs, which consent shall not be unreasonably withheld. All signs must be in accordance with applicable federal, provincial and municipal laws, by-laws, regulations and policies. The City approves the HPSB’s installation and use in the City’s discretion, of mobile signs or billboard advertising products, events, on the Leased Premises.

8. **SURRENDER, SUB-LETTING, LICENCES AND ASSIGNMENT**

It is hereby agreed as follows:

(a) Surrender of Lease – except as herein provided, no surrender of this Lease Agreement by the HPSB shall be valid unless accepted in writing by the City.

(b) Sub-Lease – the HPSB as named at the commencement of this Lease Agreement may enter into a sublease without the written consent of the City provided that the sub- HPSB enters into a sublease which continues the obligations under this Lease Agreement.

(c) Licence Agreements – the HPSB as named at the commencement of this Lease Agreement may enter into a Licence Agreement without the written consent of the City provided that the Licensee enters into a Licence Agreement which does not conflict with the HPSB’s or the City’s obligations under this Lease Agreement.
(d) Assignment by City – subject to the preservation of the rights of the HPSB under this Lease Agreement, the City as named at the commencement of this Lease Agreement may assign or convey its interest in the Leased Premises or this Lease Agreement.

(e) Assignment by HPSB – the HPSB shall not assign or convey its interest in the Leased Premises or this Lease Agreement, except as is contemplated by §8(c) above or with the prior written consent of the City (which consent shall not be unreasonably withheld). Should the HPSB convey or assign its interest in the Leased Premises or this Lease Agreement, it shall not be relieved of any obligations under this Lease Agreement.

9. **RIGHT OF FIRST REFUSAL**

Provided that the HPSB is not in default under this Lease Agreement, the HPSB shall have a continuous right of first refusal in respect of the Leased Premises as follows:

(a) if in the event that, at any time and from time to time during the Term, the City receives, from an arm’s length purchaser, a *bona fide* offer for the purchase of the Leased Premises which is acceptable to the City in all respects (the “Acceptable Offer”), the City shall give the HPSB notice of the Acceptable Offer, together with a true and complete copy of the Acceptable Offer. An agreement of purchase and sale that is conditional on the HPSB not exercising this right of first refusal shall be deemed to be an Acceptable Offer. The City agrees that the HPSB shall have the prior right to elect to purchase the Leased Premises for the price and on the terms and conditions contained in the Acceptable Offer, which right may be exercised at any time within the forty-five (45) business days following receipt of such written notice of the Acceptable Offer by written notice of such exercise given to the City;

(i) if the HPSB does so elect, the notice given by it shall constitute a binding agreement of purchase and sale; and

(ii) if the HPSB does not so elect, the City shall be free to sell the Leased Premises on the terms and conditions set forth in the Acceptable Offer and subject to this Lease Agreement, but this right of first refusal shall thereafter remain in full force and effect during the balance of the Term. If such Acceptable Offer is not completed, this right of first refusal shall remain in force for any subsequent Acceptable Offer,

(b) the City covenants and agrees not to sell the Leased Premises unless the City has first complied with the terms hereof. The City shall be entitled to transfer the Leased Premises to any affiliated corporation without triggering the above rights.

10. **INSURANCE AND INDEMNITY**
(a) HPSB Indemnity - The HPSB covenants and agrees to indemnify, defend and save the City harmless against any and all liabilities, claims, actions, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever (including, without limitation, counsel and solicitor's fees on a substantial indemnity basis, reasonable costs of professional advisors, consultants and experts) arising from:

(i) any breach, violation or non-performance of any covenant, condition or agreement in this Lease Agreement on the part of the HPSB to be observed or performed;

(ii) any damage to property of any person at, in, on or upon the Leased Premises or as a result of acts occurring on the Leased Premises, except where such damage has been caused solely by the negligence or other fault of the City; and

(iii) any injury to or the death of any person or persons occurring at, in, on or upon the Leased Premises or as a result of acts occurring on the Leased Premises, except where such injury has been caused solely by the negligence or other fault of the City.

