Present: Councillors P. Bruckler (Chair), T. Jackson (Vice Chair), M. McCarthy, D. Mitchell, B. Morelli, A. Samson and T. Whitehead

Also Present: J. Kay, General Manager/Chief, Hamilton Emergency Services  
B. Fenwick, Director, Culture and Recreation  
G. Makins, Acting Manager, Operations & Special Projects  
S. Paparella, Legislative Assistant, Clerk’s Office

Members of Council:

The Community Services Committee presents Report 05-010 and respectfully recommends:

1. Ivor Wynne Stadium, Options for Federation Internationale de Football Association (F.I.F.A.) Approved Soccer Games (CS05016) (City Wide) (Item 5.1)
   
   (a) That the Ivor Wynne Stadium, Options for Federation Internationale de Football Association (F.I.F.A.) Approved Soccer Games report CSO5016 be received for information only.

   (b) That Item “D” “Turf at Ivor Wynne Stadium” be removed from the Outstanding Business Item List.

   (c) That staff continue to consult with F.I.F.A. regarding future events, and should a request from F.I.F.A. be received to use Ivor Wynne Stadium, as a possible site for upcoming soccer events, that staff bring forward a report to the Community Services Committee, at that time.

Council – September 12, 2005
2. Hamilton-Wentworth District School Board and City of Hamilton Reciprocal Agreement (HCS04077(a)) (Item 8.1)

(a) That the Hamilton-Wentworth District School Board and the City of Hamilton Reciprocal Agreement, hereto attached as Appendix “A” to Report 05-010, be renewed according to the terms and conditions listed in the Agreement.

(b) That Outstanding Business Item “G” respecting the Hamilton-Wentworth District School Board and City of Hamilton Reciprocal Agreement be identified as completed and removed from the Community Services Outstanding Business list.

FOR THE INFORMATION OF THE COUNCIL:

(a) CHANGES TO THE AGENDA (Item 1)

The Clerk noted the following changes, which were approved:

(i) Added as Item 11.1, staff’s request to change due dates for Outstanding Business List, Item “L” – Proposed Skateboard Park Location – Turner Park, Public Open House and Item “Q” Bernie Arbour Facility for Hamilton Thunderbird Usage.

(ii) Added as Item 11.2, staff’s request to remove Item “T” – Repair and Maintenance of Recreation Centre Parking Lots from the Outstanding Business list.

(iii) As Item 4.1 - Request for Delegation by Tony Gabriele, CEO of Total Golf Management respecting RFP Prequalification – Contract C10-16-05, Management of the Hamilton Municipal Golf Courses was related to Purchasing policy matters, it has been removed from this agenda, and was referred instead to the October 5th meeting of the Corporate Administration Committee (the request was declined).

(iv) Added as Item 11.3 a motion that was presented at the October 11, 2005 meeting of the Social & Public Health Services Committee respecting the Exemption of Rental Fees – Steele Park – Hamilton East Kiwanis Boys and Girls Club.

(b) DECLARATIONS OF INTEREST (Item 2)

There were none.
(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 3)

The Minutes of the September 13, 2005, Community Services Committee meeting were approved, as presented.

(d) DELEGATION REQUESTS (Item 4)

As Item 4.1 - Request for Delegation by Tony Gabriele, CEO of Total Golf Management respecting RFP Prequalification – Contract C10-16-05, Management of the Hamilton Municipal Golf Courses was related to Purchasing policy matters; it had been removed from this agenda, and was referred instead to the October 5th meeting of the Corporate Administration Committee.

(e) Fee Waiver Policy (Item 8.2)

The request to revise the due date for Outstanding Business List, Item “E” – Fee Waiver Policy, from October 11, 2005 to November 8, 2005, was approved.

(f) Hamilton-Wentworth District School Board and City of Hamilton Reciprocal Agreement (HCS04077(a)) (Item 8.1)

Staff was directed to report back to the Community Services Committee with the 2006-2007 Hamilton-Wentworth District School Board and City of Hamilton Reciprocal Agreement, which is to include recommendations for outdoor facilities, no later than June 2006.

