



## City of Hamilton

# SOLE VOTING MEMBER OF THE HAMILTON FARMERS' MARKET ADDENDUM

**Meeting #:** 20-002  
**Date:** November 23, 2020  
**Time:** 2:30 p.m.  
**Location:** Council Chambers, Hamilton City Hall  
71 Main Street West

Stephanie Paparella, Legislative Coordinator (905) 546-2424 ext. 3993

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**Pages**


### 9. DISCUSSION ITEMS

\*9.2. Hamilton Farmers' Market Governance Report (CM20010) (City Wide)

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**CITY OF HAMILTON**  
**CITY MANAGER'S OFFICE**  
**Digital, Innovation & Strategic Partnerships**

<b>TO:</b>	Mayor and Members Sole Voting Member of the Hamilton Farmers' Market
<b>COMMITTEE DATE:</b>	November 23, 2020
<b>SUBJECT/REPORT NO:</b>	Hamilton Farmers' Market Governance Report (CM20010) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Matthew Grant 905-546-2424 Ext. 2739 Cyrus Tehrani 905-546-2424 Ext. 2261
<b>SUBMITTED BY:</b>	Cyrus Tehrani Chief Digital Officer City Manager's Office
<b>SIGNATURE:</b>	

## RECOMMENDATIONS

That staff be directed to prepare a report that provides a preferred governance and operating model for the Hamilton Farmers' Market Corporation, which prioritizes value-for-dollar invested by the Shareholder, role clarity, enhanced governance and the avoidance of any potential conflicts of interest, with the support of an external consultant, at an approximate cost of \$50,000 - \$75,000 and report back to the Shareholder with funding source to be determined.

## EXECUTIVE SUMMARY

Beginning in the fall of 2019, City staff undertook an evaluation of the current governance model of the Hamilton Farmers' Market Corporation ("HFMC"). The review was conducted on the fifth anniversary of implementing the HFMC's current governance model, which includes a board of directors made up of citizen and vendor directors and shareholder representation.

The review was initiated by City staff and was conducted by the 2WA Consulting Inc. It included reviewing board documentation (operating bylaws, agreements and minutes of open board meetings), interviewing board members, and research of the governance models of other farmers' markets. It is important to note that while an evaluation of a

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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new governance model after five years is good management practice, a governance review would typically come at the Shareholder's request.

The review resulted in a report that recommended that the Shareholder:

- A. Create an advisory committee that will provide a vendor community perspective on operational issues
- B. Change the composition of the board to remove conflict of interest issues and build a customer-centric focus
- C. Establish a customer service / customer focused advisory committee to keep the Market in touch with consumer tastes
- D. Make the board of directors solely accountable to Council.
- E. Clearly outline board expectations of vendors
- F. Revitalize the board's governance principles
- G. Conduct a strategic visioning exercise that embraces a very different future for the Hamilton Farmers' Market

During the review development and consultation process, the composition of the board did not remain 100% consistent. Three board members resigned, including one member just before the review was started.

The HFMC board has indicated on numerous occasions that the current arrangement of cost-recovery services provided to them through the City is expensive and impacting their budgets. This year, the HFMC's budget will also be impacted by a 75% rent reduction the board provided to vendors as a result of the impacts of COVID-19. Though the intent of the HFMC board was to match the Canada Emergency Commercial Rent Assistance (CECRA) program, unfortunately the program was not available to the HFMC or market vendors because the Market Corporation operates within a municipal property. The board did seek approval from the sole voting member of the Hamilton Farmers' Market and chose to proceed with the rent reduction invoices prior to formal approval by the sole voting member.

Board members participated in the interviews conducted by 2WA Consulting, Inc. as part of the report preparation process, but also raised concerns about how the report was initiated.

In written feedback, board members stated that they believed the current review represents a missed opportunity as the HFMC board was not properly consulted in the review's design. The board also expressed that the review did not adequately assess the Market's fiscal capacity or its requirements to provide funds to City departments who provide the market services on a cost-recovery basis.

**Alternatives for Consideration – See Page 8.**

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**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** There may be additional cost incurred by the City in order to develop a recommendations report on a preferred governance and operating model via outside consultant. Based on other consultant engagements it is estimated that external consultant for review of larger governance and operating models including financials would be in the range of \$50,000 - \$75,000.

**Staffing:** At this time there are no staffing implications, but a future recommendations report on preferred governance and operating model may have staffing implications.

**Legal:** There are no anticipated legal cost above and beyond internal City staff within Legal Department support to review and amending, if/as required, the operating agreement or Market Corporation By-Law(s).

**HISTORICAL BACKGROUND**

**General Overview**

In December 2014, the City of Hamilton incorporated HFMC a not-for-profit entity, for the purpose of operating the Market.

The City is the sole voting member of the Hamilton Farmers' Market Corporation. The sole voting member:

- is responsible to elect or appoint the Board of Directors. The Board of Directors is in turn responsible to manage and direct the business affairs of HFMC;
- considers the annual operating and capital budget submissions, provided by HFMC, and has the authority to approve, or amend, the budget as they deem appropriate;
- reviews the Annual Report of the HFMC and holds the Annual General Meeting which includes the delivery and or update of strategic business plans;
- amends the Operating Agreement or corporate governance of HFMC as required.

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The board of directors is comprised of Councillor(s), citizens members, and vendor members. Based on the operating agreement, the board requires a minimum of seven (7) and a maximum of (13) board members or such other number of directors as may be determined from time-to-time by the sole voting member of the corporation.

As part of the operating agreement the City provides in-kind support services to the Market including services from Human Resources, Finance, and access to Legal Services. The City also provides IT and Facilities support on a cost-recovery basis.

