

**CONFEDERATION BEACH PARK MANAGEMENT AGREEMENT (the "Agreement")**

**THIS AGREEMENT** is effective as of January 1, 2017

**BETWEEN:**

**CITY OF HAMILTON (the "City")**

- and -

**HAMILTON REGION CONSERVATION AUTHORITY (the "HRCA")**

Each a "Party" and collectively the "Parties"

**WHEREAS** the City [previously the Regional Municipality of Hamilton-Wentworth (the "Region")] is the owner of certain lands and premises, more particularly described in Schedule "A" (the "**Lands**"), including the buildings, fixtures, chattels and facilities therein, known as the Confederation Beach Park (the "**Park**");

**AND WHEREAS** the Park is located within certain areas over which the HRCA has jurisdiction;

**AND WHEREAS** the City has requested that the HRCA operate and manage the Park for the City in accordance with the terms of this Agreement;

**AND WHEREAS** the HRCA's operation and management of the Park on behalf of the City is consistent with the HRCA's objects and is permitted by the *Conservation Authorities Act*, R.S.O. 1990, Chapter C.27, as amended from time to time (the "**Act**"), particularly sections 20 and 21.1(n);

**AND WHEREAS** for these purposes, the Region and the HRCA entered into an agreement dated July 17, 1990, which expired on November 30, 1991;

**AND WHEREAS** the Region and the HRCA entered into a subsequent agreement dated December 18, 1991, setting the terms and conditions of the HRCA's operation and management of the Park on behalf of the Region (the "**Management Agreement**");

**AND WHEREAS** the Management Agreement was revised by way of an amending agreement dated April 5, 1994 (the "**Amending Agreement**") as authorized by Item 8 of Finance Report 1-93 approved by Regional Council on January 13, 1993 which outlined the City's provision of a loan to the HRCA for the expansion of the Park's Wild Waterworks Facilities on the terms and conditions outlined in the Amending Agreement;

**AND WHEREAS**, pursuant to section 20 of the Management Agreement, the Council of the Region, in adopting Item 3 of Report 4-95 of the Finance Committee at its meeting of March 21, 1995, approved the renewal of the Management Agreement for the period

from December 1, 1994 to November 30, 1997 as set out in another agreement dated March 21, 1995;

**AND WHEREAS** the Management Agreement expired effective November 30, 1997;

**AND WHEREAS**, consistent with section 20 of the Management Agreement, the Council of the Region, in adopting Item 4 of Finance Committee Report 4-98 at its March 17, 1998 meeting, approved the renewal of the Management Agreement for the period from December 1, 1997 through November 30, 2000 on certain terms and conditions subsequent to which the Management Agreement was extended on a month to month basis;

**AND WHEREAS** the "City of Hamilton" was incorporated effective January 1, 2001 to stand in place of the Region, the former cities of Hamilton and Stoney Creek, the former towns of Ancaster, Dundas and Flamborough and the former Township of Glanbrook;

**AND WHEREAS**, by agreement dated April 1, 2002, the City and the HRCA agreed that the HRCA would continue to manage the Park through March 31, 2007 which agreement was subsequently extended to March 31, 2012;

**AND WHEREAS** the City and the HRCA subsequently entered into another agreement whereby the HRCA continued to operate and manage the Park on behalf of the City which agreement expired on December 31, 2016;

**AND WHEREAS** the City and the HRCA wish to enter into a new agreement to supersede all prior agreements, arrangements, promises, representations or other understandings, whether written or oral, between them, setting forth the terms and conditions by which the HRCA shall operate and manage the Park for the City;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the covenants hereinafter contained, the City and the HRCA on behalf of themselves and their respective successors and assigns, covenant and agree as follows:

**1. TERM**

(1) This Agreement shall be effective as of the Effective Date and shall expire on December 31, 2026 (the "Term") unless terminated beforehand in accordance with this Agreement.

(2) The City may extend this Agreement for up to two (2) additional and consecutive periods of five (5) years each (each a "Renewal Term") on providing written notice to the HRCA at least ninety (90) days prior to the expiration of the Term or the first Renewal Term of this Agreement as appropriate.

## **2. AUTHORITY AND LAWS**

- (1) The HRCA shall have the authority to operate and manage the Park on behalf of the City, including the Lands, Buildings, Fixtures and Chattels listed in Schedule "B", in accordance with this Agreement.
- (2) Notwithstanding section 2(1), the City retains the overall and absolute control of the Park including all Lands, Buildings, Fixtures and Chattels listed in Schedule "B" and including all matters pertaining to the development of any additional features, lands, buildings, facilities, fixtures, chattels or otherwise.
- (3) The HRCA shall meet its obligations under this Agreement in accordance with all applicable federal, provincial, municipal and other laws, regulations, bylaws, codes, orders, standards and practices, including those of agencies, boards, commissions, utilities and other tribunals having jurisdiction over any matter provided for in this Agreement, and without limitation, the *Occupational Health and Safety Act*, R.S.O. 1990 ("OHSA") and all regulations thereunder, as amended from time to time (collectively the "Laws").
- (4) For clarity, the Parties recognize and agree that:
  - (a) the HRCA does not have the authority to enforce municipal by-laws; and
  - (b) nothing in this Agreement shall be interpreted or construed so as to render the City an "employer" (as defined in the OHSA) of any persons, employees, workers, volunteers, contractors or sub-contractors employed, retained or engaged by the HRCA.

## **3. OWNERSHIP OF REAL AND PERSONAL PROPERTY**

- (1) The HRCA acknowledges and agrees that all real and personal property located in and about the Park, including all lands, buildings, fixtures and chattels referred to in Schedules "A" and "B" are, as between the City and the HRCA, the sole and exclusive property of the City, as will be any and all subsequently acquired real or personal property purchased or acquired by the HRCA that comprises part of the Lands or the Park.
- (2) The HRCA acknowledges and agrees that it has no interest, legal or equitable, in the Lands or Park and that the City is the absolute owner thereof.
- (3) Should the HRCA own or lease any equipment, vehicles or chattels that are used to meet its obligations under this Agreement, the HRCA shall provide a list of such equipment, vehicles and chattels to the Contract Administrator for approval on the

execution of this Agreement and shall provide an updated list on at least an annual basis coincident with the renewal of the HRCA's insurance coverages and policies.

#### **4. RECORDS**

(1) The Parties agree and acknowledge that this Agreement, and all records, information and documents arising from it, are subject to, and that the Parties shall comply with, the *Municipal Freedom of Information and Protection of Privacy Act* ("**MFIPPA**") including the regulations thereto and any successor legislation.

(2) The HRCA agrees that all Records, as defined in MFIPPA, arising out of this Agreement shall become the property of the City and a record of the City.

(3) Subject to section 4(1), the HRCA shall treat all information received from or on behalf of the City pursuant to this Agreement which is not publicly available as confidential and shall not disclose such information without the City's prior written consent.

(4) The HRCA shall immediately advise the City of any request under MFIPPA for any record pertaining to this Agreement and shall, thereafter, coordinate its response to that request with the City.

#### **5. TAXES**

(1) Subject to sections 5(2) through 5(4), the HRCA shall pay to the appropriate authorities as and when due: (a) all taxes, rates, duties, assessments and other charges that may be or are levied, rated, charged or assessed against or in respect of this Agreement, HRCA revenues and all improvements, equipment, concessions and facilities of the HRCA on or in the Park; and (b) every tax and license fee which is levied, rated, charged or assessed against or in respect of the business carried on by the HRCA at the Park, or in respect of the use or occupancy of the Park. The HRCA shall, upon written request of the City, deliver to the City for inspection, all records, including receipts, relevant to the assessment and payment of all business taxes, Harmonized Sales Tax ("**HST**") or other taxes and charges that may be payable by the HRCA from time to time.

(2) Any property taxes payable by the HRCA pursuant to section 5(1) shall be considered Administrative Expenses within the meaning of section 9(1)(c).

(3) Property taxes attaching to leased premises within the Park should be identified in the relevant lease and shall be the sole obligation of the lessee.

(4) The HRCA shall remit all HST collected from all transactions in, about or related to the Park, including HST paid by the City on the Management Fee, to the appropriate taxing authorities.