(g) MOTIONS (Item 9)

Roofing over Bocce Courts for the West Mountain United Bocce Association (Item 9.1)

Councillor Whitehead withdrew the motion.

(h) Staff’s request to change due dates for Outstanding Business List, Item “L” – Proposed Skateboard Park Location – Turner Park, Public Open House and Item “Q” Bernie Arbour Facility for Hamilton Thunderbird Usage (Item 11.1)

The request to revise the due dates for Outstanding Business list Item “L” – Proposed Skateboard Location – Turner Park, Public Open House, from October 28, 2005 to January 24, 2006, and Item “Q” – Bernie Arbour Facility for Hamilton
Thunderbird Usage, from November 8, 2005 to January 24, 2006, were approved.

(i) **Added as Item 11.2, staff’s request to remove Item “T” Repair and Maintenance of Recreation Centre Parking Lots from the Outstanding Business list (Item 11.2)**

Item “T” – Repair and Maintenance of Recreation Centre Parking Lots, of the Outstanding Business list was recognized as complete, and was removed from the Outstanding Business list, as the projects and budget allocations for parking lot repairs and road repairs are currently being coordinated between the Culture and Recreation Division and the Public Works Department.

(j) **Exemption of Rental Fees – Steele Park – Hamilton East Kiwanis Boys and Girls Club (Item 11.3)**

The information was received.

(k) **ADJOURNMENT (Item 13)**

There being no further business, the Committee adjourned at 2:30 p.m.

Respectfully submitted,

Councillor P. Bruckler, Chair

Stephanie Paparella
Legislative Assistant
October 11, 2005
RECIPROCAL AGREEMENT
THIS AGREEMENT MADE THIS 1st DAY OF SEPTEMBER, 2005

BETWEEN:
THE HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD
Herein called the “Board”

OF THE FIRST PART

-and-

CITY OF HAMILTON
Herein called the “The City”

OF THE SECOND PART

W I T N E S S E S:

WHEREAS the City owns and operates recreation centers that are attached to the schools owned by the Board;

AND WHEREAS the City owns and operates recreation facilities that are NOT associated with any specific school owned by the Board;

AND WHEREAS the Board owns and operates gymnasium located within schools owned by the Board;

AND WHEREAS both the City and Board utilize the services and facilities of the other party;

AND WHEREAS the parties wish to enter into an Agreement to equalize the cost of the services and facilities provided by each party;

AND WHEREAS Section 183 of the Education Act. R.T.S 1990, chapter E.2 authorizes a School Board to enter into an agreement with a municipality for the purpose of establishing and providing for the maintenance and operation of facilities on the property of the parties to such an agreement, for such cultural, recreation, athletic, educational, administrative or other Community purpose.

NOW THEREFORE IN CONSIDERATION of the covenants and Agreements herein, the parties agree as follows:

1. The Board agrees to provide access to the school facilities listed on Schedule B (the “Board Facilities”) to the City or as amended from time to time as mutually agreed upon.

2. The City agrees to provide the facilities and hours of use listed on Schedule A (the “Municipal Facilities”) to the Board or as amended from time to time as mutually agreed upon.
3. The Board shall provide to the City a comprehensive list of dates and times that the Board Facilities are available for the City’s use on or before June 30 for the immediately following September to June school year.

4. The City shall provide to the Board, a comprehensive list of dates and times that the Municipal Facilities are available for the Board’s use on or before August 31 for the immediately following September to June school year.

5. The facilities listed on Schedule A and B shall be calculated on a 3:1 ratio. For the term of this Agreement, the maximum use of hours by the City and the Board has been established at 15,000 and 5,000 respectively. City’s use of Board Facilities exceeding 15,000 hours will require approval from the Superintendent of Business and Treasurer. If there is an imbalance in the above ratio of exchange of service in favour of the City, each hour in excess of 15,000 hours or in excess of the 3:1 ratio weighting of hours, whichever is lesser, shall be subject to the hourly fee rate for that facility fixed at the Board’s weighted average cost of rental for such gymnasia during the Term.