The current board structure was put in place in 2015, following the work of a Farmers' Market Transition Sub-Committee, which examined how to help the Market become more independent and to reduce the level of taxpayer subsidy for market operations.

The subcommittee's work resulted in a new operating agreement that states:

- That the Market Corporation shall exist as a non-profit corporation in compliance with the Ontario Corporation's Act;
- That the General Manager of the Market shall be a City employee but will report to the board of directors;
- That the City act as the sole shareholder of the non-profit with the ability to appoint or elect all members of the Market's board of directors and terminate the agreement with 30 days' notice;
- That the Market Manager be given the delegated authority to manage the Market with the board maintaining the ability to monitor their performance to ensure governing policies are being adhered to; and,
- That the Market operate in a way that ensures directors operate free from conflicts of interest (including having vendor-directors avoid conversations about other stallholders) and in compliance with Ontario Municipal Act requirements pertaining to closed session meetings.

The Operating Agreement also lays objectives to support the establishment and operation of a farmers' market corporation for the purpose of:

- providing a venue for local food growers and producers to sell directly to the public;
- provide the public with access to high quality, nutritious, locally grown food;
- strengthening the local economy with the purchase of locally grown food wherever possible;
- promoting relationships and opportunities between farmers, food producers, independent food merchants, consumers and the public;
- offering a diversity of fresh food products, including international and speciality foods; and,
- fostering an economically, ecologically and socially sustainable community.

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The HFMC Operating Agreement also includes several duties; one of which is that the goal of the Market Corporation is to reduce its dependencies on subsidies from the City, which has gone from \$258,929 in 2016 to \$295,989 in 2019, inclusive of the City's Levy funding and City-sourced sponsorship, which is currently set to expire in March of 2022.

**Governance Review**

In November of 2019, City staff engaged a consultant to review the current governance structure of the HFMC. The evaluation was undertaken in the context that it had been five years since the structure had been put in place.

After reviewing documentation related to the board (operating by-laws, agreements and Board minutes), interviewing board members, and researching other farmers' markets, the consultant, 2WA Consulting, Inc., produced a report. The report identified some areas of concern with the board's current operation and provided some recommendations that should be considered to address outstanding issues of concern.

The review took place from December 2019 to May 2020. Both the review process and the release of the final report were delayed due to COVID-19.

The final report, dated June 24, 2020, identified several concerns, including:

- that the current board is too heavily involved in operations, spends little time engaged in policy and does not closely follow its by-laws, including the excessive use of in-camera meetings;
- that board vendor representatives are in a conflict of interest and often want to focus on operations, as opposed to matters of policy;
- That the HFMC Manager is often overruled by board members on management decisions; and,
- that the leadership of the board is too focused on vendor concerns (cleanliness of the Market, parking etc.) than customer experience and the overall strategic direction of the Market.

The report also detailed several recommendations designed to improve the governance of the HFMC. Recommendations included:

- A. Create an advisory committee that will provide a vendor community perspective on operational issues
- B. Change the composition of the board to remove conflict of interest issues and build a customer-centric focus
- C. Establish a customer service / customer focused advisory committee to keep the Market in touch with consumer tastes

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- D. Make the board of directors solely accountable to Council
- E. Clearly outline board expectations of vendors
- F. Revitalize the board's governance principles
- G. Conduct a strategic visioning exercise that embraces a very different future for the Hamilton Farmers' Market

The 2WA Consult's review of other markets (which did not include review of financial operation or City subsidies to the markets) in summary found the following in common from the markets reviewed.

1. an arm's length relationship exists where Council / the City administration stays out of the Market's day-to-day operations;
2. strong, independent management;
3. Boards (where they exist) play a minor role in the decision-making;
4. vendors do not play a significant role in the operations or decision-making;
5. there are formal and informal vehicles to understand the vendor perspectives;
6. an entrepreneurial spirit is encouraged;
7. a broad variety of goods and services are offered, that appeal to a broad cross-section of the population:
  - food both fresh and ready-made;
  - art instruction and sales;
  - theatre performance;
  - live entertainment;
  - antiques;
  - business services.

The 2WA Consultants Inc., report did not include scope of work to review financial performance of the Market and board members were not provided draft copies of the report for comment or review prior to the report being finalized.

A copy of the consultant's final report was provided to the HFMC Board Executive in late June 2020. A copy of the consultant's final report was provided to all voting HFMC board members on August 24, 2020 by the City.

The total cost for the consultation report to date is \$11,825 as these costs were fully paid for by the City.

The 2020 shareholder meeting included an in-camera sole shareholder discussion of a request from the Board of Directors for fee reductions for Hamilton Farmers' Market vendors during COVID-19 Pandemic.

The sole shareholder directed the HFMC board to officially submit a copy of the governance review to the sole shareholder. The report was forwarded to the sole

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shareholder on September 17, 2020. That same day, the board also submitted a resignation letter from citizen board member, Seth Waterman.

The 2WA Consultant presented the report and conducted a question and answer session at a special HFMC board meeting both with regards to the recommendations and details of the report on September 28, 2020.

The HFMC board held a special board meeting on October 26, 2020 to discuss the report and its recommendations. Subsequent to that meeting the HFMC board provided a response letter to 2WA Consultant and is included as Appendix "A". In their letter of response, board members indicated concern with the process and many of the recommendations.

Details of how each respective board member voted for the recommendations A through G in the 2WA Consultant's report is noted in Appendix "B" HFMC Board Meeting Draft Agenda Minutes for October 26, 2020.

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

None.