(b) City Indemnity - Except in the case of the HPSB's own negligence and/or willful misconduct or that of its agents, employees, contractors, invitees or licensees, the City shall protect, defend and indemnify, and save the HPSB, his agents and employees harmless from any and all liability, damage, expense, cause of action, suits, loss, costs, penalties, attorneys fees, claims or judgments arising from any injury or loss of life to the person of City or other persons or damage to property caused by the City's negligence and/or willful misconduct or that of its agents, employees, contractors, invites or licensees.

(c) HPSB's Insurance - The HPSB shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:

(i) Property Insurance All Risk to insure property of every description. Coverage shall include but not be limited to Earthquake, Flood and Sewer Backup and shall include extra costs related to applicable Bylaws. Such insurance shall add the City as an additional insured as their interest may appear. Coverage to be computed upon a replacement cost basis;

(ii) Commercial General Liability insurance, including personal liability, contractual liability, all risk HPSBs' legal liability, non-owned automobile liability, Sexual Abuse or Molestation coverage, owners' and contractors' protective insurance coverage and coverage shall be included for "Hostile Fire" with inclusive limits of at least five million dollars ($5,000,000) per occurrence and ten million dollars ($10,000,000) in the aggregate, or such
higher limit as the City, acting reasonably, or any Mortgagee requires from time to time;

(iii) Boiler and Machinery insurance Comprehensive Form (including but not limited to Earthquake, Flood and Sewer Backup) on a blanket repair and replacement basis, with limits for each accident in an amount not less than the full replacement costs of the property, with respect to any boilers and machinery upon the Leased Premises or relating to or serving the Leased Premises, and such insurance shall add the City as an additional insured as their interest may appear; and

(iv) any other form of insurance with whatever limits the City, acting as a prudent owner, or any mortgagee reasonably requires from time to time, in such form and amounts and for risks against which a prudent HPSB under similar circumstances would insure.

The parties agree to periodically discuss amendments to the insurance requirements under this Lease Agreement to ensure that these requirements comply with current insurance industry standards. Where the parties agree on such amendments they shall set them out in writing.

11. **DEFAULT**

Any of the following constitutes an event of Default under this Lease Agreement:

(a) the HPSB fails to pay any Rent or other amount due under the Lease Agreement on the day or dates appointed for the payment thereof and fails to pay the same, with interest, within fifteen (15) days of written notice to the City of such failure;

(b) the HPSB or City becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the HPSB or City's existence or the liquidation of its assets;

(c) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the HPSB or the City;

(d) this Lease Agreement is taken under a writ of execution and such writ is not stayed or vacated within fifteen (15) days after the date of such taking; or

(e) the HPSB fails to observe or perform any other of the terms, covenants or conditions of this Lease Agreement to be observed or performed by the HPSB and does not, following notice of such failure by the City either:
i) if the matter complained of in such notice is capable of being remedied by the payment of money, correct the matter complained of within fifteen (15) days of written notice to the HPSB of any such failure; or

ii) if the matter complained of in such notice is not capable of being remedied by the payment of money:

(A) remedy such breach within thirty (30) days (or such shorter period as may be provided in this Lease) of written notice to the HPSB of any such failure;

(B) if such breach cannot reasonably be remedied within thirty (30) days or such shorter period, commence to remedy such breach within thirty (30) days of written notice to the HPSB of any such breach and thereafter proceed diligently to remedy such breach; or

(C) notify the City within fifteen (15) days after the giving of such notice by the City that the HPSB disputes the matters complained of in such notice, in which case, unless otherwise agreed between the City and the HPSB, such issues shall be determined in accordance with Section 13; if such determination shall be adverse to the HPSB, wholly or in part, the HPSB shall, within fifteen (15) days after such determination shall have been made, remedy such breach.

