SUBJECT: Execution of Administration Agreement: The Strong Start Component of the Canada-Ontario Affordable Housing Program (SSC06002) (City Wide)

RECOMMENDATION:

(a) That the City of Hamilton, through the Community Services Department, Housing Branch, deliver and administer Strong Start within the current budget and staff complement of the Branch; and,

(b) That the Mayor and City Clerk be hereby authorized and directed to execute the “Ministry of Municipal Affairs and Housing – Service Manager Administration Agreement”, attached as Appendix “A” to Report SSC06002, in a form satisfactory to Corporate Counsel.

Joe-Anne Priel
General Manager
Community Services Department

EXECUTIVE SUMMARY:

On August 31, 2005, the Honourable Joe Fontana, Federal Minister of Labour and Housing, and the Honourable John Gerretsen, Ontario Minister of Municipal Affairs and Housing announced $322 million for housing units in Ontario under Wave One of the Canada-Ontario Affordable Housing Program. Through Wave One, the City of Hamilton was allocated 175 units ($12.25 million) under the Rental and Supportive Capital component and 250 units ($3.0 million) under the Housing Allowances component.

As an interim measure while program guidelines for Wave One of the Affordable Housing Program were being developed by the Ministry of Municipal Affairs and
Housing, up to $48 million under a separate program initiative called Strong Start was created to fast track the development of up to 1,000 affordable housing units across the Province of Ontario. Under Strong Start, affordable rental housing projects that are ready to proceed immediately will be able to receive funding and start construction without waiting for the completion of the new program design and approvals process. The deadline for participation in the Strong Start program was October 31, 2005 for municipal staff to forward a prioritized list of projects to the Ministry of Municipal Affairs which was to be followed by a formal recommendation from Council.

Under Strong Start, the role of the City of Hamilton as Service Manager was to identify and recommend to the Province a prioritized list of suitable and appropriate housing projects that adhere to program requirements and that could be built and occupied as quickly as possible. Housing Branch staff issued a formal “Expression of Interest” (EOI - HB-EOI-001) on October 7, 2005 with a closing date of October 21, 2005.

This EOI was undertaken in response to Ministry documentation that noted municipalities “are expected to recommend and select projects through a process in accordance with approved municipal procurement practices”. The EOI was necessary to secure and recommend the best proposals in a fair, competitive, and transparent process consistent with the objectives of the Strong Start program. Proposals were then evaluated by a City of Hamilton Staff Evaluation Committee representing the Housing Branch, Development Planning, Finance, and Downtown Renewal.

The proposals submitted by Spallacci Contracting Ltd. and the Hellenic Community of Hamilton and District were ranked first and second in scoring as part of the evaluation process and were consistent with Strong Start objectives. Spallacci Contracting Ltd. proposed an 11 storey, 123-unit apartment building for seniors, singles and families located at 260-280 King Street East. The Hellenic Community of Hamilton proposed a 39-unit, 5-storey senior citizen apartment building located at 37 Strathcona Avenue North. Accordingly, on November 23, 2005, City Council recommended to the Minister of Municipal Affairs and Housing the approval of these two projects for Strong Start funding. On December 13, 2005, the Minister of Municipal Affairs and Housing approved Strong Start funding in the amount of $11,145,000 for the Spallacci and Hellenic projects.

In order to deliver Strong Start and the successful proponents to receive funding, the City of Hamilton must execute the Administration Agreement and return it to the Ministry of Municipal Affairs and Housing by March 1, 2006. The other requirements for municipal participation in Strong Start have been previously satisfied as part of the delivery of the Community Rental Housing Program. This includes Council endorsement on June 11, 2003 of Report PD03122, “Municipal Housing Facility By-Law” and Report FCS03087, “2003 Tax Policies and Ratios” on May 14, 2003. Due to the expeditious nature of Strong Start, its timelines are unique and will not be replicated in future capital allocations concerning the Affordable Housing Program.
The Strong Start Program:

On August 31, 2005, the Honourable Joe Fontana, Federal Minister of Labour and Housing, and the Honourable John Gerretsen, Ontario Minister of Municipal Affairs and Housing announced $322 million for housing units in Ontario under Wave One of the Canada-Ontario Affordable Housing Program. Through Wave One, the City of Hamilton was allocated 175 units ($12.25 million) under the Rental and Supportive Capital component and 250 units ($3.0 million) under the Housing Allowances component.