6. The Board shall have the right to use the Municipal Facilities listed on Schedule A on school days between the hours of 8:00 a.m. to 6:00 p.m. With best efforts, the Board shall give the City a monthly schedule of the Board’s intended use of the facilities at least 10 days before the end of the month proceeding the use period.

7. In using Recreation facilities containing a pool, the Board shall follow the Regulations that are set out by the City in Schedule C. The usage of pools is also predicated on Legislative requirements and the availability of qualified lifeguards. Additional guards are subject to availability and a trade off of unused pool time at the end of the year or a separate charge if there is no unused pool time. It is understood that lifeguards are specially trained and qualified persons who are required by Provincial Statute governing public pools, and as lifeguards are a part-time position with the Culture and Recreation Division, their availability cannot be guaranteed.

8. In using the Board Facilities, the City shall follow the Regulations that are set out by the Board in Schedule D.

9. Schedule C & D outlines the Rules and Regulations for the respective use of each party’s facilities. A group using a Board Facility whose misconduct is documented by a Facility Inspection Report submitted by the Caretaker of the school can be barred from further use of the facility. In a similar situation, a group using a Municipal Facility whose misconduct is documented by City Personnel can be barred from further use of the facility.

10. The City shall have the right to use the gymnasia of the Board Facilities, however, approval of the type of activity to be carried on in a school must be obtained from the Principal of the school. The start times will be as agreed between the Principal of the school and the City’s Recreation Centre Supervisor but if they cannot agree, start times will be determined by the school Principal in his/her sole discretion. For Elementary Schools start times for use of a gymnasia shall be not earlier than 6:00 p.m. and be completed not later then 10:00 p.m. For Secondary Schools, the start times for use of a gymnasia shall not be later than 7:00 p.m. and
not earlier than 6:15 p.m. and be completed not later than 10:15 p.m., on Monday to Friday and on weekends for hours and duration specified on City permits. Recreation Programs shall normally end no later than 10:00 p.m. Hours of use must be agreed upon no later than June 30th. Notwithstanding the foregoing, school athletic games will not be interrupted and City use of gymnasiums shall be subject to completion of same. Either party may cancel and/or withdraw the availability of any particular facility from the other upon at least five (5) business days’ notice to the Principal or Facility Manager of the subject facility and Accommodation and Planning Department of the Board. Schools directly attached to recreation centers with separate entrance into the gymnasium from the recreation center and a separate security panel do not require a caretaker on duty for rentals outside of normal caretaker hours. Schools without recreation centers attached must have a caretaker on duty for rentals outside of the normal caretaker hours. Caretaker overtime hours shall be considered as additional time of use in the City’s maximum use of hours as outlined in paragraph 5. The City will issue permits for use of all Board Facilities gymnasium. The City shall give the Board a monthly list of the City’s intended use of the Board’s facilities at least 10 business days before the end of the month proceeding the use period. The Board’s Accommodation and Planning Department will inform the City of dates when the school’s gymnasiums are not available. Each party shall use its best efforts to provide reasonable notice to the other party of any expected delay in the availability of a facility.

11. The City and Board shall not assign or sublet each other’s space for profit or to any groups other than those minor sport associations affiliated with the City of Hamilton, Culture & Recreation Department and the Hamilton-Wentworth District School Board.

12. The City shall reimburse the Board the entire costs of damage to Board property incurred by groups who have been granted access by the City to use the Board Facilities. Likewise, the Board shall reimburse the City the entire costs of damage to City property incurred by groups who have been granted access by the Board to use the Municipal Facilities.

13. Each party shall provide to the other party, promptly after any accident or other incident involving injury or misconduct at the other party’s facility, a copy of the accident report or incident report or any other document(s) related thereto.