**RELEVANT CONSULTATION**

City staff worked with 2WA Consultants, Inc., and the HFMC board to facilitate sharing of the governance report, arranging for 2WA Consultants, Inc. to answer HFMC board questions and summary or recommendations. Legal Services Division was consulted at the request of the HFMC Board Chair to confirm the report could be discussed publicly at HFMC board meetings. Corporate Services was consulted to provide the historical financial results of the Market.

**ANALYSIS AND RATIONALE FOR RECOMMENDATIONS**

The HFMC is a historical asset the City of Hamilton, which belongs to citizens through the municipality who acts as the Market's Sole Shareholder.

The HFMC board has seen three resignations in the past year. The board itself has expressed concern about the current operating model, particularly with the costs the HFMC is required to pay on a cost-recovery basis for the non-in-kind services provided by the City.



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The governance review as well as some recent changes to the board composition have highlighted some challenges that should be addressed to ensure the market can function in a way that is efficient and is consistent with the City's governance values. Challenges that should be addressed, include:

- potential conflicts of interest by having vendors with pecuniary interests in the operations of the Market involved in operational decisions that directly impact and/or benefit them as opposed to focusing on policy decisions. In other City-related governance structures, board members would likely be expected to recuse themselves from operational matters that impact their financial interests;
- the recent resignation of three board members;
- concerns related to role clarity of board members that have been identified in the review and by board members themselves;
- challenges with role clarity with board members, City staff and employees of the market itself;
- dissatisfaction with the current governance model expressed by members of the board as well as expectations of the sole shareholder in the operating agreement not being met.

In undertaking further analysis, focus should be paid to the goals of the sole shareholder for the Market, including ensuring that the Shareholder receives value for dollar for its investments into the Market and avoids real or perceived conflicts of interests, as would be expected of all City boards and committees and of Council itself.

Recommendation

That staff be directed to prepare a report that provides a preferred governance and operating model for the Hamilton Farmers' Market Corporation, which prioritizes value-for-dollar invested by the Shareholder, role clarity, enhanced governance and the avoidance of any potential conflicts of interest, with the support of an external consultant, at an approximate cost of \$50,000 - \$75,000 and report back to the Shareholder with funding source to be determined.

**ALTERNATIVES FOR CONSIDERATION**

That the sole shareholder approves the recommendations as provided by the 2WA Consultant's Report and direct the HFMC board to implement the recommendations.

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**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Economic Prosperity**

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop

**Culture and Diversity**

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

**APPENDICES AND SCHEDULES ATTACHED**

- Appendix “A” to Report CM20010: HFMC Board Response Letter to Governance Review Report 26-Oct-2020
- Appendix “B” to Report CM20010: HFMC Board Meeting Minutes 26-Oct-2020
- Appendix “C” to Report CM20010: HFMC Operating Agreement
- Appendix “D” to Report CM20010: HFMC Board Financials
- Appendix “E” to Report CM20010: HFMC Current Board Members and Terms

**October 26, 2020**

To Cyrus Tehrani, as (Acting) Contract Manager, on behalf of the City of Hamilton:

The Hamilton Farmers' Market Board of directors thoroughly reviewed the document *Hamilton Farmers' Market Governance Review* by Michael H Howes and Anne Bermingham of 2WA Consulting Inc. This letter is a precis of our position as a Board on the review and an outline of the Board's intentions for ongoing improvements to governance.

We appreciated the opportunity to directly engage with Michael Howes on September 28 2020 to hear his response to some of the 63 questions that Board members asked in writing before the meeting, plus additional questions raised at the meeting.

We regret that this was the first and only opportunity that the Board had to engage with any version of the report since no prior drafts were shared with the Board. We recognize that neither you (personally) nor council are accountable to this point, since the report was initiated and managed by a director 14(3)(d) of MFIPPA who commissioned the consultant on his own volition without direction from council or the Hamilton Farmers' Market. In the future, we recommend that city-commissioned reviews of the market be co-managed with the market. Such cooperation will help to properly scope future assignments and to review draft work to clarify or correct content ahead of its finalization.

Overall, we feel the governance review was a missed opportunity to include in its scope a consideration of the fiscal capacity of the market and its financial relationship to city departments that charge fees on a cost-recovery basis. The consultants compared the Hamilton Farmers' Market to markets with a vastly different fiscal capacity and arrangements – such as Detroit's Eastern Market which has 19 senior staff and 99 employees, and London's Covenant Gardens which owns a revenue-generating parking facility. In comparison, the City of Hamilton setup the Hamilton Farmers' Market to operate with one manager and one or two part-time office staff, while the market *paid* the City of Hamilton an average of \$70K annually for customer parking over the prior 5 fiscal years. In 2019, the Market received a tax-supported levy of \$113K while it paid the City \$237K in facility fees and parking and for the operation of the central utilities plant.

In response to questions that disputed many of the consultant's assertions of excessive and inappropriate use of in-camera sessions, Mr. Howes confirmed that he was not provided with any in-camera minutes. Mr. Howes did not have records of which Board members voted for which resolutions, since votes had not been recorded up to that point in time, so the report's assertions about votes being "deadlocked" or split between vendors and citizens were "anecdotal" as he said, rather than factual. Mr. Howes verbally noted some errors in the report but did not offer to provide a revised corrected version.

On the question of a pathway for change, Mr. Howes advised the Board that it is better to evolve governance rather than "blowing things up and starting again", with an importance of ensuring that there is a "part for every person". He acknowledged that he used "blunt language" and said "I imagine it's tough to read" but he felt that it "reflected what he saw".

Despite the limitations of the report, the Board seriously considered the consultant's seven recommendations. Below are the quoted recommendations and our Board reply.