As an interim measure, while program guidelines for Wave One of the Affordable Housing Program are being developed by the Ministry of Municipal Affairs and Housing, up to $48 million under a separate program initiative called Strong Start was created to fast track the development of up to 1,000 affordable housing units across the Province of Ontario. Initially, Strong Start targets of 500 units and up to $24 million were announced. This allocation was increased due to the tremendous response on the part of Service Managers to Strong Start. Under Strong Start, affordable rental housing projects that were ready to proceed immediately will be able to receive funding and start construction without waiting for the completion of the new program design and approvals process. The deadline for participation in the Strong Start program was October 31, 2005 for municipal staff to forward a prioritized list of projects to the Ministry of Municipal Affairs which was to be followed by a formal recommendation from Council.

The City of Hamilton’s Role in Strong Start:

Under Strong Start, the role of the City of Hamilton as Service Manager was to identify and recommend to the Province a prioritized list of suitable and appropriate housing projects that adhere to program requirements and that could be built and occupied as quickly as possible. The City of Hamilton issued a formal “Expression of Interest” (EOI - HB-EOI-001) on October 7, 2005 with a closing date of October 21, 2005 and was advertised in the Hamilton Spectator on October 7 and October 14, 2005.

This EOI was undertaken in response to Ministry documentation that noted municipalities “are expected to recommend and select projects through a process in accordance with approved municipal procurement practices”. The EOI was necessary to secure and recommend the best proposals in a fair, competitive, and transparent process consistent with the objectives of the Strong Start program. Proposals were then evaluated by a City of Hamilton Staff Evaluation Committee representing the Housing Branch, Development Planning, Finance, and Downtown Renewal.

The proposals submitted by Spallacci Contracting Ltd. and the Hellenic Community of Hamilton and District were ranked first and second in scoring as part of the evaluation process and were consistent with the following Strong Start objectives:

- projects are well advanced in the development approvals process;
- the proponent is in a position to sign a Contribution Agreement by March 31, 2006;
- housing affordability targets are satisfied;
The submission from Spallacci Contracting Ltd. was the highest rated proposal, an 11 storey, 123-unit apartment building for seniors, singles and families located at 260-280 King Street East. Prioritized as number two, the proposal from the Hellenic Community of Hamilton will build a 39-unit, 5-storey senior citizen apartment building located at 37 Strathcona Avenue North. Both projects will offer market rents 20% below the average market rent level in the City of Hamilton.

Accordingly, on November 23, 2005, City Council recommended to the Minister of Municipal Affairs and Housing the approval of these two projects for Strong Start funding. On December 13, 2005, the Minister of Municipal Affairs and Housing approved Strong Start funding in the amount of $11,145,000 for the Spallacci and Hellenic projects. In order to deliver Strong Start and the successful proponents to receive funding, the City of Hamilton must execute the Administration Agreement and return it to the Minister by March 1, 2006. Due to the expeditious nature of Strong Start, its timelines are unique and will not be replicated in future capital allocations concerning the Affordable Housing Program.

There are three requirements for the City of Hamilton in order to participate in the Strong Start component of the Affordable Housing Program. Most notably, the Administration Agreement must be executed in a timely manner. The Strong Start Administration Agreement is very similar to the Community Rental Housing Program Administration Agreement, previously approved by Council on February 26, 2003.

The other two requirements set out by the Province of Ontario include establishing a Municipal Housing Facilities By-Law and setting the “New Multi-Residential” tax class to equal that of “Residential” (i.e., single family). The City of Hamilton has previously fulfilled these requirements through Council endorsement on June 11, 2003 of Report PD03122, “Municipal Housing Facility By-Law” and Report FCS03087, “2003 Tax Policies and Ratios” on May 14, 2003. Therefore, the last step remaining to initiate the flow of Strong Start funding to the proponents is the execution of the Administration Agreement.