14. It is understood and accepted, that on occasion and during school vacation periods (Christmas, March break, July and August), school programming, cleaning and maintenance may necessitate delayed start or interruption to the City’s program at a particular Board Facility; further, City programming and maintenance may necessitate delayed start or interruption to school usage of a particular Municipal Facility. Neither party shall be liable to the other, nor to any person offered use or making use of the facilities in question by virtue of this Agreement, by reason of any such delay. Each party shall use its best efforts to reasonable notice to the other of any expected delay in the availability of a facility.

15. Each party agrees to keep records on the use of that party’s facilities by the other. There is a ratio of three (3) Board gym hours to one (1) City facility hour capped at 15,000 hours to 5,000 respectively. Schools without recreation centers attached must have a caretaker on duty for weekend rentals. Caretaker overtime hours will be added into the total number of hours for exchange of services. If there is an imbalance in the use as calculated in the proceeding manner at the end of the term, the party which has caused the imbalance will pay to the other
party the hourly fee for the facility in accordance with the fee rate as set out in Paragraph 5 hereof, payment will be made within thirty (30) days of the end of the term hereof.

16. The use of Board gymnasiums for tournaments is not permitted under this Agreement. Requests for use of Board gymnasiums for tournament use shall be directed to the Board’s Accommodation and Planning Department for consideration under a separate use arrangement.

17. If the event one party does not utilize all of the hours available to it, no credit shall be given to that party by the other party, except that if the City cancels the use of a pool by the Board because of the unavailability of lifeguards, the Board shall be entitled for credit for each hour cancelled.

18. This agreement shall have a term of one (1) year, commencing September 1, 2005 and terminating on August 31st, 2006 (the “Term”). The City and the Board agree to meet no later than May 31, 2006 to negotiate a renewal of this agreement. Any renewal is subject to the approval of both parties elected bodies.

19. The City may make regulations on the use of the Municipal Facilities. The City will provide the Board with a copy of these regulations.

20. The Board may make regulations on the use of the Board Facilities. The Board will provide the City with a copy of these regulations.

21. Any party requiring services of facilities greater than the 3:1 ratio or the number of agreed hours shall request the services from the other party and be advised whether the service of facility is available and the cost of the service or facility.

22. a) The Board hereby agrees to defend, indemnify and shall save the City, its elected officials, officers and employees harmless from and against any claims, proceedings, penalties, expenses, and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, any of them or to which any of them may be liable by reason of the Board carrying out any obligation to which it is subject, or exercising any right to which it is entitled, under this Agreement, except to the extent that the same are caused by the negligence or deliberate wrong-doing of the person entitled to that indemnity.

   b) The rights of indemnification granted under subsection (1) shall extend to any amount paid by the person entitled thereto in the settlement of any claim against it, and in entering into any such settlement, that person may exercise its reasonable discretion as to the amount to be paid, but the person entitled to the indemnity shall serve prior notice of any intended settlement on the Board, at least 5 Business Days prior to agreeing to any such settlement.

   c) The rights of indemnification provided to the elected officials, officers and employees of the City under subparagraph (a) above may be enforced by the City as trustee on their behalf, and shall be enforceable to the same extend by the City, as if the City was enforcing a right in its own favour.

   d) The Board shall procure and maintain comprehensive public entity general liability insurance, including occupiers, including coverage extending but not limited to bodily and
personal injury liability, property damage, contractual liability, and contingent employers liability coverage, and each policy shall by its wording or endorsement,

i) have an inclusive limit of not less than $5,000,000 or such greater amount as the City may from time to time request, for each occurrence involving personal injury or property damage;

ii) insure the Board;

iii) include the City as an additional insured, to the extent of the Board’s obligations to the City under this agreement;

iv) contain cross liability and severability of interest provisions;

v) extend to cover the liabilities assumed by the Board under this Agreement;

vi) extend to insurance against loss of, or damage to, property owned by the City or by others, where that property is in the possessions, control or guard of the Board.

