SUBJECT: Assignment and Assumption Agreement for Trieste Bocce Association (ECS08044) (Ward 7)

RECOMMENDATION:

(a) That the Mayor and City Clerk be authorized and directed to execute an Assignment and Assumption Agreement, in a final form satisfactory to the City Solicitor (draft attached as Appendix A to Report ECS08044) with Trieste Bocce Association to transfer a donated tent structure for the William Bethune Park Bocce Courts; and,

(b) That in the future, delegation of authority be granted to the General Manager of Community Services for Assignment and Assumption Agreements related to sport, recreation, art and culture structures and equipment that are donated and benefit residents and the greater public good.

Joe-Anne Priel,
General Manager
Community Services Department

EXECUTIVE SUMMARY:

The City of Hamilton would like to enter into an Assignment and Assumption Agreement (attached as Appendix A to Report ECS08044) with Trieste Bocce Association who would like to donate the tent canopy structure over the bocce courts (William Bethune
Park) to the City. Also, staff request that in the future the General Manager of the Community Services Department receives authority to authorize assignment and assumption agreements for donated sports, recreation, arts and culture structures and equipment to the City of Hamilton that benefit residents and the greater public good.

**BACKGROUND:**

The Trieste Bocce Association is a non-profit recreation bocce club that uses City bocce courts located in William Bethune Park. In 2006, the club raised funds and purchased a structure to cover the bocce courts in order to increase public use. The structure is made of steel trusses covered by a fire resistant fabric canopy and meets code for wind and snow loads.

In the winter of 2007, the structure was damaged due to vandalism at an estimated cost of $10,000. The Trieste Bocce Association does not have the funds to repair the canopy structure. Staff reviewed the issue with Corporate Risk Management who advised that the City cannot pay for the damages unless we have an Assignment and Assumption Agreement in place as the City does not own the structure. The Trieste Bocce Association has agreed to donate and transfer the ownership of the structure to the City of Hamilton.

In consultation with Legal Services, a draft Assignment and Assumption Agreement (attached as Appendix A to Report ECS08044) was prepared between the City of Hamilton and Trieste Bocce Association. Under the advisement of Risk Management, the Agreement contains a clause which does not guarantee any future repairs to, or replacement of, the structure. The intent of the clause is to provide an opportunity for the City, after the initial repairs, to avoid further spending if additional damages are incurred.

At the present time, the Mayor, City Clerk and the General Manager of Planning and Economic Development (property agreements) have the delegation of authority for Assignment and Assumption Agreements (property agreements). Given that the Community Services Department works closely with many community organizations who may from time to time wish to donate or provide gifts in kind, such as sports equipment/structures, works of art, and other cultural assets, the department would like approval for the General Manager to have the delegation of authority for Assignment and Assumption Agreements for donated recreation and cultural assets, as deemed appropriate from time to time.
ANALYSIS/RATIONALE:

Financial Sustainability:

The estimated cost to replace the canopy tent for the bocce courts at William Bethune Park is $10,000 and will be covered under the City’s risk management insurance policy. Any further damages, as outlined in the Assignment and Assumption Agreement will not be covered by the City of Hamilton.

Public Input:

Recreation Division staff have consulted with the Trieste Bocce Association and executive, who approved the terms and conditions of the agreement.

ALTERNATIVES FOR CONSIDERATION:

No other alternate considerations are being proposed at this time. If the Assignment and Assumption Agreement is not approved the bocce tent canopy will go into further disrepair. As a result, the public use of the facility will be greatly reduced and become a health and safety hazard.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial:

The financial implications are the value to replace the tent canopy structure valued at $10,000. The Trieste Bocce Association is aware that the City of Hamilton is prepared to replace the structure this one-time only. The Trieste Bocce Association has agreed to sign the Assignment and Assumption Agreement in order to transfer the ownership of the tent canopy structure to the City of Hamilton.

Staffing:

There are no staffing implications associated with the recommendations of Report ECS08044.

Legal:

Staff have consulted and worked with Legal Services in the preparation of the Assignment and Assumption Agreement with Trieste Bocce Association.
POLICIES AFFECTING PROPOSAL:

None.

RELEVANT CONSULTATION:

Recreation Division staff consulted with Risk Management, Legal Services and the Real Estate Services Division.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and 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
Recreation facilities are highly valued by Hamilton residents. Appropriate stewardship of these community assets is vital to community well-being.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Provides a physical infrastructure for outdoor recreational enjoyment in a park setting.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Promotes Hamilton’s physical environment as a desirable place to live and work.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No
Community well-being, environmental well-being and economic well-being are being enhanced.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No
These recommendations create conditions where the involved employees can excel in their service to the community.

The recommended initiative provides the involved employees with challenging and, therefore, fulfilling works in their pursuit of excellent public service.