ANALYSIS/RATIONALE:

City of Hamilton staff responded to the opportunity for Strong Start funding in an expeditious manner as staff recognize that the need for affordable rental housing in Hamilton is significant. Through participation in Strong Start, not only will the supply of affordable housing be increased, but also neighbourhood revitalization and economic opportunities in the building trades.

In addition, participation in Strong Start will showcase the City of Hamilton as a credible partner with senior levels of government on affordable housing initiatives. It also positions the City of Hamilton to capture additional Federal and Provincial monies from
other municipalities who may choose not to participate in the Canada-Ontario Affordable Housing Program.

**ALTERNATIVES FOR CONSIDERATION:**

There are no alternatives for delivery of the Strong Start program. The delivery framework was determined by the Federal and Provincial Governments, who decided that Municipal Service Managers would be the delivery agents. By not executing the Administration Agreement, the funding for the Spallacci and Hellenic projects would not occur and the projects could not proceed.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial – Under Strong Start, the Province will pay a one-time fee for municipal delivery and administration of approximately $863.28 per unit. The amount to be received by the City is estimated to be $139,851.36, which will go toward funding the existing staffing complement. Funding by senior levels of government is for capital initiatives only. There will be no on-going operating subsidies provided by the City of Hamilton.

Staffing – The Strong Start program would be delivered within the current budget and staff complement of the Housing Branch.

Legal – Legal staff have reviewed the draft Administration Agreement and have not identified any concerns. The City’s Signing Officers will review the final agreement again prior to execution.

**POLICIES AFFECTING PROPOSAL:**

None.

**RELEVANT CONSULTATION:**

Housing Branch staff have consulted with Finance and Legal staff in regard to the delivery of the Strong Start program. Further, Housing Branch staff are in continual discussion with Provincial colleagues clarifying implementation details and administration of Strong Start.

There have been a number of discussions with community-led and private sector stakeholders on the timing and content of program implementation in Hamilton.

**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
Shelter, care and satisfying employment are accessible to all Hamiltonians.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

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
Life-long learning is supported.
SERVICE MANAGER ADMINISTRATION AGREEMENT

Canada - Ontario New Affordable Housing Program (2003)

Strong Start Program

Rental and Supportive Component

This Agreement made the day of 2006.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

AS REPRESENTED BY

THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING

(hereinafter called the "Minister")

- and -

City of Hamilton

(hereinafter called the "Service Manager")
WHEREAS:

A. In order to create a supply of Affordable Housing, Canada Mortgage and Housing Corporation ("CMHC") and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Public Infrastructure Renewal entered into a bi-lateral agreement effective April 1, 2003 (the "CMHC - Ontario New Affordable Housing Program Agreement").

B. The Minister of Municipal Affairs and Housing (the "Minister") is responsible for the CMHC - Ontario New Affordable Housing Program Agreement.

C. The Minister established the Strong Start Program pursuant to which the Minister would provide CMHC funds and provincial funds for Development Activities related to Affordable Housing by builders and owners of Housing, as defined in this Agreement.

D. The Minister established Rental and Supportive, Home Ownership, and Remote Components under the Strong Start Program.

E. The Minister is entering into this Agreement in order to administer the Strong Start Program - Rental and Supportive Component (the "Program").

F. The Service Manager wishes to participate in the Program, as set out in this Agreement.

G. The Minister and the Service Manager have entered into this Agreement for the purpose of establishing the Service Manager's obligations with respect to the Procurement Process, the pre-occupancy period and the post-occupancy period under the Program and for the purpose of setting out the Minister's obligation to provide funding to the Service Manager's administrative costs of participating in the Program.
NOW THEREFORE, the Minister and the Service Manager agree with each other as follows:

1. INTERPRETATION

1.1 In the Agreement, unless the context requires otherwise,

- “Administration Costs” means the Service Manager’s cost of performing tasks under this Agreement, including costs for communications and agents used for the purpose of the Procurement Process;