23. a) The City hereby agrees to defend, indemnify and shall save the Board, its elected officials, officers and employees harmless from and against any claims, proceedings, penalties, expenses and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, any of them or to which any of them may be liable by reason of the City carrying out any obligation to which it is subject, or exercising any right to which it is entitled, under this Agreement, except to the extent that the same are caused by the negligence or deliberate wrong-doing of the person entitled to that indemnity.

b) The rights of indemnification granted under subsection (1) shall extend to any amount paid by the person entitled thereto in the settlement of any claim against it, and in entering into any such settlement, that person may exercise its reasonable discretion as to the amount to be paid, but the person entitled to the indemnity shall serve prior notice of any intended settlement on the City, at least 5 Business Days prior to agreeing to any such settlement.

c) The rights of indemnification provided to the elected officials, officers and employees of the Board under subsection (a) may be enforced by the Board as trustee on their behalf, and shall be enforceable to the same extent by the Board, as if the Board was enforcing a right in its own favour.

d) The City shall procure and maintain comprehensive public entity general liability insurance, including occupiers, including coverage extending but not limited to bodily and personal injury liability, property damage, contractual liability, and contingent employers liability coverage, and each policy shall by its wording or endorsement,

i) have an inclusive limited of not less than $5,000,000 or such greater amount as the Board may from time to time request, for each occurrence involving personal injury or property damage;

ii) insure the City;

iii) include the Board as an additional insured, to the extent of the City’s obligations to the Board under this Agreement;

iv) contain cross liability and severability of interest provisions;

v) extend to cover the liabilities assumed by the City under this Agreement;
vi) extend to insurance against loss of, or damage to, property owned by the Board or by others, where that property is in the possession, control and guard of the City.

24. Either of the parties may terminate this Agreement on three (3) month’s notice to the other party without compensation payable by either party.

25. This Agreement shall be governed by, and construed under the laws of the Province of Ontario.

26. No amendment, modification or supplement to the Agreement shall be valid or binding unless set out in writing and executed by the parties hereto.

27. This Agreement and the Schedules attached hereto, which form part of this Agreement, contain the entire agreement between the parties hereto with respect to the subject matter thereof. Each party respectively acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty of the other party except as set out in this Agreement.

28. In construing this Agreement, words in the singular shall include the plural, and vice versa, and words importing the masculine shall include the feminine, the neuter and vice versa, and words importing persons shall include corporations and vice versa.

29. This Agreement shall ensure to the benefit of, and be binding upon, each of the parties hereto, and each of their respective successors and assigns.

30. The parties agree to comply with all applicable provincial, federal laws and statutes, and City-by-laws and each will comply with their respective Collective Agreements, policies and procedures of the other party where applicable.

31. The parties acknowledge that this Agreement relates only to indoor facilities. The parties will use their best efforts to establish a separate agreement for the use of their field and playground facilities and the shared use thereof for the summer of 2005.

32. Any written notice provided for shall be effectively given to the Board by registered mail addressed to, or by delivery as follows:

If to the City:
The City Clerk, City of Hamilton
City Hall
71 Main Street West, P. O. Box 2040
Hamilton, Ontario L8N 3T4
Attention: Culture and Recreation Director

If to the Board:
Hamilton-Wentworth District School Board
100 Main Street West, Po. O. Box 2558
Hamilton, Ontario L8N 3L1
Attention: Manager, Accommodation and Planning
Any Notice given shall be deemed to have been received on that date of personal delivery or on the fourth business day after the date of mailing, as the case may be. Each party shall given the other prompt Notice of any change in the Party’s address for service.

**IN WITNESS WHEREOF** the parties hereto have affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

THE HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD  
Per:  

__________________________________________________  
Donald Grant, Superintendent of Business & Treasurer  

CITY OF HAMILTON  
Per:  

__________________________________________________  
Mayor Larry DiIanni, City of Hamilton  

__________________________________________________  
City Clerk