- A. "Create an advisory committee that will provide a vendor community perspective on operational issues to the Market manager and the Board"

**Directors unanimously agreed** to create a vendor committee that will focus on operational issues, with the intent for vendors to work with market staff to solve problems outside of Board meetings, and to codify operational procedures over time into written operational policy. The Board will defer to the current vendor directors and market manager to draft a terms of reference for the committee that would include details about the meeting frequency and the composition of the committee, with the draft terms being ratified at a Board meeting.

- B. "Change the composition of the Board to remove conflict of interest issues, and to develop a customer-centric focus"

**Five directors disagreed** with the consultant's recommendation of reducing the number of vendor Board members from four to just one out of a possible 12. The farmers' market, like all markets, is more effective when suppliers (vendors) are as equally represented, and empowered, as demanders (consumers) in governing the marketplace.

**Three directors agreed** with the consultant to reduce the number of vendor Board members to one elected member of the vendor advisory committee to bring the perspective of that committee to the Board and to flow the Board's perspective back to the committee.

- C. "Establish a customer service / customer focused advisory Board to keep the Market in touch with consumer tastes"

**Directors unanimously disagreed** with the consultant's recommendation because there is already much customer information available from surveys in past years. This would add another layer of structure that is not necessary at this time. The customer focus can also be brought in by the citizen representatives.

- D. "Make the Board of Directors solely accountable to City Council for the Market"

**Four directors agreed** with the consultant that the Market Manager's dual reporting to the Contract Manager and to the Board isn't ideal, with potential for blurred accountability and potential conflict when the Contract Manager provides direction to the manger that is contrary to Board direction.

**Three directors deferred agreement or disagreement** since this recommendation is contingent upon other details that would need some elaboration.

**One director disagreed** with the consultant's perspective that the Market Manager is caught in a conflict of interest situation between the Board and the Contract Manager. Since the Market Manager is a city employee, this position will need to report to someone in the City, however, the manager does not need to take instructions from the Contract Manager.

- E. "Clearly outline the Board's expectations of vendors to create consistent customer service"

**Directors unanimously disagreed** that a set of written expectations needs to be created to provide consistent customer service. The stallholder agreement already sets out the Board's expectations of vendors.

- F. "Revitalization of the Governance Principles"

**Seven directors agreed** to revisit the existing strategic plan with governance that can be improved with governance training and orientation. In prior years, governance training and orientation was not routinely provided. In future years, the Board recommends that the city provide Board members with training in relevant city policies and meeting/Board procedural matters, together with training to identify and develop skills specific to officer positions. This will help to bring Board members towards a shared understanding and practice of governance. With respect to shifting the Board away from operational details, the Board has long had a goal to codify more market practices as official policy in writing. This would help to promote clear and consistent decisions and to help evaluate staff performance.

**One director disagreed** to revitalize the governance principles.

- G. "Conduct a strategic visioning exercise that embraces a very different future for the Hamilton Farmers' Market"

**Directors unanimously agreed** that the strategic plan is due for a revisit, and that consideration should be given to creating a vision for a shorter term horizon (3-4) years, as well as a longer term horizon (8-10). Bold visions are important, as with strategizing on how to attain them, while at the same time being realistic about what is or is not possible. As an example noted by the consultant, the market has spent a considerable amount of time trying to remedy problems with York Boulevard adjacent to the market; the market has already followed the advice of the consultant by identifying "what is possible" for the street and how it can be pursued, and yet the market remains constrained by the city's steadfast adherence to "what is" in existence

on York.

All considered, a positive and attainable vision for the future is more likely to be realized when it recognizes strengths to build upon. Despite the lack of positive comments by the consultant, the Board recognizes that the last five years under the present governance model have demonstrated the benefit of evolving towards greater self-governance.

The Market enjoys loyal and satisfied customers that have helped to keep the market's occupancy levels far higher than the average in downtown Hamilton. The market delivers outstanding food and drinks and flowers and crafts from diverse and innovative small businesses that span in age from years to generations. The market's customers continue to praise the quality and value of products and the friendly and knowledgeable proprietors and their staff. The market remains a launching point for new products and businesses, and a place for established businesses to relocate. The market provides year-round resiliency to individuals and families and businesses that demand local and global products.

The Board recognizes that while the Market has many loyal and satisfied customers, changes need to occur to help the Market to recover from the current pandemic and to position it well for ongoing changes in consumer and producer preferences.

Sincerely,

Eric Miller (Chair), Shane Coleman (Vice-Chair), Gordon Albini (Treasurer), Wilf Arndt, Elly Bowen, Charlie Chiarelli, Ron Jepson, Anne Miller, Councillor Esther Pauls

Board of Directors of the Hamilton Farmers' Market

**Draft Minutes of Special Meeting of the Hamilton Farmers' Market Board of Directors**  
Monday October 26 2020 starting at 5PM by video/teleconference

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Directors present: Eric Miller, Shane Coleman, Gordon Albini, Wilf Arndt, Elly Bowen,  
Charlie Chiarelli, Ron Jepson, Anne Miller, Councillor Esther Pauls (from  
6:30PM)  
Staff present: Bill Slowka

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Meeting called to order at 5:07PM

Motion to record this meeting using webex. Shane/Elly, carried.

**1. Approve agenda**

Ron/Shane, carried.

**2. Declarations of interest**

None declared.

**3. Board review of draft letter and vote on responses to recommendations**

Recommendation A:

- Motion to modify recommendation to add "of 12" after "vendor committee" and to leave out last sentence: Elly, Wilf, not carried.
- Votes in support of the "agrees" statement as written: Shane, Gordon, Ron, Charlie, Anne, Eric, Elly, Wilf.
- There was no "disagrees" statement provided or added.