f) the City fails to observe or perform any of the terms, covenants or conditions of this Lease Agreement to be observed or performed by the City and does not, following notice of such failure by the City either:

(i) if the matter complained of in such notice is capable of being remedied by the payment of money, correct the matter complained of within forty-five (45) days of written notice to the City of any such failure; or

(ii) if the matter complained of in such notice is not capable of being remedied by the payment of money:

(A) remedy such breach within sixty (60) days (or such shorter period as may be provided in this Lease Agreement) of written notice to the City of any such failure;

(B) if such breach cannot reasonably be remedied within sixty (60) days or such shorter period, commence to remedy such breach within sixty (60) days of written notice to the City of any such breach and thereafter proceed diligently to remedy such breach; or

(C) notify the HPSB within forty-five (45) days after the giving of such notice by the HPSB that the City disputes the matters complained of in such notice, in which case, unless otherwise agreed between the City and the HPSB, such issues shall be determined in accordance with Section 13; if such determination shall be adverse to the City,
wholly or in part, the City shall, within forty-five (45) days after such
determination shall have been made, remedy such breach.

12. REMEDIES UPON DEFAULT

(a) If and whenever an event of Default by the HPSB occurs, then, without prejudice to
any other rights which it has pursuant to this Lease Agreement or at law, the City
shall have the following rights and remedies, which are cumulative and not
alternative:

(i) to terminate this Lease Agreement by notice to the HPSB;

(ii) to re-enter the Leased Premises and repossess them and, in either case,
    enjoy them as of its former estate, and to remove all persons and property
    from the Leased Premises and store such property at the expense and
    risk of the HPSB or sell or dispose of such property in such manner as the
    City sees fit without notice to the HPSB. If the City enters the Leased
    Premises without notice to the HPSB as to whether it is terminating this
    Lease Agreement under this sub-Section 12(a)(ii) or proceeding under
    sub-Section 12(a)(iii) or any other provision of this Lease Agreement, the
    City shall be deemed to be proceeding under sub-Section 12(a)(iii), and
    the Lease Agreement shall not be terminated, nor shall there be any
    surrender by operation of law, but the Lease Agreement shall remain in
    full force and effect until the City notifies the HPSB that it has elected to
    terminate this Lease Agreement. No entry by the City shall have the effect
    of terminating this Lease Agreement without notice to that effect to the
    HPSB;

(iii) to enter the Leased Premises as agent of the HPSB to do any or all of the
    following:

    (A) relet the Leased Premises for whatever length of time and on such
        terms as the City, in its discretion, may determine, and to receive the
        Rent therefor;

    (B) take possession of any property of the HPSB on the Leased
        Premises, store such property at the expense and risk of the HPSB,
        or sell or otherwise dispose of such property in such manner as the
        City sees fit without notice to the HPSB;

    (C) make alterations to the Leased Premises to facilitate their reletting;
        and

    (D) apply the proceeds of any such sale or reletting, first, to the payment
        of any expenses incurred by the City with respect to any such
        reletting or sale, second, to the payment of any indebtedness of the
HPSB to the City other than Rent, and, third, to the payment of Rent in arrears, with the residue to vest with the City;

(iv) to remedy or attempt to remedy any default of the HPSB under this Lease Agreement for the account of the HPSB. No notice of the City's intention to remedy or attempt to remedy such default need be given to the HPSB unless expressly required by this Lease Agreement, and the City shall not be liable to the HPSB for any loss, injury or damages caused by acts of the City in remediying or attempting to remedy such default. The HPSB shall pay to the City all expenses incurred by the City in connection therewith plus twelve percent (12%);

(v) to recover from the HPSB all damages, costs and expenses incurred by the City as a result of any default by the HPSB (including, if the City terminates this Lease Agreement, any deficiency between those amounts which would have been payable by the HPSB for the portion of the Term following such termination and the net amounts actually received by the City during such period of time with respect to the Leased Premises plus twelve percent (12%); and

(vi) to recover from the HPSB the full amount of the current month's Rent together with the next three months' installments of Rent, all of which shall immediately become due and payable as accelerated Rent.