- “Affordable Housing” means Housing which is modest in terms of floor area and amenities, based on household needs and community norms, in projects that achieve an average project rent which is at or below Average Market Rents for comparable Housing in a community or area, but does not include residential premises used as a nursing home, retirement home, shelter, crisis care facility or any other type of similar facility;

- “Affordable Housing Program - Strong Start Program” means the Affordable Housing Program described in the Strong Start Program Guidelines;

- “Affordability Payment” means the province’s contribution to a Unit;

- “Affordability Period” means the period during which the average Unit rents in a Project are required to be maintained at or below Average Market Rents, as established by the Service Manager in accordance with the Strong Start Program Guidelines;

- “Average Market Rents” means the average rent figures, based on geographical areas and classified by bedroom count, as determined annually in the CMHC Average Market Rent Survey;
• “Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;

• “Contribution Agreement” means an agreement entered into by the Service Manager or the Minister or another party contributing to the Project and an approved Proponent for contributions under the Program;

• “Contributions by Others” means cash or in-kind eligible contributions from municipalities, the private sector, the voluntary sector, charities and individual donors used in accordance with the Program. It does not include contributions from any other Government of Canada sources, including, but not limited to the CMHC - Ontario Social Housing Agreement dated November 15, 1999, nor contributions which receive credit under any agreement with CMHC outside this Agreement nor equity contributions to the Project made by the Proponent to the extent required in the Procurement Process;

• “Development Activities” means those activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for residential purposes and include the acquisition of property and activities for which Project Development Funding may be provided;

• “Housing” means residential accommodation and facilities, common areas and services used directly with the residential accommodation. Housing does not include commercial or institutional premises, social or recreational services, and services or facilities related to mental or physical health care, education, corrections, food services, social support or public recreation;

• “Occupancy Date” means the date on which occupancy of all Units in a Project is permitted;
• "Parties" means the Minister and the Service Manager and "Party" means either of them, as the context may require;

• "Phase-out Period" means the last five (5) year period of the Affordability Period;

• "Procurement Process" means the request for proposals or procurement process issued pursuant to section 3.0 of this Agreement;

• "Program" means the Strong Start Program - Rental and Supportive Component, as set out in the Strong Start Program Guidelines;

• "Project" means Affordable Housing proposed or approved for the Program, as the context may require;

• "Project Development Funding" means that part of the CMHC funds in an amount of up to one hundred fifty thousand dollars ($150,000) which is to be used by the Proponent to pay for planning and engineering studies, architectural drawings and legal expenses;

• "Proponent" means a person or other legal entity that has submitted a Proposal;

• "Proposal" means the response to the request for proposals or procurement process, submitted to the Service Manager pursuant to the Procurement Process;

• "Security Documents" means the security documents attached to and forming part of the Provincial Contribution Agreement;
• "Strong Start Program Guidelines" means the Guidelines issued by the Minister and attached to this Agreement as Schedule "A";

• "Unit" means a self-contained residential dwelling, including, without limiting the generality of the foregoing, (i) supportive rental Housing where service funding is secured from sources other than CMHC funds and provincial funds provided under the Program; (ii) multi-bedroom units which are used for congregate living; and (iii) disabled/accessible units.

1.2 The following Schedules are attached to and form part of this Agreement:

- Schedule “A” - Strong Start Program Guidelines
- Schedule “B” - Rental Protocol
- Schedule “C” - Service Manager's Quarterly Report
- Schedule “D” - Proponent's Initial Occupancy Report
- Schedule “E” - Proponent's Annual Occupancy Report
- Schedule “F” - Proponent's Annual Targeting Report
- Schedule “G” - Service Manager's Annual Report
- Schedule “H” - Communications Protocol

1.3 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

1.4 All references in this Agreement to section numbers are references to sections of this Agreement unless stated otherwise.

2. REQUIREMENTS FOR SIGNING THE ADMINISTRATION AGREEMENT
2.1 Prior to the **Service Manager** signing this Agreement:

(a) the **Service Manager**, in its capacity as a municipality, or the municipality or municipalities to which the **Procurement Process** applies, by Council action, resolution or by-law, shall ensure that the general property tax applicable to **Units** built under the **Program** is in accordance with the criteria set out in the **Strong Start Program Guidelines**.