Recommendation B:

- Defer consideration until later of "The Board remains committed..."
- Votes in support of the "agrees" statement: Elly, Gordon, Wilf.
- Votes in support of the "disagrees" statement: Charlie, Ron, Anne, Shane, Eric

Recommendation C:

- Votes in support of the "agrees" statement: None
- Votes in support of the "disagrees" statement: Elly, Gordon, Wilf, Shane, Ron, Anne, Charlie, Eric

Recommendation D:

- Votes in support of the "agrees" statement: Shane, Gordon, Charlie, Eric
- Votes in support of the "disagrees" statement: Elly
- Votes in support of an added statement: "Defer since this recommendation is contingent upon other details that would need some elaboration": Wilf, Ron, Anne.

Recommendation E:

- Votes in support of the "disagrees" statement: Elly, Gordon, Wilf, Ron, Shane, Charlie, Anne, Eric.

- There was no "agrees" statement provided or added.

Recommendation F:

- Grammatical edit to replace "and governance can" with "with governance that can"
- Votes in support of the "agrees" statement: Elly, Gordon, Ron, Wilf, Anne, Shane, Eric
- Votes in support of an added "disagrees" statement: "Disagree to revitalize the governance principles": Charlie.

Recommendation G:

- Motion to remove the sentence starting with "As an example...": Elly, Gordon, Shane, Wilf, not carried.
- Votes in support of the "agrees" statement: Wilf, Ron, Shane, Anne, Elly, Charlie, Gordon, Eric
- No "disagrees" statement provided or added.

Rest of letter:

**Motion:** Approve the rest of letter as written, with voted recommendations. Shane/Ron, carried. (In favour: Charlie, Shane, Ron, Anne, Pauls, Eric; Against: Elly, Wilf, Gordon)

#### 4. **Adjournment**

Adjourned at 7:15PM, Ron/Wilf, carried.



**OPERATING AGREEMENT**

This Agreement made as of the 21<sup>st</sup> day of December 2015.

BETWEEN:

**CITY OF HAMILTON**  
(herein referred to as the "City")

-and-

**HAMILTON FARMERS' MARKET CORPORATION**  
(herein referred to as "Market Corporation")

WHEREAS the City and Market Corporation wish to enter into this Agreement, under which Market Corporation, among other things, will act as the operator of the Hamilton Farmers' Market; and

WHEREAS the City and Market Corporation have agreed on the terms and conditions hereinafter set out for the provision of such services for the City;

THEREFORE, IN CONSIDERATION OF the mutual agreements and covenants herein contained and subject to the terms and conditions herein set out, the City and Market Corporation covenant and agree each with the other as follows:

## 1 DEFINITIONS

"Annual Report" has the meaning ascribed to it in Paragraph 11(a);

"Applicable Law" means, with respect to any person, property, transaction, event or other matter, any rule, statute, regulation, by-law, guideline, policy, code, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such person, property, transaction, event or other matter, and includes, where appropriate, any interpretation of a rule, statute, regulation, by-law, guideline, policy, code, order, judgment, decree, treaty or other requirement having the force of law by any person having jurisdiction over it, or charged with its administration or interpretation;

"Annual Member Meeting" means the annual meeting of the sole voting member of the Corporation, which may occur during the City's budget deliberations;

"Board of Directors" means the board of directors of Market Corporation;

"Confidential Information" has the meaning ascribed to it in the *Municipal Freedom of Information and Protection of Privacy Act*;

"Contract Manager" means the individual appointed by the City's General Manager of Corporate Services to administer this Agreement or such other person as is duly authorized in his or her stead for the purposes of administering this Agreement as authorized by the General Manager in writing;

"Effective Date" means the date specified at the start of this Agreement;

"General Manager of Market Corporation" means the person appointed by Market Corporation to manage the day-to-day business of Market;

"MFIPPA" means the Ontario *Municipal Freedom of Information and Protection of Privacy Act*;

"Market" means the Hamilton Farmers' Market, located at 35 York Boulevard, Hamilton;

"Market Employees" has the meaning ascribed to it in Paragraph 13(b).

## **2 TERM**

This Agreement commences on the date first above written and shall continue in full force and effect until shall continue in full force and effect until this Agreement is terminated as herein provided.

## **3 STATUS AND ORGANIZATION OF MARKET CORPORATION**

- (a) Market Corporation shall subsist as a not-for-profit corporation, without share capital, and shall be incorporated, organized and at all times be in good standing under the *Ontario Corporations Act*.
- (b) The objects of Market Corporation shall be the establishment and operation of a farmers' market corporation for the purposes of:
  - (i) providing a venue for local food growers and producers to sell directly to the public;
  - (ii) providing the public with access to high quality, nutritious, locally grown food;
  - (iii) strengthening the local economy with the purchase of locally grown food wherever possible;
  - (iv) promoting relationships and opportunities between farmers, food producers, independent food merchants, consumers and the public;
  - (v) offering a diversity of fresh food products, including international and specialty foods;
  - (vi) fostering an economically, ecologically and socially sustainable community;

and such other complementary purposes not inconsistent with these objects.