#### **6. OPERATION, MAINTENANCE AND MANAGEMENT OF PARK**

(1) The HRCA shall, within the limits of the budgets approved by the City, in a manner consistent with the City's objectives for the Park and the City's policies, practices, procedures, resolutions and bylaws, operate, maintain, market, manage and secure the Park to a standard consistent with best practices for comparable parks. On or before July 1, 2018, the City and the HRCA shall finalize a written Memorandum of Understanding that outlines specific standards and practices for the Park.

#### **7. ROLES AND RESPONSIBILITIES**

(1) The City shall be responsible for the:

- (a) overall direction, purpose(s), mission and development of the Park;
- (b) negotiation and finalization of all leases at the Park; and
- (c) maintenance, operation and inspection of all playgrounds and sports facilities.

(2) The HRCA shall:

- (a) operate, market, maintain, inspect, repair, replace and modify, as appropriate, the Park and all Lands, Buildings, Fixtures and Chattels including the Wild Waterworks attractions (the "Wild Waterworks"), save and except the sports fields and playgrounds (which remain the responsibility of the City), so as to ensure optimum utilization consistent with the purposes of the Park to the extent possible while staying within allotted budget;
- (b) hire, retain, employ and supervise the labour, personnel, contractors, volunteers and expertise necessary to discharge the HRCA's obligations under this Agreement;
- (c) administer all leased premises at the Park which includes the timely collection and receipt of all rents due from these tenants and, where appropriate, recommending to the City all actions and proceedings deemed necessary to recover any arrears of rent, to remove any defaulting tenants and/or recover possession of the relevant leased premises;
- (d) in accordance with section 8, contract with all appropriate providers necessary to operate the Park;

- (e) establish and collect any and all entrance and other fees charged to members of the general public for the use of the Park and any of its services and facilities;
- (f) be responsible for, and maintain ongoing communication with, all lessees, tenants, third party providers and members of the public;
- (g) develop, track and report to the City such information, including performance indicators, as required by the City; and
- (h) perform such other actions and activities appropriate to the successful administration, development and operation of the Park as directed by the City or the Park Management Review Team ("PMRT").

#### **8. NEGOTIATION OF THIRD PARTY AGREEMENTS**

- (1) The HRCA shall negotiate and enter into agreements with third parties to provide the goods, services, labour and facilities necessary to operate the Park consistent with the City's objectives.
- (2) The HRCA may enter into such third party agreements on condition that any such agreement:
  - (a) does not exceed a length of five (5) years without the City's prior written consent;
  - (b) does not have an expiry date beyond the expiry date of this Agreement; and
  - (c) is consistent with the budget approved by the City.
- (3) The HRCA shall provide the City's Contract Administrator with a true copy of each such third party agreement within thirty (30) days of execution.
- (4) The HRCA shall be solely responsible for the payment of every such contractor employed, engaged or retained by it and shall coordinate the services of its contractors in a manner acceptable to the City, and ensure that the HRCA's contractors comply with all the requirements of this Agreement.
- (5) The HRCA shall be liable to the City for all claims, costs or damages arising from the acts, omissions, negligence or willful misconduct of its contractors.
- (6) Unless directed otherwise by the City, the HRCA shall apply all revenue (except H.S.T. that is remitted to the Province of Ontario) derived from Park operations (including without limitation, all payments, rentals, fees, percentages of business received and other revenues, however calculated) exclusively for the purposes of the Park.

## 9. BUSINESS PLANS AND BUDGETS

- (1) On or before September 30 of each year (or such other date as directed by the City), the HRCA shall, with PMRT's approval, present to the City its written Business Plan (using, as phased in over the first three years of this Agreement as directed by PMRT, the template attached hereto as Schedule "C") for, and proposed budget in relation to, the Park for the forthcoming fiscal year which runs from January 1 through December 31 inclusive, which budget shall include:
  - (a) expenditures of a capital nature proposed for the forthcoming fiscal year consistent with the ten (10) year capital plan (in accordance with section 18) addressing all additions, improvements, replacements, removals and repairs in relation to, and for the development of, all real and personal property of every nature, kind and description located in and comprising the Park and, without limiting the generality of the foregoing, for additions, improvements, replacements, removals, repairs and for the development of any and all structures, buildings, landscaping, herbaceous plantings, trees, roadways, paths, bridges, fences, gates and improvements of all kinds (whether in existence on the Effective Date or acquired or erected subsequent to that date);
  - (b) expenditures for the operation and maintenance of the Park for the forthcoming fiscal year which take into account the expected revenue for the Park from all sources projected by the HRCA;
  - (c) expenditures for all "**Administrative Expenses**" which means those administrative expenses necessarily incurred by the HRCA in order to meet its obligations under this Agreement, including: (i) the salaries and benefits of employees directly supporting the HRCA's obligations under this Agreement prorated to the time those employees spend directly supporting the HRCA's obligations (ii) advertising and marketing costs; (iii) cleaning expenses; (iv) data processing costs; (v) general office supplies, printing and stationary costs; (vi) postage and freight costs; (vii) equipment rental costs; (viii) minor repairs, maintenance, and equipment servicing which do not amount to Capital Expenditures; (ix) security expenses; (x) telephone and communication charges; (xi) exterminator, snow and trash removal costs; (xii) computer, software, hardware and training costs; (xiii) utility expenses; (xiv) audit and accounting fees; (xv) insurance costs only as required to meet the HRCA's obligations under this Agreement; and (xvi) legal fees, except for legal fees associated with disputes between the Parties to this Agreement; and
  - (d) a management fee comprised of a sum equal to fifteen percent (15%) of the aggregate of the items referred to in sections 9(b) and (c) of this Agreement (excluding the cost of any debt repayment) (the "**Management Fee**"). This Management Fee is intended to be fair compensation to the HRCA for its managerial, administrative and

supervisory services together with those miscellaneous expenditures which it may incur that are not charged directly to the City.

(2) For clarity, the City is not responsible to pay, or reimburse the HRCA for the following expenses or costs and the HRCA will indemnify and hold harmless the City from all liabilities related to:

- (a) any costs, expenses or similar charges not directly related to the management or operation of the Park;
- (b) subject to section 9(1)(c), the cost of salary, benefits and wages, payroll taxes, insurance, worker's compensation and other costs associated with HRCA's management, accounting and office personnel including any bonus compensation, incentive compensation, termination and severance payments, retirement plan payments or similar benefits and out-placement costs unless approved in writing by the City;
- (c) the cost of in-house accounting and reporting systems, software or services, furnished by the HRCA under this Agreement as distinguished from third party accounting and reporting costs (such as, for example, the costs of the annual audit required under this Agreement);
- (d) the cost of forms, papers, ledgers and other supplies, equipment, copying and telephone devices of any kind used by the HRCA at any location other than the Park;
- (e) save for the cost of internet and Point of Sale equipment and services directly related to the operation or management of the Park, the cost of electronic data processing equipment, systems software or related services, or any related pro rata charge, whether or not located at the Park;
- (f) the cost of any advances made to HRCA employees;
- (g) the cost of travel by HRCA employees, contractors, volunteer, representatives or agents to and from the Park;
- (h) any costs attributable to losses arising from the negligence, misconduct or fraud on the part of the HRCA, its employees or others for whom HRCA is responsible in law, or arising from the HRCA's breach of this Agreement including, without limitation, theft of assets by HRCA employees, contractors or other agents; penalties or loss of discount due to delay in payment of bills or invoices; overpayment or duplicate payment of invoices arising from either fraud or error; overpayment of labour costs arising from either fraud or error; and the unauthorized use of facilities by the HRCA's employees, contractors or agents;
- (i) the cost of comprehensive crime insurance or fidelity bonds purchased by the HRCA for its own account;



- (j) recruitment and hiring expenses, including, but not limited to, employment and employment agency fees, unless previously approved in writing by the City;
- (k) the cost of any insurance carried by the HRCA, whether or not it is required to be carried by the HRCA, save and accept the cost of the insurance coverage specific to the HRCA's management and operation of the Park;
- (l) advertising expenses of the HRCA not related to the Park; and
- (m) the dues of the HRCA or any of its employees as members or participants in professional organizations as well as the cost of any of the HRCA's employees participating in industry conventions, seminars, meetings or other similar functions that have not been approved in advance by the City.

#### **10. CONSIDERATION OF BUDGET**

The City shall consider each budget proposed by the HRCA and shall approve such proposal or make any changes the City deems appropriate and communicate the resulting approved budget to the HRCA at the City's earliest convenience.

#### **11. CHANGE IN BUDGET**

In the event that the City requires any changes in the HRCA's proposed budget which are unacceptable to the HRCA, the HRCA may elect to terminate this Agreement in accordance with section 19.