(b) Distress - Notwithstanding any provision of this Lease Agreement or any provision of any applicable legislation, none of the goods and chattels of the HPSB on the Leased Premises at any time shall be exempt from levy by distress for Rent in arrears or any other event of Default, and the HPSB waives any such exemption. If the City makes any claim against the goods and chattels of the HPSB by way of distress, this provision may be pleaded as an estoppel against the HPSB in any action brought to test the right of the City to levy such distress. The HPSB hereby irrevocably waives and renounces the benefit of any present or future legislation taking away ordiminishing the City's right to distrain for Rent or other amounts owing under the Lease Agreement.

(c) Costs - The HPSB shall pay to the City all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the City in enforcing the terms of this Lease Agreement, or with respect to any matter or thing which is the obligation of the HPSB under this Lease Agreement, or in respect of which the HPSB has agreed to insure or to indemnify the City plus twelve percent (12%).

(d) Remedies Cumulative - Notwithstanding any other provision of this Lease Agreement, the City may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the HPSB, either by any provision of this Lease Agreement, by statute or common law, all of which
rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease Agreement as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the City by statute or common law.

(e) If and whenever an event of Default by the City occurs, then, without prejudice to any other rights which it has pursuant to this Lease Agreement or at law, the HPSB shall have the following rights and remedies, which are cumulative and not alternative:

(i) to terminate this Lease Agreement by notice to the City, provided that the event of Default renders the Leased Premises unusable for the purposes of the HPSB under this Lease Agreement;

(ii) to remedy or attempt to remedy any default of the City under this Lease Agreement for the account of the City. No notice of the HPSB's intention to remedy or attempt to remedy such default need be given to the City unless expressly required by this Lease Agreement, and the HPSB shall not be liable to the City for any loss, injury or damages caused by acts of the HPSB in remedying or attempting to remedy such default. The City shall pay to the HPSB all expenses incurred by the HPSB in connection therewith plus twelve percent (12%); and

(iii) to recover from the City all damages, costs and expenses incurred by the HPSB as a result of any default by the City plus twelve percent (12%).

(f) Costs - The City shall pay to the HPSB all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the HPSB in enforcing the terms of this Lease Agreement, or with respect to any matter or thing which is the obligation of the City under this Lease Agreement, or in respect of which the City has agreed to insure or to indemnify the HPSB plus twelve percent (12%).

(g) Remedies Cumulative - Notwithstanding any other provision of this Lease Agreement, the HPSB may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the City, either by any provision of this Lease Agreement, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease Agreement as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the HPSB by statute or common law.

13. SETTLEMENT OF DISPUTES

(a) Where any dispute arises between the parties hereto as to any matter contemplated by or arising from the terms of this Lease Agreement, proceedings
may be commenced by one party (the “Initiating Party”) giving notice to the other party (the “Responding Party”) specifying the matter in dispute and requesting that it be resolved. Within ten (10) days of receipt of such notice, if the dispute has not been resolved, the parties shall meet and shall consider whether they wish to have the dispute in question resolved by a person generally recognized in the business community as having familiarity with and expertise in the matter which is the subject of the dispute (an “Expert”). At such meeting, if either party is of the view that the dispute should be resolved by an Expert, it may give written notice to the other party to that effect, listing its choice of Expert. If, within twenty (20) days after delivery of such written notice, the parties are able to agree to the use of an Expert for the resolution of the matter in dispute, to the person or persons to be the Expert(s) for such purpose, and as to the time period within which the Expert(s) is (are) to determine such matter, the matter shall be resolved on such basis and the decision of such Expert(s) shall be final and binding on the parties who shall bear equally the costs related to the procedures.

(b) If the parties do not agree to any or all of such items within the prescribed time period, the dispute shall not be resolved by an Expert but shall rather be determined by arbitration in accordance with Sections 13(c) and 13(d) below.