- (c) The City shall be the sole voting member of Market Corporation.
- (d) The Board of Directors shall be elected or appointed by the sole voting member of Market Corporation.
- (e) The fiscal year of Market Corporation shall correspond to the calendar year.
- (f) Market Corporation shall notify the City, in writing, forthwith in the event of a change of the corporate status or organization of Market Corporation. Without limiting or restricting any other right the City may have under this Agreement, in the event that Market Corporation materially changes its corporate status or organization, objects or constitution of its board or membership, the City may terminate this Agreement on 30 days' notice.
- (g) Market Corporation is granted, during the term of this Agreement, the right to use the name "Hamilton" or any other identifier of the City including but not limited the City's logo for the sole purpose of Market-related undertakings and responsibilities of Market Corporation on behalf of the City set out in this Agreement. This licence shall cease upon the expiration or termination, for any reason, of this Agreement.
- (h) Market Corporation shall notify the City forthwith of any name other than "Hamilton Farmers' Market Corporation" or "Hamilton Farmers' Market" that Market Corporation intends to use or uses in its identification to others or in connection with its business or any part of its business.
- (i) In the exercise of its powers to borrow, Market Corporation shall not mortgage, charge, pledge or use as security this Agreement, any other agreement between the City and Market Corporation, or any amount receivable from or owing by the City under this or any other agreement without the City's written consent, which the City may arbitrarily withhold.
- (j) The Board of Directors may delegate to the General Manager of Market Corporation full power to manage and direct the business and affairs of Market Corporation (except such matters and duties as by law must be transacted or performed by the Board of Directors and/or by the members). The board shall be responsible for monitoring the General Manager of Market Corporation's job performance to determine the degree to which board policies and strategic priorities are being met. Only decisions of the board are binding on the General Manager of Market Corporation. Decisions or instructions of individual directors, officers or committees are not binding on the General Manager of Market Corporation except in rare circumstances when the board has specifically authorized or delegated such exercise of authority. In the case of board members or committees requesting information or assistance without board authorization, the General Manager of Market Corporation can refuse such requests.
- (k) Except where otherwise expressly provided in this Agreement, the General Manager of

Market Corporation shall address all matters concerning the Market to the Contract Manager and City personnel under this Agreement. The Contract Manager and City personnel, as the case may be, shall in all respects be entitled to rely upon the General Manager as having full and complete authority on Market Corporation's behalf in all matters.

- (l) Any submissions or requests by Market Corporation that are intended for City Council, whether for purposes of decision or information, shall be presented by Market Corporation through the Corporate Services Department of the City, or such other Department designated by the City from time to time.

#### 4 RESPONSIBILITIES OF MARKET CORPORATION

- (a) Market Corporation shall administer, manage and supervise the operation of the Market, including but not limited to the following duties:
- (i) provide the public with access to high quality, nutritious, locally grown food;
  - (ii) promote relationships and opportunities between farmers, food producers, independent food merchants, consumers and the general public;
  - (iii) advertise the Market as a shopping destination of choice;
  - (iv) create promotional event plans for the Market;
  - (v) use reasonable efforts on a continuing basis to reduce its dependence on subsidies from the City;
  - (vi) increase local awareness of the economic and ecological benefits of purchasing locally grown food;
  - (vii) prepare, implement and, where appropriate obtain any necessary approval of, all budgets necessary for the efficient, effective, and timely carrying out of Market Corporation's business, initiatives and responsibilities;
  - (viii) consult, as appropriate, with the City;
  - (ix) select persons to whom stalls shall be assigned and assign stalls to those persons;
  - (x) enter into contracts with persons who have been selected as stallholders and enforce those contracts;
  - (xi) determine the fees to be paid by stallholders;
  - (xii) determine the days and hours when the Market shall be open;
  - (xiii) determine the products which may be sold at the Market, which shall include a diversity of fresh food products including international and specialty foods;
  - (xiv) ensure the Market operates continuously and actively throughout the year, unless the Contract Manager consents to a temporary shutdown;
  - (xv) ensure the Market is kept clean and safe;
  - (xvi) maintain, repair and replace the furnishings in the Market; and
  - (xvii) approve, establish and enforce rules pertaining to the operation of the Market;

and any other reasonable thing to promote the objects of Market Corporation and the growth and success of the Market.

- (b) The Corporate Services Department of the City shall, on behalf of Market Corporation, (i) issue invoices to and receive payments from stallholders on account of their fees, and (ii) issue invoices to and receive payments from any other parties conducting business with Market Corporation. Should any payments become overdue, the Corporate Services Department shall communicate the issue to Market Corporation, and Market Corporation shall pursue all available remedies against the stallholders or other parties. The Corporate Services Department may intervene, at any time, in order to pursue its standard collection procedures.
- (c) For the purpose of operating the Market, Market Corporation is hereby authorized, during the term of this Agreement, to use the Market to carry out its obligations under this Agreement. As a condition of the right to use the Market, Market Corporation agrees that it, its employees and stallholders shall comply in all material respects with any policies of the City regarding City-owned lands and buildings. No legal title or leasehold interest in the Market or its structures, equipment or facilities shall be deemed or construed to have been created or vested in Market Corporation by anything contained in this Agreement. Market Corporation shall not register this Agreement or notice thereof against title to the Market or any part thereof. Notwithstanding such right of use, the City shall have access to the Market and its structures, equipment and facilities in order to perform its services under this Agreement and to perform periodic inspections.
- (d) The Contract Manager and Market Corporation may agree from time to time to add to, eliminate, transfer, or otherwise vary the responsibilities of Market Corporation set out in this Agreement as circumstances warrant in the opinion of the City and Market Corporation.
- (e) Market Corporation shall not, without the prior written consent of the City,
- (i) sell, transfer, exchange or otherwise dispose of, whether or not for valuable consideration, or make any material change in the business or any substantive portion of the business;
  - (ii) out of the usual course of business, sell, transfer, exchange or otherwise dispose of, whether or not for valuable consideration, any real or personal property, including any franchise, patent, copyright, trade mark or other intangible asset, with which Market Corporation carries on business; or
  - (iii) make any decision or take any action that materially fetters or impairs the ability of Market Corporation to conduct its business in the usual course.