#### **12. DEEMED ACCEPTANCE OF CHANGE IN BUDGET**

In the event that the City makes any changes in the HRCA's proposed budget and the HRCA does not elect to terminate this Agreement pursuant to sections 11 and 19, the HRCA shall be deemed to have accepted the resulting approved budget and shall meet all of the duties, obligations, liabilities and standards outlined in this Agreement within that approved budget.

#### **13. BUDGET FUNDING**

Once a budget has been approved by the City, and accepted by the HRCA, the City shall provide the budget funding in accordance with a mutually agreeable payment schedule.

The performance by the HRCA of its obligations pursuant to this Agreement shall be limited to the extent of funds in the HRCA's possession and the HRCA shall not be obligated to advance its own funds. Accordingly, if from time to time the HRCA's disbursements incurred in fulfilling its obligations pursuant to this Agreement shall exceed the balance of funds in its possession, the City shall promptly advance to the HRCA such additional funds as may be reasonably required for this purpose.

**14. PARK FUNDING SEPARATE FROM CITY FUNDING UNDER THE ACT**

The budget for the Park, and the resulting funding provided by the City as provided for in this Agreement, is separate from, and in addition to, the City's obligations to the HRCA for conservation purposes under the Act.

**15. TRUST MONIES, SURPLUS FUNDS AND OPERATING DEFICITS**

- (1) All funding, except the Management Fee, received by the HRCA from the City pursuant to this Agreement, as well as any surplus accumulated by the HRCA, shall be the property of the City and shall constitute money held by the HRCA in trust for the City ("Trust Monies") until the same are actually and properly used by the HRCA for purposes of the Park.
- (2) Any operating surplus shall be transferred to the Waterpark Reserve fund in accordance with the resolutions approved by City Council on December 9, 2015 in response to Report PW11005c/FCS15090 (extract attached at Schedule "D").
- (3) The HRCA shall immediately advise the Contract Administrator as soon as it becomes aware that the Park faces a reasonable risk of running an operating deficit in any one year in which case the City and the HRCA shall jointly promptly identify the reasons for, and implement measures to mitigate, this deficit. If, despite the Parties' best efforts, an operating deficit still results, the Parties shall discuss how best to address this deficit before concluding budget discussions for the forthcoming year.

**16. INSURANCE AND INDEMNIFICATION**

***Insurance Requirements***

- (1) Throughout the term of this Agreement (including any renewal thereof), the HRCA shall obtain and maintain the following policies of insurance (and no subcontracting of

any portion of its other obligations shall in any way relieve the HRCA of its insurance obligations under this Agreement):

(a) Commercial General Liability Insurance written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, liquor liability (if applicable), incidental medical malpractice including the rendering of, or failure to render, first-aid, broad form property damage, and contingent employer's liability coverage, having an inclusive limit of not less than \$20,000,000 per occurrence and in the aggregate. Coverage shall be included for pollution liability arising from "hostile fires" and the storage and use of fuels and chemicals. Alternatively, any portions of the above coverages may be provided under a separate policy form. All insurance policies shall include the City named as an additional insured, to the extent of the HRCA's obligations to the City under this Agreement. Coverage shall be subject to a \$250,000 deductible, but only with respect to liability arising out of the HRCA's operation and management of the Park;

(b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$5,000,000 per occurrence for third party liability, in respect of the use or operation of vehicles owned, operated or leased by the HRCA for the provision of services under this Agreement;

(c) Non-Owned Automobile Liability Insurance in the standard form having an inclusive limit of not less than \$2,000,000 per occurrence or such greater amount as the City may from time to time request, in respect of vehicles not owned by the HRCA, that are used or operated on the HRCA's behalf for the provision of services under this Agreement;

(d) Comprehensive Crime Insurance, broad form coverage endorsed to include third parties, to adequately protect the HRCA and the City against loss of monies, securities or other properties, including property of the City while such property is in the HRCA's care, custody, and control, for dishonesty, disappearance and destruction, to protect against incidents arising out of but not limited to theft, robbery or burglary; having a limit of not less than \$50,000 for Employee Dishonesty (Commercial Blanket Form A), Loss inside the Premises, and Loss outside the Premises.

(2) The HRCA shall also maintain Property Insurance and Business Interruption insurance to cover loss of revenues, profits, extra expenses and rental expense, as may be applicable, with respect to loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control (except City property), including its equipment, tools, stock, used in connection with this Agreement.

(3) All policies of insurance shall:

- (a) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the City, that is licensed to carry on business in Ontario;
  - (b) be maintained continuously during the course of carrying out the obligations under this Agreement; or for such period of time as may be required after completion of the Term, as deemed necessary by the City;
  - (c) contain cross liability and severability of interest provisions, as may be applicable;
  - (d) preclude subrogation claims against the City and any other person insured under the policy; and
  - (e) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the City by the HRCA's insurer before that insurer or the HRCA takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.
- (4) The City reserves the right to require the HRCA to purchase such additional insurance coverage as the City may reasonably require. The City reserves the right to request such higher limits of insurance or otherwise alter the types of coverage required due to material or significant change arising from such matters as the nature of the work, contract value, industry standards, and availability of insurance as the City may reasonably require.
- (5) Any insurance coverage acquired under this Agreement shall in no manner discharge, restrict or limit the liabilities assumed by the HRCA under this Agreement. The dollar limit of insurance coverage shall not be limited by the dollar amount of this Agreement.
- (6) The HRCA shall pay all premiums on these policies as they become due failing which the City may pay the premiums and deduct the amounts thereof from any moneys due the HRCA from the City.
- (7) The cost of such required insurance coverages shall be included as a distinct component in the budgets presented by the HRCA pursuant to section 9 of this Agreement.
- (8) It is the responsibility of the HRCA to ensure that its contractors and subcontractors, of every description, obtain and maintain insurance coverage which includes, at a minimum:

- (a) Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage with a minimum limit of coverage of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate endorsed to include the City and the HRCA as additional insured;
  - (b) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the contractors or subcontractors, that are used or operated on its behalf for the provision of the sub-contractor's services under its agreement with the HRCA; and
  - (c) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario including third party liability insurance and at least Two Million Dollars (\$2,000,000.00) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the contractors and subcontractors.
- (9) It is the responsibility of the HRCA to ensure that its lessees and licensees, of every description, obtain as of the next annual renewal of their insurance policies, and thereafter maintain insurance coverage which includes at a minimum the following:
- (a) Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage with a minimum limit of coverage of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate or with respect to the operation of food service or other concessions, Five Million Dollars (\$5,000,000) per occurrence and, if applicable, endorsed to include Host Liquor Liability. The policy shall be endorsed to include the City and the HRCA as additional insureds;
  - (b) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence in respect of vehicles not owned by the lessees or licensees, that are used or operated on its behalf for the provision of services under the Contract;
  - (c) Tenant's All Risk Legal Liability with a minimum limit of Fifty Thousand (\$50,000); and
  - (d) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario including third party liability insurance and at least Two Million Dollars (\$2,000,000) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the lessees and licensees.

### ***Proof of Insurance***

(10) The HRCA shall deposit with the City such confirmation of the HRCA's insurance coverages as reasonably required by the City:

(a) at the time of execution of this Agreement; and

(b) no later than twenty (20) Business Days after the renewal date of each applicable policy, the HRCA shall deposit with the City an original Certificate of Insurance signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to the name/description of this Agreement, name of insurer, name of broker, name of insured, name of Additional Insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable and the cancellation/termination provisions; or (at the City's election) a certified copy of the insurance policy or policies required under section 17. Certificate Holder will be addressed as the 'City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5, attn.: Risk Management. All certificates, cancellation, non-renewal or adverse change notices should be mailed to this address.

(11) The HRCA shall not do or omit to do anything that would impair or invalidate these insurance policies.

(12) Delivery to, and examination or approval by, the City of any certificates of insurance or policies of insurance or other confirmation of insurance shall not relieve the HRCA of any of its indemnification or insurance obligations under this Agreement. The City shall be under no duty either to ascertain the existence of, or to examine such, certificates of insurance or policies of insurance or to advise the HRCA in the event such insurance coverage is not in compliance with the requirements of this Agreement.