(c) The parties shall attempt to agree upon an arbitration procedure within fifteen (15) days after the expiry of the twenty (20) day period referred to in Section 13(a) above. If the parties cannot agree upon an arbitration procedure within such fifteen (15) day period, either party may, by written notice to the other party, designate an arbitrator. The other party shall, within fifteen (15) days thereafter, be entitled to appoint an arbitrator by written notice to the first party, and the two (2) arbitrators so appointed shall meet and select a third arbitrator acceptable to both of them. If the two (2) arbitrators so appointed are unable to agree upon a third arbitrator, then the Initiating Party shall make an application to the appropriate court pursuant to the Arbitration Act, 1991 (Ontario) S.O. 1991, Chapter 17, as amended (“Arbitration Act”) for the selection of a third arbitrator, and the provisions of the Arbitration Act shall govern such selection. If the other party fails to appoint an arbitrator within the fifteen (15) day period, then the arbitration will proceed before the arbitrator appointed by the first party who will act as a sole arbitrator.

(d) When the conditions set out in Section 13(c) have been fulfilled, the resulting arbitration panel shall thereafter proceed to set out the procedure for the arbitration, shall hear the submissions of the parties and shall attempt to render a decision within thirty (30) days after the appointment of the final arbitrator or such longer period thereafter as may be required. The decision of a majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, and that decision shall be final and binding upon the parties and not subject to appeal. The arbitration panel shall have the authority to assess the costs of the arbitration panel against either or both of the parties; however, each party shall bear its own witness and counsel fees.
14. **EXPROPRIATION**

If, at any time during the Term, any public body or paramount authority shall take or expropriate the whole or a portion of the Leased Premises, then the following provisions shall apply:

(a) the City, the HPSB, and any mortgagee may exercise fully all the rights, remedies and claims for compensation which each may have under the applicable legislation. The City and the HPSB shall inform each other fully of the claims for compensation made by each of them in the event of any expropriation, shall not claim compensation on any basis inconsistent with this Lease Agreement, and shall afford reasonable co-operation to each other in the prosecution of any proper separate claims. The City and the HPSB shall co-operate with each other regarding any expropriation of the Leased Premises or any part thereof so that each receives the maximum award to which it is entitled at law; and

(b) if such expropriation or compulsory taking does materially affect the HPSB’s use or enjoyment of the Leased Premises, then the HPSB may elect to terminate this Lease Agreement by notice to the City within ninety (90) days of the notice of the expropriation and the Term shall terminate on the date upon which the expropriating or taking authority requires possession of the Leased Premises so expropriated or taken. In such case, the City shall be entitled to receive the entire compensation award or settlement, whether fixed by agreement or otherwise, save and except for the portion thereof that is specifically awarded or allocated to the HPSB in respect of the right of the HPSB to occupy and use the Leased Premises for the balance of the Term.

15. **EARLY TERMINATION**

Either the City or the HPSB may terminate this Lease Agreement, at their discretion, upon giving the other party three (3) months’ written notice of their desire to terminate in accordance with the Notice provisions set out below.

16. **GENERAL PROVISIONS**

(a) **Mortgage or Disposition of Reversion** - nothing in this Lease Agreement contained shall preclude the City from mortgaging or disposing of the reversion in the Leased Premises.

(b) **Notices** - all notices to be given pursuant to this Lease Agreement shall be sufficiently given if mailed, prepaid and registered:

   (i) in the case of the HPSB, addressed to the HPSB at:
Hamilton Police Services Board  
155 King William Street  
P.O. Box 1060, LCD 1  
Hamilton, Ontario  
L8N 4C1  
Attention: Chair, Hamilton Police Services Board

(ii) in the case of the City, addressed to the City at:

City of Hamilton  
Community Services Department - Culture Division  
71 Main Street W  
Hamilton ON L8P 4Y5  
Attention: Director Culture

with a copy to:

City of Hamilton  
71 Main Street W  
Hamilton ON L8P 4Y5  
Attention: City Clerk

unless either party gives notice to the other of a change of address by registered mail. The date of receipt of any such notice shall be deemed to be seventy-two (72) hours after such mailing.

Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of Canada Post shall be deemed to have been received only if delivered personally or sent by prepaid courier.

(c) Entire Agreement - there are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease Agreement, save as expressly set out or incorporated by reference herein, and this Lease Agreement constitutes the entire agreement duly executed by the parties hereto, and no amendment, variation or change to this Lease Agreement shall be binding unless the same shall be in writing and signed by the parties hereto, and shall be interpreted according to the laws of the Province of Ontario.

(d) Successors and Assigns - The rights and liabilities of the parties shall enure to the benefit of their respective heirs, executors, administrators, successors and assigns, subject to any requirement for consent by the City hereunder.
(e) **Severability** - if any Article or Section or part or parts of an Article or Section in this Lease Agreement is or is held to be illegal or unenforceable, it or they shall be considered separate and severable from the Lease Agreement and the remaining provisions of this Lease Agreement shall remain in full force and effect and shall be binding on the City and the HPSB as though such Article or Section or part or parts thereof had never been included in this Lease Agreement.

(f) **Captions and Headings** - the captions appearing at the headings of the Articles or Sections in this Lease Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease Agreement or any of its provisions.

(g) **Non-waiver** - any condoning, excusing or overlooking by a non-defaulting party of any default, breach or non-observance by the defaulting party at any time or times of any covenant, proviso or condition herein contained shall not operate as a waiver of the non-defaulting party’s rights hereunder in respect of any continuing or subsequent default, breach or non-observance, nor defeat or affect in any way the rights of the non-defaulting party hereunder in respect of any such continuing or subsequent default, breach or non-observance and all rights or remedies herein contained on the part of the non-defaulting party shall be deemed to be cumulative and not alternative. The subsequent acceptance of Rent by the City shall not be deemed a waiver of any preceding breach by the HPSB of any term, covenant or condition regardless of the City’s knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the HPSB to the City hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the HPSB hereby waives the benefit of any statutory or other right in respect of abatement or set off in its favour at the time hereof or at any future time.

(h) **Force Majeure** - notwithstanding any other provision contained herein, in the event that either the City or the HPSB should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds (such reasons collectively referred to as “Force Majeure”), then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section shall not under any circumstances operate to excuse the HPSB from prompt payment of Rent and/or any other charges payable under this Lease Agreement.
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(i) **Acknowledgment** - the parties agree to do or cause to be done, from time to time, all such things, and shall execute and deliver all such documents, agreements and instruments reasonably requested by another party, as may be necessary or desirable to carry out the provisions and intention of this Lease Agreement.

**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 POLICE SERVICES BOARD**
Signed for and on behalf of the Hamilton Police Services Board by:

Signed_________________________________________ Signed_________________________________________
Name: Bruce Pearson
Title: Chair

Name: Lois Morin
Title: Administrator

Date_________________________________________ Date_________________________________________

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

Signed_________________________________________ Signed_________________________________________
Name: Fred Eisenberger
Title: Mayor

Name: Rose Caterini
Title: City Clerk

Date_________________________________________ Date_________________________________________

**Authorized by Item No. , Report No. , of X Emergency and Community Services Committee, passed by Council on the day of , 2010.**

File Number:
Schedule “A”

Attached to and forming a part of this Lease Agreement between the Hamilton Police Services Board and the City of Hamilton,

Sketch of Leased Premises:
Schedule “B”

Attached to and forming a part of this Lease Agreement between the Hamilton Police Services Board and the City of Hamilton,

Historic Structures Report prepared by Craig Sims
Schedule “C”

Attached to and forming a part of this Lease Agreement between the Hamilton Police Services Board and the City of Hamilton,