(b) The **Service Manager** shall establish income limits, at levels which it considers appropriate, which it shall apply as a requirement for all applicants for tenancies of **Units**, but it shall not apply them as a requirement for tenants during the term of their tenancies or upon any lease renewal or extension. The **Service Manager** shall periodically review such income limits and, if it considers it necessary, revise them to levels which it considers appropriate.

2.2 The **Service Manager** acknowledges and agrees that the **Rental Protocol** set out in Schedule “B” applies to the **Project** by virtue of the contractual terms of this Agreement, notwithstanding that the **Rental Protocol** does not apply to the **Project** under the **Tenant Protection Act, 1997**; and its regulations.

3. **PROCUREMENT PROCESS**

3.1 The **Service Manager** shall undertake a **Procurement Process** that is an open, transparent and fair selection process which meets the requirements of the **Strong Start Program Guidelines**.

3.2 The **Service Manager** shall evaluate, or shall have evaluated, each **Project** in accordance with the requirements of the **Strong Start Program Guidelines**.
3.3 The Minister shall allocate the CMHC and the provincial funds to the Projects in the Proposals submitted by the Service Manager on a first-come-first-serve basis, at the discretion of the Minister.

3.4 The Minister shall not be obligated to allocate any monies whatsoever unless the Procurement Process complies or complied with the requirements of the Strong Start Program Guidelines. The Minister shall not be obligated to allocate any monies to any Project unless the Proposal complies or complied with the requirements of the Procurement Process.

3.5 The provisions of sections 3.1, 3.2, 3.3, and 3.4 apply to any Procurement Process in which contracts are awarded for Development Activities of Projects owned by municipalities or municipal non-profits, or otherwise designated by the Minister to be a municipally sponsored Project.

4. PAYMENTS BY THE MINISTER

4.1 The Minister shall pay the Service Manager, within fifteen (15) Business Days following the execution of this Agreement by both Parties, an advance on account of Administration Costs in an amount equal to one per cent (1%) of the CMHC funds allocated by the Minister.

4.2 If the Service Manager is not in breach of this Agreement and if the Minister has approved an allocation of funds, the Minister shall make payments to the Service Manager on account of the balance of the Administration Costs in respect of each Provincial Contribution Agreement on or before the ninetieth (90th) day after the execution of each respective Provincial Contribution Agreement, as follows:

(a) The maximum amount of such payment or payments shall be calculated as three decimal two-seven per cent (3.27%) of the CMHC capital funding allocated by the Minister to the Project or Projects less the amount paid under section 4.1, provided that, in the event of a negative amount, the
Service Manager shall not be required to repay any portion of the monies paid under section 4.1.

(b) No payment under this section 4.2 shall be made with respect to any Project until a Provincial Contribution Agreement respecting such Project has been executed with respect to such Project. Payments respecting individual Projects shall be calculated as pro rata portions of the amount calculated under section 4.2(a) based on proportionate Unit counts.

(c) No payment under this section 4.2 shall be made to the extent that the amount paid pursuant to section 4.1 exceeds the pro rata portion attributable to the Project or Projects in respect of which a Provincial Contribution Agreement has been executed.

4.3 Any enhancements to the administrative fee structure set out in this section shall be implemented as of the effective date of the enhancement.

5. POST PROCUREMENT PROCESS ADMINISTRATION

5.1 In conjunction with the execution of each respective Provincial Contribution Agreement, the Service Manager shall prepare, have executed by the Proponent and register the required Security Documents, on behalf of the Minister and the Service Manager.