### ***Notice of Accident, Injury or Harm***

(13) The HRCA shall give the City written notice, with all details then known, no later than seventy-two (72) hours after becoming aware of any incident, accident, injury or harm involving any person on or using the Park or of any damage, loss or defect in or to any part of the Park or any damage or loss of any property of any person using the Park or any damage or loss of any property of the City on or at the Park which comes to the attention of the HRCA, its officers, employees, members, servants or contractors, notwithstanding that the City may not have any obligation with respect to same.

### ***Indemnification***

(14) The HRCA shall indemnify and shall defend and save the City, its officials, officers, and employees harmless from and against any claims, proceedings, fines, penalties, expenses and costs (including legal costs on a complete indemnity 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 HRCA's negligence in carrying out, or its failure or omission to carry out, or in carrying out, any obligation or part thereof to which it is subject under the Laws or this Agreement, or in exercising any right to which it is entitled, under this Agreement, except to the extent that the same are caused by the negligence of the City or other person entitled to indemnification under this Agreement in carrying out, or its failure or omission to carry out, or in carrying out, any obligation or part thereof to which it is subject under Laws or this Agreement.

(15) The right of indemnification granted to the City or other person entitled to indemnification under subsection (14) shall extend to any amount paid by the City or that person in the settlement of any claim against it, and in entering into any such settlement, the City or that person may exercise its reasonable discretion as to the amount to be paid, but the City or that person shall serve prior notice of any intended settlement on the HRCA, at least five (5) Business Days prior to agreeing to any such settlement.

(16) The City may enforce the rights of indemnity conferred on its officials, officers and employees under subsection (14) on their behalf and to the same extent as if they were parties to this Agreement.

(17) The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of the City, its officials, officers and employees provided under this Agreement.

(18) The rights to indemnity provided for in this section shall survive the expiration or any termination of this Agreement.

#### ***Claim Protocol***

(19) For the purposes of this Agreement, and only with respect to liability arising out of the HRCA's operation and management of the Park, the City shall, on behalf of the HRCA, fund claims payable within the HRCA's Commercial General Liability deductible limit (the "**Deductible Limit**").

a) Where a claim exceeds the Deductible Limit, and only with respect to liability arising out of the HRCA's operation and management of the Park, the City shall, on behalf of the HRCA, fund the deductible.

b) Third party claims reported to the HRCA, and where the HRCA has complied with subsection (13), that fall within the Deductible Limit shall be forwarded to the City which shall investigate and, where necessary, negotiate and complete settlement of the claim.

c) The HRCA shall forward all third party claims reported to the HRCA that exceed the Deductible Limit to the City which shall report them to the HRCA's Commercial General Liability insurer. Where required by the HRCA's Commercial General Liability insurer, the City shall investigate or assist the HRCA's Commercial General Liability insurer in investigating the claim or claims.

#### **17. SEPARATE BOOKS OF ACCOUNT AND RECORDS**

(1) The HRCA shall keep and maintain two proper and separate books of accounts for revenues and expenditures in relation to: (a) all leased properties, the Lakeland Centre, the Wild Waterworks and its operations; and (b) the remaining Park operations. These books of accounts shall be audited by an independent auditor retained by the HRCA with PMRT's approval. By April 30 of each year (or such later date approved by the City), the HRCA shall provide the City with a copy of the independent auditor's report covering the prior fiscal year which report shall include an engagement review letter and a detailed income statement.

(2) In addition, the HRCA will make its books of accounts available for inspection or audit, at any time, on the request of the City which may share copies of such accounts with other appropriate parties in its discretion.

(3) The HRCA shall cooperate fully in all such inspections and audits and shall provide to the City, any independent auditor, the City's auditor or the PMRT, as the case may be, complete access to all relevant records and information. The HRCA shall not, without the written consent of the City, dispose of any such accounts, records or information, but shall preserve and keep the same available for inspection and audit by the City.

#### **18. CAPITAL EXPENDITURES**

(1) In conjunction with the HRCA, the City will prepare a ten (10) year capital budget that will recommend a capital program for the Park and which will provide sufficient detail to explain each capital item and associated estimated capital expenditure and annualized operating impacts. The capital budget will be submitted with HRCA's annual Business Plan and operating budget and will be reviewed by the PMRT as part of the budgeting process prior to submission to the City for consideration.



(2) On approval of the capital budget by the City, the HRCA, in conjunction with the City, will implement the approved capital budget in conformance with a competitive, open and transparent procurement process.

#### **19. TERMINATION**

(1) Despite any other provision of this Agreement, either Party may, at any time upon providing at least six (6) months written notice to the other Party, terminate this Agreement. Consistent with section 20(2), immediately on receipt of a termination notice from the City, the HRCA shall provide notice of employment termination to all of the HRCA's employees whose permanent dismissal by the HRCA is directly caused by the City's premature termination of this Agreement.

(2) Notwithstanding subsection (1) above, the HRCA shall not terminate this Agreement, or its responsibilities and obligations thereunder, during the peak operational cycle of the Park, being from May 1 through October 31 of any year without the prior written consent of the City.

(3) Within fifteen (15) Business Days of the expiry or termination of this Agreement, the HRCA shall deliver all relevant records including, but not limited to, all tenant files, operating agreements, vouchers, invoices and other relevant documents and information pertaining to the Park to the City.

#### **20. STAFF TRANSITION UPON TERMINATION**

(1) Subject to section 20(2), upon the expiry of this Agreement, or its termination by the HRCA, the HRCA shall be solely responsible for all legal obligations relevant to its employees and contractors including, without limitation, any claims, costs or damages arising out of any contractual or employment relationship, the *Human Rights Code*, the *Employment Standards Act*, the *Labour Relations Act*, the *Workplace Safety and Insurance Act*, the common law as well as any obligations related to contract termination, severance and termination pay.

(2) If the City terminates this Agreement before its scheduled expiry date, it and the HRCA shall share, on a 50/50 basis, any outstanding severance pay or termination pay obligations that remain beyond the working notice period HRCA is responsible to provide in accordance with section 19(1) to any HRCA employees whose permanent dismissal by the HRCA is directly caused by the City's premature termination of this Agreement. For these purposes, the HRCA shall provide an itemized calculation of all such claims and the City shall approve the settlement of any severance or termination pay claims advanced by HRCA employees.

**21. OUTSTANDING LOAN BALANCES UPON TERMINATION**  
**INTENTIONALLY DELETED**

**22. AUDITED STATEMENT UPON TERMINATION**

Upon the expiry or termination of this Agreement, the HRCA shall prepare an audited statement of its Park accounts and shall immediately invoice the City for any monies owed to the HRCA and remit any Trust Monies held by the HRCA to the City.

**23. LEGAL CAPACITY OF HRCA**

The HRCA represents to the City that the HRCA has the legal capacity and power to enter into this Agreement and to perform and meet, as the case may be, any and all duties, liabilities and obligations as may be required of it under this Agreement.

**24. RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed to mean that the City and the HRCA are partners or joint venturers, or have any relationship (including master and servant and employer and employee). At all times, it is hereby recognized that the HRCA is an independent contractor.

**25. EXCLUDED LAND AND EXCLUSION DATE**

(1) The HRCA acknowledges and agrees that, notwithstanding that this Agreement provides for the management by the HRCA of certain lands owned by the City known as Confederation Beach Park as described in this Agreement, the City shall have the right to remove any portion or portions of the Lands and/or the Park from the jurisdiction of this Agreement. This right may be exercised by the City in its sole, absolute and unfettered discretion, at any time, upon giving ninety (90) days' written notice to the HRCA, setting out the location and size of the portion of the Lands and/or Park to be

removed from the HRCA's management (the "Excluded Lands"), and the effective date of the removal (the "Exclusion Date").

(b) As of the Exclusion Date, the HRCA will no longer have any authority under this Agreement pertaining to the Excluded Lands, and shall cease all of its operations as they affect the Excluded Lands, and will provide the City with a report as to the then current state of the Excluded Lands as of the Exclusion Date to the satisfaction of the City.

(c) The HRCA acknowledges and agrees that it will remain liable to the City for its management of the Excluded Lands pursuant to the terms of this Agreement up to the Exclusion Date.

(d) As of the Exclusion Date, the City will assume the management of the Excluded Lands, which may be dealt with or used for any purpose as the City may in its sole discretion authorize.

(e) The HRCA shall indemnify, defend and save harmless the City from any and all claims, actions, causes of action, expenses, costs, damages or other sums arising directly or indirectly out of the HRCA's use, possession, custody, care or control of the Excluded Lands until the Exclusion Date. For clarity, the City shall be responsible to respond to any and all claims that arise directly or indirectly from its use, possession, custody, care or control of the Excluded Lands as of the Exclusion Date.