## 5 REGULATORY MATTERS

- (a) Market Corporation is deemed to be a part of the "municipality" pursuant to MFIPPA, which allows for a right of access to information held by Market Corporation and requires protection of personal privacy. Where the General Manager of Market Corporation receives requests for information, he/she shall forward such requests to the City Clerk.
- (b) Market Corporation is subject to a variety of legislation that governs its operations and which establishes responsibilities of Market Corporation including without limitation the *City of Hamilton Act 1968-69*; *Corporations Act*; *Municipal Act, 2001*; Ontario Regulation 599/06 regarding Municipal Services Corporations; and the City's Municipal Alcohol Policy. Market Corporation shall, at all times, comply with all Applicable Law and shall ensure that its officers, directors, employees, agents and subcontractors comply with all Applicable Law and shall furnish the City on request with evidence of compliance satisfactory to the City.
- (c) Market Corporation shall comply with the *Corporations Information Act*, including submitting corporate and financial filings within the time periods prescribed therein. Market Corporation shall seek assistance from a financial advisor, experienced in not-for-profit corporations, to assist with completing and submitting all necessary filings and otherwise preserving its not-for-profit status.
- (d) Market Corporation shall comply with all requirements of the Medical Officer of Health, including without limitation all requirements under the *Health Protection and Promotion Act* and its regulations, and all laws relating to food premises.
- (e) Market Corporation shall use reasonable efforts to ensure stallholders comply with all Applicable Law, including public health laws and the City's licensing by-law.
- (f) Market Corporation shall hold an Annual Member Meeting of its sole voting member not later than six months after the end of Market Corporation's fiscal year.

## 6 CONFIDENTIALITY

Market Corporation shall ensure that Confidential Information in its custody and control is not disclosed or otherwise made available to anyone, except to the extent that:

- (i) disclosure to the General Manager of Market Corporation, Market Employees, authorized agents of Market Corporation, or other employees or agents of the City is necessary for the performance of any of their duties and obligations under this Agreement; and
- (ii) disclosure is required or permitted in the course of judicial proceedings or pursuant to law.

## 7 IN CAMERA MEETINGS

- (a) Meetings of the Board of Directors shall be open to the public, except where otherwise permitted by the *Municipal Act* or other law. The *Municipal Act* permits a meeting or part of a meeting to be closed to the public if the subject matter being considered is:
- (i) the security of the property of the municipality or local board;
  - (ii) personal matters about an identifiable individual, including municipal or local board employees;
  - (iii) a proposed or pending acquisition or disposition of land by the municipality or local board;
  - (iv) labour relations or employee negotiations;
  - (v) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
  - (vi) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
  - (vii) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.
- (b) Before holding a meeting or part of a meeting that is to be closed to the public, the Board of Directors shall state by resolution: (a) the fact of the holding of the closed meeting; and (b) the general nature of the matter to be considered at the closed meeting.
- (c) A meeting shall not be closed to the public during the taking of a vote unless: (a) a provision of Market Corporation's corporate by-laws permits or requires a meeting to be closed to the public; and (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of Market Corporation or persons retained by or under contract with Market Corporation.

## 8 CONFLICT OF INTEREST

- (a) Market Corporation shall ensure that its directors and officers comply with the *Municipal Conflict of Interest Act* and *Corporations Act* and their regulations, as well as the City's Code of Conduct.
- (b) Market Corporation shall operate the Market, and shall ensure its directors perform their duties, without an actual, potential or perceived conflict of interest, including the following:
- (i) ensure there is no self-dealing or any conduct of private business or personal services between any director and the Corporation except as procedurally controlled to assure openness, competitive opportunity and equal access to inside information;
  - (ii) ensure directors do not use their positions to obtain employment in the Corporation for themselves, family members or close associates, and if a director

- desires employment, he or she shall first resign;
- (iii) ensure directors annually disclose their involvements with other organizations, stallholders or any other associations that might produce a conflict;
  - (iv) ensure directors shall respect the confidentiality appropriate to issues of a sensitive nature and understand that it is the chair's role to represent and speak on behalf of the board;
  - (v) acknowledge that the directors and officers of the Corporation shall be deemed to be members for the purposes of the *Municipal Conflict of Interest Act* and will therefore comply with said Act;
  - (vi) ensure that no director who is a stallholder of the Market shall be permitted to participate in a discussion of confidential information or vote involving another existing stallholder of the Market; for clarity, a director who is a stallholder of the Market shall be permitted to vote in the selection of a new stallholder, provided that new stallholder is not already an existing stallholder of the Market and provided no other conflict of interest exists.

## 9 MARKET BUDGET

- (a) While it is the goal of Market Corporation to reduce its dependence on subsidies from the City, it is acknowledged that the receipt of subsidies from the City is essential at the outset of Market Corporation's performance of the business and responsibilities under this Agreement. Market Corporation agrees to work independently but co-operatively with the City to reduce and eliminate its dependence on subsidies from the City and secure its own revenues to provide the Market undertakings and responsibilities herein.
- (b) Each year, Market Corporation shall prepare and submit to City Council, in such detail and form and by such date as the City may prescribe, an annual budget of all sums required during the year for the operating and capital purposes of Market Corporation, including but not restricted to:
  - (i) sources of estimated revenues and objects of estimated expenditures;
  - (ii) an amount sufficient to pay all debts of Market Corporation falling due within the year; and
  - (iii) provision for uncollectable accounts.
- (c) Market Corporation shall provide variance reports to Council three times per year or such other frequency that may be established by the City from time to time.
- (d) City Council may approve the budget and may make such changes to it as Council considers appropriate.
- (e) Market Corporation shall not incur obligations or spend money, other than for its normal operating expenses,