5.2 The Service Manager shall be responsible for the administration of the Security Documents, on behalf of the Minister and the Service Manager. Notwithstanding the foregoing, it is understood and agreed that the Minister and the Service Manager shall act collectively at all times when pursing their remedies under the Security Documents. The Minister and the Service Manager shall act reasonably and in good faith in jointly considering the course of action to be taken with respect to the pursuit of their remedies. In the event the Minister and the Service Manager cannot agree as to a course of action, the party who contributed the larger amount towards the Project shall make the decision as to the course of action to be taken.
5.3 During the period prior to the Occupancy Date, the Service Manager shall monitor all Projects which have received a funding allocation to determine whether the Proponents carry out all Development Activities required in the Procurement Process or proposed in or intended by the Proposal and whether they are carrying out such Development Activities in such manner and within such time periods as are set out in the Strong Start Program Guidelines.

5.4 The Service Manager and the Minister shall provide each other with information as to the status of each Project, including, without limitation, the proposed schedules for construction and progress payments, and any information relevant thereto, including actual or constructive notice of construction liens.

5.5 The Service Manager shall, at the request of the Minister, provide the Minister with proof that occupancy of all Units in the Project is permitted.

5.6 The Service Manager shall immediately inform the Minister in writing of the following matters as soon as it becomes aware of them:

(a) any failure by the Proponent to carry out all the Development Activities required in the Strong Start Program Guidelines or any failure to carry out such Development Activities in such manner and within such time periods as are set out in the Strong Start Program Guidelines.

(b) any breach by the Proponent of its Contribution Agreement with the Minister or the Service Manager, or any breach of any other Contribution Agreement respecting the Project by any party thereto;

(c) the Proponent becoming bankrupt or insolvent or taking the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or filing any proposal or making any assignment for the benefit of creditors or any arrangement or compromise;
(d) the appointment of a receiver or a receiver and manager for all or a portion of a Project; and

(e) the taking of any steps or any action or the institution of any proceedings by a Proponent or by any other party, including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding up or liquidation of the Proponent or its assets.

6. ACCOUNTABILITY FRAMEWORK

6.1 The Service Manager shall submit to the Minister a ranked list of Council approved Projects with recommended funding requirements.

6.2 On or before the date the Minister and the Proponent sign a Provincial Contribution Agreement respecting a Project, the Service Manager shall:

(a) complete and submit to the Minister, a report setting out the value of the municipal contribution to the Project, in the form attached to this Agreement as Schedule “C”;

(b) provide written confirmation to the Minister that commitments have been made by the Minister of Community and Social Services or the Minister of Health and Long Term Care to provide funding for the support services required by tenants of the supportive housing units in the Project.

6.3 During the period between the date of execution of this Agreement and the Occupancy Date of all of the Projects, the Service Manager shall complete and submit to the Minister reports on all of the said Projects on or before the tenth (10th) Business Day following the last day of March, June, September and December in each year, in the form attached to this Agreement as Schedule “C”.
6.4 The Service Manager shall provide the Minister with such information as may be required by the Minister to determine the amount of the Affordability Payment or the amount of any adjustment to the Affordability Payment.

6.5 On or before the date the Minister disburses the initial Affordability Payment to the Proponent, the Service Manager shall enter into a targeting agreement with each Proponent whereby the Proponent shall be required to make Units available to targeted groups from the Occupancy Date as long as any necessary support services are provided to the targeted group.

6.6 The Service Manager shall advise the Minister once the targeting agreement has been signed by the Proponent and the Service Manager and shall advise the Minister annually as to whether the Proponent is complying with the targeting agreement.

6.7 During the period between the Occupancy Date of each Project and the end of the Phase-out Period, the Service Manager shall:

(a) obtain annually from each Proponent completed information reports, in the forms attached to this Agreement as Schedules “E” and “F”; and

(b) complete and submit to the Minister, on or before the last day of March subsequent to each reporting calendar year, a report on all of the said funded Projects, in the form attached to this Agreement as Schedule “G”.

6.8 During the period between the date of execution of this Agreement and the Occupancy Date of all of the Projects, the Minister and the Service Manager shall collaboratively review annually during the month of April the progress of utilization of the CMHC and the provincial capital funding by the Proponents at their respective Projects on the basis of the reports submitted pursuant to Schedules “C” and “G”.
6.9 The Service Manager acknowledges that the Minister is required to report to CMHC under the CMHC - Ontario New Affordable Housing Program Agreement and that, in order to fulfill the said reporting requirements, it will be relying on the materials provided to it pursuant to sections 6.2, 6.3, 6.6 and 6.7, and on the collaborative review of these materials pursuant to section 6.8.