(f) The HRCA will continue to manage the remainder of the Lands and the Park pursuant to the provisions of this Agreement.

(2) For clarification, as of October 31, 2017 the Excluded Lands include Part 1 on Reference Plan Number 62R-20596 (as outlined in the copy of Plan No. RC-H-930-1 attached as Schedule "E").

#### **26. PARK MANAGEMENT REVIEW TEAM**

(1) The Park Management Review Team ("PMRT") shall be comprised of four members of the City's administrative staff authorized and appointed by the City and three members authorized and appointed by the HRCA.

(2) The Parties hereby appoint the following members and each Party may change any appointed member upon providing written notice to the other Party and to each of the other members:

(a) the City:

- i. General Manager of Public Works or delegate (who shall act as Chair);
- ii. General Manager of Finance & Corporate Services or delegate;
- iii. Director of Energy, Fleet & Facilities or delegate; and
- iv. City Contract Administrator; and

(b) the HRCA:

- i. CAO or delegate;
- ii. Secretary-Treasurer or delegate; and
- iii. Director of Conservation Area Services or delegate.

(3) The PMRT shall meet at least once per year, and, in addition, as needed by call of the Chair or as may be requested by any member of the PMRT by written notice to all other members of the PMRT. The PMRT shall meet at a mutually convenient location or by telephone conference call or other means of simultaneous electronic communication agreed between the PMRT members. Unless otherwise directed by the Chair, any meeting requested by a member of the PMRT shall be held no earlier than ten (10) Business Days and no later than fifteen (15) Business Days after such written notice is communicated or such other time as decided by a majority of the PMRT members.

(4) The quorum for any meeting of the PMRT shall be three (3) members, at least the majority of whom shall be appointees of the City.

(5) The Chair shall circulate an agenda for all meetings to all members at least five (5) Business Days in advance of a meeting. Written minutes shall be taken of all meetings which shall record all actions taken or authorized by the PMRT arising from any meeting of the PMRT and a copy of such minutes shall be delivered or otherwise communicated to each member of the PMRT within twenty (20) Business Days of such meeting.

(6) All decisions shall require the approval of a majority of the members of the PMRT, acting in a commercially reasonable manner, at a properly constituted meeting at which a quorum is present, or the direct written consent of the City and the HRCA. Matters requiring the approval of City Council shall be approved at a meeting of City Council.

(7) The PMRT shall:

- (a) ensure compliance with the terms of this Agreement;
- (b) review, and approve before presentation to City Council, all proposed business plans, capital and operating budgets, and any revisions thereto;
- (c) ensure compliance with the operating and maintenance standards and policies as may be proposed by the City or the HRCA from time to time;

- (d) review and approve practices, policies, procedures and protocols applicable to the Park and its operations;
- (e) review scheduling and programming practices applicable to the Park;
- (f) maintain the character of the Park;
- (g) review the services and facilities in the Park;
- (h) fix the location and nature of such services and facilities; and
- (i) generally provide oversight and direction consistent with the objectives of the City.

**27. CONTRACT ADMINISTRATOR AND REPRESENTATIVE**

- (1) In this Agreement, "**Contract Administrator**" refers to the individual appointed by the City to administer this Agreement on behalf of the City. On or before the Effective Date, the City shall appoint a Contract Administrator and shall provide his/her name and full contact information to the HRCA. The City shall also immediately advise the HRCA of any change in the Contract Administrator's name or contact information.
- (2) Anything in this Agreement requiring the approval of the City shall not be undertaken until such approval is given. Where this Agreement requires the HRCA, or any of its contractors, to submit a plan, schedule, design, document, information or any other thing which requires the approval of the City, and where the City requires revisions to the plan, schedule, design, document, information or other thing before providing its approval, the HRCA shall forthwith undertake such revisions and again seek the City's approval and shall continue undertaking revisions until the City's approval has been given. The City may exercise absolute discretion in granting or withholding such approval and may require the HRCA to apply for such approval using form(s) prescribed by the City.
- (3) The Contract Administrator shall have complete access to and may inspect the Park, including, but not limited to, all premises, buildings, facilities, equipment and vehicles being used for to provide the services outlined in this Agreement, at all reasonable times, for the purpose of ensuring that the HRCA is in compliance with this Agreement.
- (4) At any time, and upon reasonable notice to the HRCA, the City, its employees or agents may enter the Park for the purpose of construction or installing such works as the City may desire, and the HRCA shall facilitate and support the timely completion of such works.

(5) The Contract Administrator shall, at his/her discretion, provide guidance regarding day-to-day operating matters, act as a link between Park users and the PMRT and provide ongoing operational and park management advice as required from time to time. The day-to-day operational matters to which the Contract Administrator may provide guidance includes, but is not limited, to:

- (a) operating and maintenance standards and policies;
- (b) Park and other facility allocation practices;
- (c) scheduling of Park and other facility components;
- (d) programming of Park and other facility components;
- (e) community issues regarding the Park;
- (f) Park user satisfaction; and
- (g) maintenance of the Park (including all facilities and lands).

(6) In this Agreement, “**Contract Representative**” refers to the senior level HRCA employee responsible to administer this Agreement on behalf of the HRCA. On or before the Effective Date, the HRCA shall appoint the Contract Representative and shall provide his/her name and full contact information to the City. The HRCA shall also immediately advise the City of any change in the Contractor Representative’s name or contact information.

## **28. MONTHLY MEETINGS**

(1) The HRCA shall participate in regular monthly meetings, as scheduled by the Contract Administrator in coordination with the Contract Representative, to review any matters pertaining to this Agreement. The monthly meetings shall be held at a mutually agreeable place, date and time.

(2) The Contract Administrator and the Contract Representative shall each make best efforts to provide their agenda items to each other for the monthly meetings in writing at least three (3) Business Days prior to such meetings. The agenda for each monthly meeting shall require the HRCA to present its revenue statement for the year to date current to the most recent completed month.

(3) The City and the HRCA will meet to provide guidance regarding day-to-day operating matters, act as a link between the Park users and the PMRT and to provide ongoing

operational and management advice as required from time to time. The day-to-day operational matters will include, but not be limited to, the following matters:

- (a) operating and maintenance standards and policies;
  - (b) Park and other facility allocation practices;
  - (c) scheduling of Park and other facility components;
  - (d) programming of Park and other facility components;
  - (e) community issues regarding the Park;
  - (f) Park user satisfaction including a review of all public comments, complaints, concerns and compliments; and
  - (g) maintenance of the Park (including facilities and land).
- (4) The Contract Representative shall attend all other meetings as required by the Contract Administrator and each shall attend, and jointly report on, all items listed in section 28(3) to the PMRT at its meetings.
- (5) The HRCA is encouraged to propose improvements to the operation of the Park and to submit suggestions to the Contract Administrator at monthly Agreement meetings. Suggested improvements will receive full consideration, but the implementation of any changes must first be approved by the Contract Administrator and, where appropriate, by the PMRT and the City.
- (6) The Contract Administrator may revise the reporting requirements outlined in this Agreement on providing reasonable notice to the HRCA.

## **29. REPORTING AND STATISTICS**

- (1) The HRCA shall provide to the City all information and reports that the City reasonably requests which shall include all information/reports required to satisfy inquiries received from any City Councillor, committee or department. The HRCA shall also prepare all reports and supply all information required by any regulatory agency and will, at the direction of the Contract Administrator, forward these reports and information to the appropriate person or agency.
- (2) The HRCA shall prepare, maintain and retain all records required under all Laws and all obligations under this Agreement and, at the direction of the Contract Administrator, will provide copies of all such records to the appropriate person or agency. Further, at

the expiration or early termination of this Agreement, the HRCA shall provide all copies of such records to the Contract Administrator, upon request.

(3) The reporting obligations set out in this Agreement shall remain in effect for a period of twelve (12) months following the termination or expiry of this Agreement.