The City of Hamilton Vision Statement. The recommendations of Report ECS08044 align with the City’s new Vision “To be the best city in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities”.
ASSIGNMENT AND ASSUMPTION AGREEMENT

This Agreement made as of the 13th day of May 2007 (this “Agreement”)

Between:

CITY OF HAMILTON

(the "City")

OF THE FIRST PART

-and-

TRIESTE BOCCE ASSOCIATION

("TRIESTE")

OF THE SECOND PART

WHEREAS the City owns the Trieste Bocce Facility (the “Facility”) located at Bethune Park, Hamilton, ON. The facility was constructed under Contract No. C11-127-03;

AND WHEREAS TRIESTE utilizes the Facility;

AND WHEREAS TRIESTE obtained the necessary funds and permits to construct a tent structure at the Facility;

AND WHEREAS TRIESTE desires to transfer and donate the tent structure to the City;

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1.01 The undersigned TRIESTE, an association, (the “Assignor”) does hereby grant, assign and convey to and in favour of City, the full post office address of whose principal office of place of business is City of Hamilton, City Centre, 77 James Street North, Suite 220 Hamilton, ON, L8R2K3 (the "Assignee"), all the right, title and interest, including all goodwill arising therefrom, which the Assignor may have acquired or has acquired in the structure which is further identified in Schedule "A" (the “Tent Structure”).

2.01 The Assignee accepts this Assignment.

3.01 The Assignor covenants, promises and agrees with the Assignee that the Assignor is now rightfully in title to the sold, assigned and transferred Tent Structure and that the Assignor now has in it good right, title and authority to sell, assign and transfer to the Assignee, its successors and assigns, according to the true intent and meaning of these presents and that
the Assignee shall immediately after execution and delivery have possession of and may
from time to time and at all times peaceably and quietly have, hold, possess and enjoy the
same and every part thereof to and for its own use and benefit without any manner of
hindrance, interruption, molestation, claim or demand whatsoever of, from or by the
Assignor or any person whomsoever and with good and marketable title thereto, free and
clear and absolutely released and discharged from and against all former and other bargains,
sales, gifts, grants, mortgages, pledges, security interests, adverse claims, liens, charges and
encumbrances of any nature or kind whatsoever and the Assignor agrees to waive, release
absolutely, defend, indemnify and save harmless the Assignee, its employees, officials,
successors, contractors and agents the Assignee with respect thereto.

4.01 Any notice or other documents required or permitted to be given under this Agreement
shall be in writing and shall be delivered, mailed by prepaid, registered mail, electronic
mail or sent by facsimile addressed to the party to whom it is to be given at the address
shown below or at such other address or addresses as the party to whom such writing or
document is to be given shall have last notified the other party in accordance with the
provisions of this paragraph:

(a) In the case of the City:

Office of the City Clerk
City of Hamilton
City Centre
77 James Street North, Suite 220
Hamilton, ON L8R 2K3

Fax: 905.546.2095

(b) In the case of TRIESTE:

Victor DiSimoni
546 Di Cenzo Drive
Hamilton, ON L9B 2C3

Phone #: 905-383-3031

4.02 Any such notice or other document shall:

(a) if delivered, to be deemed to have been given and received at the place of receipt on the
date of delivery, provided that if such date is a day other than a business day in the
place of receipt, such notice or document shall be deemed to have been given and
received at the place of receipt on the first business day in the place of receipt thereafter;
(b) if transmitted by facsimile, be deemed to have been given and received at the place of receipt on the next business day in the place of receipt following the day of sending;

(c) if mailed, be deemed to have been given and received at the place of receipt, three (3) days after mailing; and

(d) if emailed, be deemed to have given and received at the place of receipt, one (1) day after sending.

4.03 In the event of a postal disruption, such notice or documents must be delivered personally or sent by facsimile or email.

5.01 The City shall be under no obligation to repair, replace or maintain the Tent Structure, or any part thereof, whatsoever. For great certainty, the City shall solely determine the use, placement, future repair, if any and maintenance of the Tent Structure. The City shall not be liable whatsoever for any failure, refusal or neglect to repair, replace or maintain the Tent Structure.

6.01 This Agreement may be executed in counterparts, and each counterpart so executed and delivered shall be deemed an original.

7.01 No amendment, variation, or other modification to this Agreement shall be valid or binding upon the parties unless the same is in writing.

8.01 This Agreement, the documents incorporated by reference herein, and any schedules hereto constitute the entire agreement between the parties and all prior negotiations, commitments, conditions, representations, warranties and undertakings are merged herein. Except as herein provided, there are no oral or written representations to the Shareholder relating to the subject matter hereof, whether direct, indirect, collateral, expressed or implied.

9.01 If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) sign this Agreement as the Assignor, the liability of each such individual, corporation, partnership or other business association to pay the Licence Fee and to make and perform all other payments and obligations hereunder shall be deemed to be joint and several. In like manner, if the Assignor is a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several. The Assignor warrants and represents that it is duly formed and in good standing, and has full corporate or partnership authority, as the case may be, to enter into this Agreement, and has taken all corporate or partnership action, as the case may be, necessary to make this Agreement a valid and binding obligation, enforceable in accordance with its terms.
10.01 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto, and each party irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario.

11.01 This Agreement shall inure to the benefit of and be binding upon the parties hereto and, as permitted herein, their respective heirs, administrators, personal representatives, executors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Agreement in triplicate on the day and year first above written.

CITY OF HAMILTON

BY:________________________
   Name: Fred Eisenberger
   Title:  Mayor

BY:________________________
   Name: Kevin C. Christenson
   Title:  City Clerk

TRIESTE BOCCE ASSOCIATION

Per________________________
   Name:
   Title:

Per________________________
   Name:
   Title:

“We have the authority to bind the Trieste Bocce Association”
SCHEDULE “A”

TENT STRUCTURE

- 36ft wide x 112ft long Legend Series Cover-All
- Trusses 14ft on centre with DuraWeave II fire-rated (FR) fabric cover
- Partial end walls open
- Concrete piers and Anchors system