6.10 The Service Manager shall, on forty-eight (48) hours prior written notice, give the Minister free access to such staff, documents, books, records and accounts as may be determined by the Minister, for the purpose of verifying compliance with this Agreement.

6.11 The Minister may conduct an audit, investigation or inquiry in relation to a Project or any larger development or project of which any Project is a part and the Service Manager shall co-operate with the Minister and shall provide free access to such staff, documents, books, records and accounts as may be determined by the Minister.

6.12 The provisions of sections 6.9, 6.10 and 6.11 shall continue to apply for a period of seven (7) years following the end of the Phase-out Periods for all of the Projects or the date of any early termination of this Agreement.

6.13 The Service Manager shall enter into an agreement with the Proponent which imposes on the Proponent such obligations as enable the Service Manager to fulfill its obligations under sections 5.3, 5.4, 5.5, 5.6, 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7.

6.14 If the Service Manager makes a contribution in the nature of a Contribution by Others to any Project to which the Minister has allocated funds under this Agreement, it shall enter into a Contribution Agreement with the Proponent for such Project. The Contribution Agreement shall indicate the amount of any cash contributions from the Service Manager and the amount of any eligible in-kind contributions from the Service Manager. The provisions of the agreement required pursuant to section 6.13 may be included in any Contribution Agreement entered into by the Service Manager.
6.15 The amount of any cash contributions from the Service Manager shall be included in the Security Documents. The amount of any eligible in-kind contributions from the Service Manager shall not be included in the Security Documents.

6.16 The Service Manager represents that it has not knowingly provided the Minister with any false or misleading information respecting the subject matter of this Agreement and agrees that it shall not knowingly provide any false or misleading information to the Minister in the performance of its obligations under this Agreement.

7. REMEDIES

7.1 If the Service Manager breaches any one (1) or more provisions of this Agreement, the Minister may, subject to sections 7.2 and 7.3, terminate this Agreement and the Service Manager upon twenty (20) Business Days prior written notice from the Minister, shall repay to the Minister all amounts previously paid to it by the Minister under this Agreement that relate to the Project in respect of which the breach occurred with the exception of any payment made pursuant to section 4.1.

7.2 In the case of a default that can be corrected, the Service Manager shall not be required to make any payment required pursuant to section 7.1 unless:

(a) the Minister has delivered to it written notice of the Service Manager's breach of the Agreement; and

(b) the Service Manager has not corrected the said breach within twenty (20) Business Days following its receipt of the said notice or such longer period as may be determined by the Minister in his sole and absolute discretion.
7.3 If the Service Manager has not corrected its default within the period established pursuant to section 7.2 (b), it shall repay to the Minister, within twenty (20) Business Days thereafter, all amounts previously paid to it by the Minister under this Agreement that relate to the Project in respect of which the breach occurred.

7.4 Nothing in this Agreement is to be construed as authorizing one Party to contract for or incur any obligation on behalf of the other or to act as agent for the other and nothing in this Agreement shall be construed to constitute the Minister and the Service Manager as partners of each other. In particular, the Minister is in no way accountable for any related environmental or pollution matters. Furthermore, the Service Manager acknowledges that CMHC is not a party to this Agreement or other agreement relating to any Project and is in no way accountable for any related environmental or pollution matters. The Service Manager agrees to indemnify the Minister and save him harmless from all losses, costs, damages, expenses, injury and liability whatsoever which the Minister may suffer as a result of claims of any sort whenever made arising out of the implementation of this Agreement, including any environmental or pollution claims, except as caused or contributed to by the Minister other than by entering into or fulfilling this Agreement.

7.5 All of the remedies in this Agreement are cumulative and are not alternative and the Minister shall not be precluded from availing himself simultaneously of some or all of the said remedies and any other remedies otherwise available in equity or at law.