(4) The HRCA shall develop and maintain a written and electronic activity log for the approval of the Contract Administrator, which log shall, for each day the Wild Waterworks is open to the public, track the following items which shall also be reported to the Contractor Administrator at the conclusion of each week:

- (a) the date, quantity and type of each ticket sold;
- (b) all sources and amounts of other revenue;
- (c) the climatic conditions (including twice daily readings at 10 a.m. and 4 p.m. of each of the then current ambient temperature, accumulated precipitation for that day and windspeed);
- (d) the number and function of all sub-contractors on-site;
- (e) a copy of the records of all maintenance, repair and inspection activities;
- (f) a complete description of any unusual events, incidents or functions including service disruptions, injuries and actions taken to return to normal operating conditions; and
- (g) a description of each complaint received and remedial actions taken.

### **30. ALTERATIONS AND ADDITIONS**

(1) The HRCA agrees that it shall not make any alterations whatsoever to the Lands or the Park without the prior written approval of the City. The HRCA shall submit, in advance of conducting any non-scheduled or non-budgeted works, a proposed plan and shall not commence any works until such plan is approved by the City.

(2) All buildings, facilities, structures, installations, alterations, additions, partitions and fixtures of the HRCA constructed, installed or placed at, in or upon the Park are, immediately upon construction, installation or placement, the City's property without compensation therefor to the HRCA and shall not be removed from the Park by the HRCA at any time without the prior written consent of the City.

### **31. INTENTIONALLY DELETED**



**32. TIME IS OF THE ESSENCE**

Time shall be of the essence and both Parties shall strictly adhere to any dates or deadlines set out in this Agreement. For the purposes of this Agreement, “**Business Day**” means a day from Monday to Friday, other than a:

- (a) holiday as defined in section 87 of the *Legislation Act, 2006*; and
- (b) day on which City offices are closed.

**33. OUTSTANDING OBLIGATIONS**

Notwithstanding the termination or expiry of this Agreement, the HRCA’s duties, liabilities and obligations under this Agreement shall not terminate or expire until each has been discharged, in whole, to the satisfaction of the City as confirmed by delivery of the City’s written confirmation of discharge to the HRCA.

**34. DEFAULT**

Notwithstanding anything to the contrary in this Agreement, where the HRCA fails to meet any obligation under this Agreement or is otherwise in default under or in breach of this Agreement, the City, without the necessity of any further notice or demand, may exercise against the HRCA all rights and remedies that it may have under this Agreement or otherwise by statute or by common law. No delay or omission by the City in exercising any such right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of them shall preclude any other or further exercise of them or the exercise of any other right or remedy. All rights and remedies of the City granted or recognized in this Agreement are distinct, separate and cumulative and may be exercised at any time and from time to time independently or in combination.

**35. ASSIGNMENT**

The HRCA shall not assign this Agreement, or any part of it, without the prior written approval of the City, which approval may be arbitrarily or unreasonably withheld. Any attempt by the HRCA to assign this Agreement, or part of it, without the City’s prior written approval is void and of no effect.

36. **NOTICE**

(1) Any notice or demand, or any other thing to be given or delivered under this Agreement, shall be deemed to have been given or delivered properly if delivered personally or by courier, or if mailed by prepaid first class registered mail, or if transmitted by facsimile, email or other form of recorded communication as follows:

(a) In the case of the City:

General Manager (Public Works Department)  
City of Hamilton  
77 James Street North, Suite 320  
Hamilton, ON L8R 2K3  
Attention: Manager of Policy and Programs  
Fax: 905.546.3972  
Email: [Jennifer.Didomenico@hamilton.ca](mailto:Jennifer.Didomenico@hamilton.ca)

with a copy to:

City of Hamilton  
Hamilton City Hall  
71 Main Street West  
Hamilton, ON L8P 4Y5  
Attention: City Clerk  
Fax: 905.546.2095  
Email: [Rose.Caterini@hamilton.ca](mailto:Rose.Caterini@hamilton.ca)

(b) In the case of the HRCA:

Hamilton Region Conservation Authority  
P.O. Box 81067  
838 Mineral Springs Road  
Ancaster, ON L9G 4X1  
Attention: Director, Conservation Area Services  
Fax: 905.648.4622  
Email: [Gord.Costie@conservationhamilton.ca](mailto:Gord.Costie@conservationhamilton.ca)

(2) Any notice or demand given or delivered pursuant to this Agreement shall be deemed to have been given and received on:

- (a) the next Business Day following the day of delivery if personally delivered or sent via courier; or
- (b) on the third Business Day next following the date of its mailing if sent by registered or regular mail; or

- (c) on the next Business Day following transmission if sent by facsimile or email.
- (3) Each Party shall immediately advise the other Party in writing of any change in its address or contact information for notice purposes.

**37. SEVERABILITY**

If any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions shall not be affected or impaired thereby.

**38. GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada as applicable.

**39. GENDER AND NUMBER**

This Agreement shall be read with such changes of gender or number or corporate status as the context may require.

**40. HEADINGS**

All headings in this Agreement have been inserted for convenience and reference only and cannot define, limit or expand the scope of meaning of this Agreement or any of its provisions.

**41. SCHEDULES**

(1) The following Schedules are incorporated into, and form part of, this Agreement:

Schedule "A" - Map and Description of Property;

Schedule "B" - Lands, Buildings, Fixtures and Chattels;

Schedule "C" – HRCA Business Plan Template;

Schedule "D" - Extracts from Minutes of Public Works Committee (December 7, 2015) and Council (December 9, 2015) Meetings re: Report PW11005c/FCS15090—Confederation Park Management Agreement; and

Schedule "E" - Copy of Plan No. RC-H-930-1

(2) In the event of any inconsistency between the main body of this Agreement and the Schedules, the text of the main body of this Agreement shall govern.

#### **42. BINDING AGREEMENT**

This Agreement shall enure to the benefit of and be binding upon the respective successors, administrators and assigns of each of the Parties.

#### **43. ENTIRE AGREEMENT**

This Agreement contains the entire and only understanding between the Parties and supersedes all prior agreements, arrangements, promises, representations or other understandings, whether written or oral, between them. This Agreement shall not be amended, in any way, except in writing executed by both Parties.

#### **44. DISPUTE RESOLUTION**

(1) The Parties agree to attempt to first resolve any dispute by diligently conducting negotiations in good faith using the following process:

(a) in the event one Party (the "Initiating Party") has a dispute in connection with any aspect of this Agreement (the "Dispute") with the other Party (the "Responding Party"), the Initiating Party shall give written notice of the Dispute ("Notice of Dispute") to the Responding Party;

(b) the Notice of Dispute shall include the name of one representative of the Initiating Party with sufficient authority to negotiate and resolve the Dispute;

(c) within five (5) Business Days of receiving the Notice of Dispute, the Responding Party shall appoint one representative, with sufficient authority, to negotiate and resolve the Dispute and shall notify the Initiating Party in writing of the appointed representative;

- (d) within ten (10) Business Days of the Responding Party receiving the Notice of Dispute, the representatives of both Parties shall meet to discuss and, in good faith, to negotiate and attempt to resolve the Dispute;
- (e) following receipt of the Notice of Dispute, the Responding Party shall have ten (10) Business Days (which deadline may be extended by mutual written agreement) to make investigations relating to such Dispute as the Responding Party considers reasonably necessary. For the purpose of such investigation, the Initiating Party shall immediately make available to the Responding Party the information relied upon to substantiate the Dispute; and
- (f) should the Parties fail to resolve the dispute within thirty (30) Business Days after delivery of the Notice of Dispute (or such further period as the Parties agree to in writing), the Dispute shall be referred to binding arbitration in accordance with the *Arbitration Act, 1991, S.O. 1991, c. 17, as amended (the "Arbitration Act")*.
- (2) The Parties shall meet and attempt to agree upon an arbitrator. If the Parties are unable to agree on an Arbitrator within five (5) Business Days, then either Party may apply to have an Arbitrator appointed by a Judge of the Superior Court of Justice for Ontario. The arbitrator so agreed upon or appointed, as the case may be, is herein referred to as an "**Arbitrator**".
- (3) The Arbitrator shall be an experienced arbitrator and shall be qualified by education and training to decide the particular question in dispute and shall be a person generally recognized in the business community as having familiarity with and expertise with the matter which is the subject of the dispute. No person who is then employed by either of the Parties or any person not dealing at arm's length with a Party shall be appointed as the Arbitrator.
- (4) The Arbitrator will be required to render a decision and reasons to the Parties in an expeditious and prompt manner, and to set a schedule for the arbitration process, which achieves this objective, while permitting all Parties due process and an opportunity to present their case and respond to the case presented by the other Party. The Parties may agree to have the Arbitrator render a decision based on written submissions only without the benefit of an oral hearing or testimony.
- (5) The decision and reasons of the Arbitrator shall be in writing and signed by the Arbitrator. Such written decision and reasons of the Arbitrator shall be final and binding and the Parties agree that there will be no right of appeal with respect thereto except as provided in the Arbitration Act.


(6) The compensation and expenses of the Arbitrator shall be paid in equal portions by the Parties, unless otherwise determined by the Arbitrator, it being agreed that the Arbitrator has the power to allocate responsibility for such costs as s/he deems fit.


(7) Notwithstanding anything herein contained and notwithstanding any failure to so state in any provision or provisions hereof, any Dispute in respect of any matter set out in this Agreement shall be resolved by Arbitration at the request of any Party that is a Party to such Dispute.

(8) Where arbitration is required by this Agreement, the commencement and completion of such arbitration in accordance with this Agreement shall be a condition precedent to the commencement of an action at law or in equity in respect of the matter required to be arbitrated save and except that a Party may commence, but not continue an action until the arbitration process is completed, for the purposes of preserving a Party's rights under Ontario's *Limitations Act*.

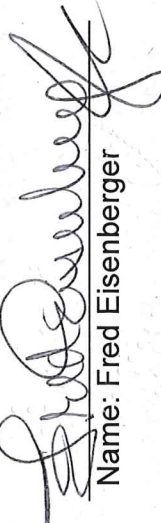
**[REMAINDER OF PAGE BLANK—SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF the Parties have hereunto affixed their respective corporate seals duly attested by their respective officers authorized in that behalf.

Approved as  
to form:  


Approved as  
to content:  


**CITY OF HAMILTON**

  
Name: Fred Eisenberger

Title: Mayor

Date:

  
Name: Rose-Caterini Lisa Barrosso

Title: Clerk

Date:

I/We have authority to bind the corporation.

The authority to enter into this Agreement was approved by City Council on December 9, 2015 pursuant to Public Works Committee Report 15-016 (See Schedule "D")

**HAMILTON REGION  
CONSERVATION AUTHORITY**

  
Name: Neil McDougall

Title: Secretary - Treasurer

Date: 2017/12/12

  
Name: Lisa Burnside

Title: Chief Administrative Officer

Date: 2017/12/12

I/We have authority to bind the corporation.

OFFICE OF THE CLERK  
APPROVED BY COUNCIL  
DATE: December 9, 2015  
AUTHORITY: PW15-016, Item 8  
INTL: CW YEARFILE: 2017-12819

**SCHEDULE "A"**

**CONFEDERATION BEACH PARK LANDS**

**Part of PIN 17572-0033(LT)**

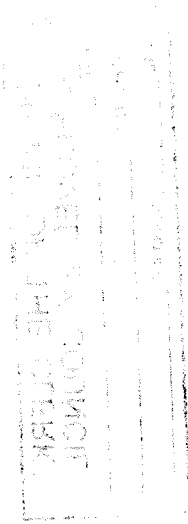
Parts 1, 2, 3, 10, 11, 21 and 22 on Plan 62R-6372; Except Part 13 on Plan 62R-16843;  
And Except Part 1 on Expropriation Plan 102374 (P-2113-624); And Except Part 8 on  
Plan 62R-17545; And Except Part 1 on Plan 62R-20580; And Except Part 1 on Plan  
62R-20578; And Except Part 1 on Plan 62R-20596

**All of PIN 17572-0042 (LT)**

Part 7 on Plan 62R-6372; Except Part 11 on Plan 62R-16843

**Part of PIN 17572-0044(LT)**

Part 13 on Plan 62R-6372





**SCHEDULE "B"**

**LANDS, BUILDINGS, FIXTURES AND CHATTELS**

**WHICH ARE COVERED BY THIS MANAGEMENT AGREEMENT**

All real and personal property comprising and located in and about the Lands and the Park, more particularly described in Schedule "A" of this Agreement, save and except all real and personal property comprising and located in and about Excluded Lands, and including all lands, buildings, building contents, equipment, fixtures, structures, facilities, improvements, chattels, inventory of saleable goods situated thereon as well as all real and personal property which is not located on the Lands but is used to meet the HRCA's obligations under this Agreement save and except the list of the HRCA's equipment, vehicles and chattels approved by the Contract Administrator pursuant to section 3(3) of this Agreement.

## SCHEDULE "C"

### HRCA's Confederation Beach Park Business Plan Template

A business plan introduces discipline and logical thought process into all of business planning activities. If the plan is prepared properly it can significantly improve company's ability to consistently and effectively establish and meet goals and objectives that best serves organization's owners, employees and investors.

#### A Business Plan:

- Sets the goals and objectives for the company's performance.
- Provides a basis for evaluating and controlling the company's performance
- Communicates a company's message to its stakeholders.

The following headings outline the key elements to be contained within a 5-year business plan for Confederation Beach Park that will be updated annually by the Hamilton Conservation Authority (HRCA). Adjustments to the business plan contents can be made from time to time based on Park Management Review Team (PMRT) approval.

### Business Plan Components

#### COVER PAGE

- Company Name
- Logo
- Contact Person
- Address and Phone Number

#### EXECUTIVE SUMMARY

#### BACKGROUND AND PURPOSE

- History - a brief overview of the history of the company
- The Product or Service Concept
- Business Objectives

#### MISSION & VISION

- Mission Statement
- Core Purpose
- Core Values

#### PRODUCT & SERVICE DESCRIPTION

- Overview of Products & Services (including high-level costs)
- Problems, Causes, Solutions & Benefits
- Product & Service Advantages

#### COMPETITIVE ANALYSIS

- Unique Value Proposition (UVP)
- Competitive Advantages
- Competitive Overview (Industry Overview, Industry Size and Trends)
- Direct Competitors
- Indirect Competitors
- Market Share Analysis

#### MARKETING PLAN

- Pricing Strategy
- Specific Market Segment
- Target Customers and Ideal Customer Profile
- Pricing & Positioning
- Distribution Plan
- Marketing Materials
- Special Offers and Promotions
- Online Marketing (Keyword, Search Engine Optimization, Paid Online Advertising, Social Media)
- Joint Ventures/Partnerships
- Referral Strategy
- Retention Strategy

#### ORGANIZATION STRUCTURE AND MANAGEMENT

- Key Personnel
- Staffing and Training
- Board of Directors & Board of Advisors
- Quality Control Measures
- Organizational Chart
- Forecasted Labor Force
- IT Requirements

#### FINANCIAL PLAN

- Financial Summary (Current Financial Position)
- Expenses
- Projected Profit and Loss
- Projected Cash Flow
- Projected Balance Sheet
- Accounts Payable
- Accounts Receivable
- Cost Control Measures
- Break-Even Analysis

#### RISK FACTORS

- SWOT (Strengths, Weaknesses, Opportunities and Threats) ANALYSIS

- Cost Overruns
- Failure to Meet Production Deadlines
- Problems with Labor, Suppliers, or Distributors
- Sales Projections Not Met
- Unforeseen Industry Trends
- Competition
- Unforeseen Economic, Social, or Political Developments
- Technological Developments
- Inadequate Capital
- Business Cycles
- Other Risks

#### APPENDICES

- Product Comparison
- Exit Strategy
- Photograph(s) of Product(s) and Service(s)
- Market Surveys
- Marketing Materials
- Advertisements
- Press Releases
- Historical Financial Statements
- Table of Current Profit and Loss Statement
- Asset Acquisition Schedule
- Key Contracts

**SCHEDULE "D"**

**Extracts from Minutes of Public Works Committee (December 7, 2015) and  
Council (December 9, 2015) Meetings re: Report PW11005c/FCS15090 —  
Confederation Park Management Agreement**