7.6 Notwithstanding any of the terms of this Agreement, the Minister shall have the option of waiving any or all of his remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

8. COMMUNICATIONS PROTOCOL

8.1 The Service Manager acknowledges that the Minister of Public Infrastructure Renewal entered into a Communications Protocol with CMHC under the CMHC - Ontario New Affordable Housing Program Agreement as set out in Schedule “H”
hereto. The **Service Manager** agrees that it shall co-ordinate its communications activities with the **Minister** so as not to cause the **Minister** to be in default of his obligations to **CMHC** under the said Communications Protocol.

8.2 The **Service Manager** shall provide the **Minister** with information on each recommended **Proposal** not less than ten (10) **Business Days** before it notifies any **Proponent** of the decision to include its **Proposal** on the list of recommended **Proposal** to be submitted to the Council of the **Service Manager**.

8.3 The **Service Manager** shall ensure that **Proposal** approval notifications are in a form acceptable to both **CMHC** and the **Minister** and shall identify the **CMHC - Ontario New Affordable Housing Program Agreement** as a source of funding.

8.4 The **Service Manager** shall ensure that all public information material related to **Procurement Process** shall clearly and prominently indicate that the approved **Projects** are funded pursuant to the **CMHC - Ontario New Affordable Housing Program Agreement**.

9. **NOTICE**

9.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:

(a) delivered personally;

(b) sent by prepaid courier service; or

(c) sent by facsimile communication, and confirmed by mailing the original documents so sent by prepaid mail on the same or following day, addressed as follows:
(i) in the case of notice to the Minister:

**Ministry of Municipal Affairs and Housing**

Attention: Director, Delivery Branch

777 Bay Street, 2nd Floor

Toronto, ON

M5G 2E5

Fax: (416) 585-6588

(ii) in the case of notice to the Service Manager:

**City of Hamilton**

Attention: Program Manager, Housing Development and Partnerships

1 Hughson Street North, Fifth Floor

Hamilton ON L8P 3L5

Fax: (905) 546-2762

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a **Business Day** such notice or other communication shall be deemed to have been given and received on the next following **Business Day**. Any notice or other communication transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a **Business Day** and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1st) **Business Day** after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.
GENERAL

10.1 Any power, right or function of the Minister, contemplated by this Agreement, may be exercised by any employee or agent of the Ministry of Municipal Affairs and Housing.

10.2 The disbursement of funds by the Minister to the Service Manager under section 4 is subject to the necessary appropriations from the Federal Parliament and the Provincial Legislature. Neither the Minister nor CMHC shall have any liability in the event the respective appropriations are insufficient to meet the funding obligations of the Minister.

10.3 No member of:

(a) the House of Commons or Senate of Canada; or

(b) the Legislative Assembly of Ontario; or

(c) the Municipal Council constituting the Service Manager herein or the Municipal Council of any local municipality of such Service Manager or the governing body of any Municipal Agency, Board or Commission of any of such municipalities;

shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit arising therefrom, including, without limitation, any contract, agreement or commission arising from or related to the Program.

10.4 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or abridged by agreement in writing signed by the Minister and the Service Manager or their respective solicitors on their behalf, who are hereby expressly appointed in this regard.
10.5 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.

10.6 The headings and subheadings contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.

10.7 The parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting this Agreement other than as expressed in writing in this Agreement.

10.8 This Agreement shall be read with all changes of gender and number required by the context.

10.9 Each of the Parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Party, execute and deliver to the other Party a statement in writing confirming that this Agreement is in good standing, unmodified and in full force and effect, or if there have been modifications that the same are in good standing and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.

10.10 The Service Manager shall not assign this Agreement without the prior written consent of the Minister, which consent may be withheld, acting in his sole discretion.

10.11 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of section 10.10 restricting the Service Manager's ability to assign this Agreement.
IN WITNESS THEREOF this Agreement has been executed by the Parties.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF
MUNICIPAL AFFAIRS AND HOUSING

__________________________________________
The Honourable John Gerretsen
Minister of Municipal Affairs and Housing

City of Hamilton

Per: __________________________
Name: __________________________
Title: __________________________

C/S

Per: __________________________
Name: __________________________
Title: __________________________