**PUBLIC WORKS COMMITTEE**

**MINUTES 15-016**

**Monday, December 7, 2015**

8. Confederation Park Management Agreement (PW11005(c)/FCS15090) (Ward 5)  
(Item 7.2)  
(Collins/Whitehead)
- (a) That Appendix A attached to Report PW11005c/FCS15090 respecting Operational Review of Confederation Park, Hamilton, ON, Sierra Planning and Management, 2015, be received;
  - (b) That based on the results of the operational review the City of Hamilton continue with the Hamilton Conservation Authority as the operators under agreement to manage Confederation Park moving forward;
  - (i) That the General Manager of Public Works be authorized and directed to negotiate a long-term operating agreement with the Hamilton Conservation Authority for Confederation Park in a form satisfactory to the City Solicitor;
  - (ii) That the Mayor and City Clerk be authorized and directed to execute the agreement as outlined in Report PW11005c/FCS15090;
  - (c) That payment to the Hamilton Conservation Authority of \$696,217 to cover the Confederation Park accumulated deficit to December 31, 2014 be approved and funded from the following:
    - (i) Tax Stabilization Reserve #110046 – for the operating deficit from 2014 of \$366,397;
    - (ii) 2014 Year-End Operating Budget Surplus – for the accumulated operating deficit to 2013 of \$329,820 (previously approved by Council through Report FCS14047b);
  - (d) That an increase to the operating budget for Confederation Park in the amount of \$70,000 be referred to the 2016 budget process for consideration;
  - (e) That a Waterpark Reserve be established as follows;

(i) That the 2015 operating surplus from the Waterpark operations, estimated at \$300,000, be transferred to the Waterpark Reserve with the exact amount to be determined when the HCA's financial audited statements are finalized in the spring of 2016;

(ii) That future annual Waterpark operating surpluses (if realized) be transferred to the Waterpark Reserve so that at least a minimum balance of \$300,000 is maintained, and that reserve funds at or below the \$300,000 level be used to offset future annual operating deficits (if realized);

(iii) That Waterpark Reserve balance above the \$300,000 minimum level be available for use for capital improvements at the Waterpark, as approved by the City of Hamilton in consultation with the Waterpark operators, and as one component of a comprehensive 10-year capital plan as outlined in Report PW11005c/FCS15090;

(f) That the Consolidated Loan Agreement between the City of Hamilton and Hamilton Conservation Authority, as amended on December 8, 2008, in the amount of \$1,699,015 be cancelled as mutually agreed;

(g) That the capital expenditures for Confederation Park of \$1,699,015 be funded and repaid from the Unallocated Capital Levy Reserve 108020 at \$264,790 annually until December 2023.

CARRIED

## CITY COUNCIL

### MINUTES 15-027

**Wednesday, December 9, 2015**

PUBLIC WORKS COMMITTEE REPORT 15-016

(Merulla/Collins)

That the SIXTEENTH Report of the Public Works Committee be adopted, and the information section received.

CARRIED

**SCHEDULE "E"**

**Copy of Plan No. RC-H-930-1**








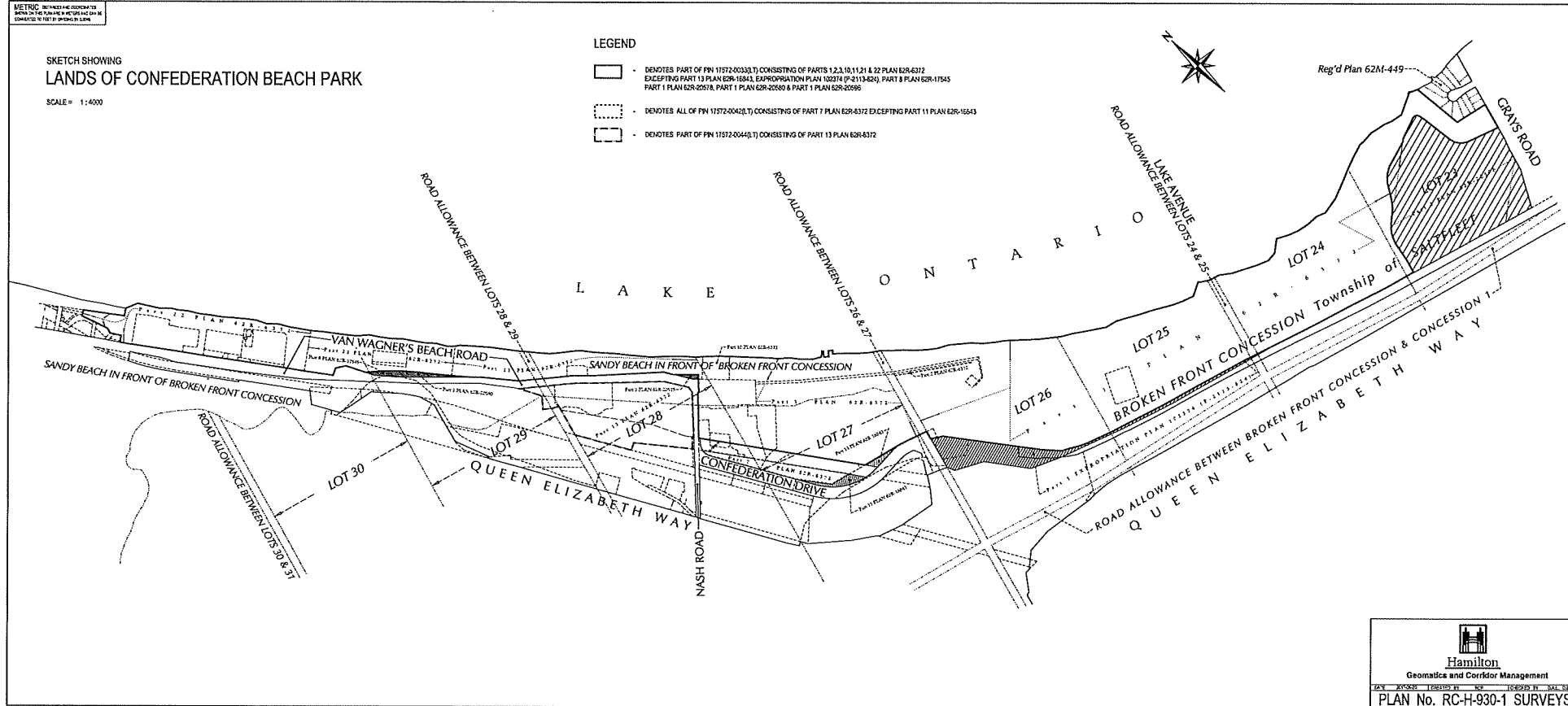
METRIC: DIMENSIONS AND COORDINATES  
SHOWN ON THIS PLAN ARE IN METERS AND CAN BE  
CONVERTED TO FEET BY MULTIPLYING BY 3.281

SKETCH SHOWING  
LANDS OF CONFEDERATION BEACH PARK

SCALE = 1:4000

LEGEND

-  DENOTES PART OF P.W. 11572-0043(2,7) CONSISTING OF PARTS 1,2,3,10,11,21 & 22 PLAN E2R-6372 EXCEPTING PART 13 PLAN E2R-16843, EXPROPRIATION PLAN 102374 (P-2113-4843), PART 8 PLAN E2R-17545 PART 1 PLAN E2R-20578, PART 1 PLAN E2R-20560 & PART 1 PLAN E2R-20596
-  DENOTES ALL OF P.W. 11572-0042(2,7) CONSISTING OF PART 7 PLAN E2R-6372 EXCEPTING PART 11 PLAN E2R-10643
-  DENOTES PART OF P.W. 11572-0044(2,7) CONSISTING OF PART 13 PLAN E2R-6372






  
Hamilton  
Geomatics and Corridor Management  
PLAN No. RC-H-930-1 SURVEYS



METRIC DIMENSIONS AND CONVERSIONS  
SHOWN ON THIS PLAN ARE FOR INFORMATION ONLY  
CONVERT TO 1 FT = 0.3048 METERS

SKETCH SHOWING  
LANDS OF CONFEDERATION BEACH PARK  
SCALE = 1:4000

LEGEND

-  DENOTES PART OF PIN 17572-00338 (T) CONSISTING OF PARTS 1, 2, 3, 10, 11, 21 & 22 PLAN 62R-6372 EXCEPTING PART 13 PLAN 62R-16843, EXPROPRIATION PLAN 102374 (P-2113-624), PART B PLAN 62R-17545 PART 1 PLAN 62R-20578, PART 1 PLAN 62R-20580 & PART 1 PLAN 62R-20595
-  DENOTES ALL OF PIN 17572-00423 (T) CONSISTING OF PART 7 PLAN 62R-6372 EXCEPTING PART 11 PLAN 62R-16843
-  DENOTES PART OF PIN 17572-00443 (T) CONSISTING OF PART 13 PLAN 62R-6372



Reg'd Plan 62M-449



  
Hamilton  
Geomatics and Corridor Management  
DATE: 2016-09-01 | CREATED BY: RJP | CHECKED BY: RAL-DIA  
PLAN No. RC-H-930-1 SURVEYS