- (i) until the budget for the fiscal year has been approved; or
  - (ii) if the budget has not been approved, unless City Council approves the obligation or expenditure.
- (f) Market Corporation may,
  - (i) incur obligations and spend money only in accordance with its approved aggregate budget; and
  - (ii) may deviate from the budget only with the approval of City Council.
- (g) One or more representatives of Market Corporation shall attend the meeting or meetings of City Council, as requested, at which Market Corporation's annual budget is being considered for the purpose of making submissions and providing information sufficient to enable Council to give reasonable consideration to the matter.
- (h) If requested by the City, Market Corporation shall at no expense to the City provide the City, at such time or times as appropriate, with one or more reports suitable for public release on Market Corporation and its activities.
- (i) Market Corporation acknowledges that it is subject to anti-bonusing laws and shall therefore not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise by reason of the payment being a bonus in aid thereof contrary to section 106 of the *Municipal Act, 2001* or a successor of that section. Market Corporation shall indemnify and save the City harmless in the event of a breach of that section.
- (j) Market Corporation may establish and maintain one or more reserve funds for purposes including, but not limited to, the transfer of year-end surpluses or deficits to or from the operating accounts when balances warrant, as determined by the City.

## 10 PROVISION OF SERVICES BY CITY

The City agrees to make available to Market Corporation, as part of its subsidy, services of City personnel to assist Market Corporation in its personnel needs. The Contract Manager shall determine, in his/her sole and unfettered discretion, the scope of services, necessary qualifications and number of personnel required or available to perform such services and the cost of such personnel, if any, which Market Corporation shall reflect in its budget. The Contract Manager shall consult with Market Corporation prior to making any such determination. Market Corporation acknowledges that City budgetary considerations and staff workload may directly impact the availability of City personnel.

## 11 FINANCIAL ACCOUNTABILITY

- (a) The Corporation shall prepare and approve an "Annual Report" and submit and present the report to City Council, at a meeting of City Council for the purposes of receiving the report, which may be during the Annual Member Meeting. The Annual Report shall include:
- (i) Such explanations, notes and information as are required to account for any variances between the actual results from operations and the budgeted amounts set forth in the approved budget, and any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the City.
  - (ii) Information that is likely to materially affect the City's financial objectives.
  - (iii) Information regarding any matter, occurrence or other event which is a material breach or violation of any law, including major findings of internal and other audits.
  - (iv) Information on progress and accomplishments relative to the strategic business plan in place.
  - (v) Information regarding the performance of Market Corporation such that City Council can determine that the strategic business plan has been respected.
  - (vi) Information regarding the performance of Market Corporation can determine that this Agreement has been respected.
  - (vii) Such additional information as City Council or the Contract Manager may specify from time to time.
- (b) Market Corporation's Annual Report shall be consistent with, but not in lieu of, other reporting that the City may require.
- (c) Within the first year of each new term of City Council, Market Corporation shall provide the City with a strategic business plan for Market Corporation, outlining goals, strategies and new directions for the following four years. The strategic business plan shall be consistent with the City's strategic priorities.
- (d) Market Corporation shall deliver to the City, as soon as practicable and in any event no later than the 31<sup>st</sup> day of May in the year following the end of each fiscal year, the Market Corporation audited annual Financial Statements signed on behalf of the Board of Directors by two members of the Board of Directors along with a copy of the Auditor's Report and the External Auditor's Findings Report and the management letter for consideration by the City. Further financial statements shall be delivered by

Market Corporation to the City in accordance with the City's corporate schedule for budget exception reporting.

- (e) Market Corporation shall adopt and use the accounting policies and procedures that may be approved by the Board of Directors from time to time and all such policies and procedures shall be consistent with the requirements of this Agreement and in accordance with generally accepted accounting principles and applicable regulatory requirements.
- (f) Market Corporation shall adopt and use a Procurement Policy that is open, fair and transparent in keeping with the principles of public procurement. In the event that Market Corporation fails to adopt such a Procurement Policy, it shall by default be subject to the Procurement Policy adopted by the City of Hamilton. Notwithstanding that Market Corporation adopts its own Procurement Policy, the Contract Manager may elect to require Market Corporation to follow the Procurement Policy of the City of Hamilton at any time.
- (g) The City shall have unrestricted access to the books and records of Market Corporation during normal business hours. The City shall treat all information of Market Corporation with the same level of care and confidentiality as any Confidential Information of the City.
- (h) The City shall at each Annual Member Meeting appoint an auditor, or may require Market Corporation to appoint an auditor, to audit the accounts of Market Corporation for report to the City who shall hold office until the next following annual meeting; provided, however, that Market Corporation may fill any casual vacancy in the office of the auditor. If an appointment is not so made, the auditor in office must continue until a successor is appointed. The remuneration of the auditor shall be fixed by the City or by Market Corporation if it is authorized to do so by the City, and the remuneration of an auditor so appointed by Market Corporation shall be fixed by Market Corporation. The City may by resolution remove any auditor before the expiration of the auditor's term of office and shall appoint another auditor in such auditor's stead for the remainder of the term.

## 12 FINANCIAL ROLES AND RESPONSIBILITIES

The following table outlines the financial roles and responsibilities of the City and Market Corporation:

	CORPORATE SERVICES - CITY	MARKET
Accounts Receivable	Invoice customers based on signed contract and deposit monthly cheques.	Collect signed contracts with post-dated cheques and forward to AR for invoicing.
	Invoice customers based on submitted Request for Invoice for items other than monthly rent.	Create Request for Invoice for non-contracted revenue.
	Regular collection procedures as available to City Departments i.e. letters, collection agency	Aid in collection efforts and advise Accounts Receivable when standard collection efforts are not appropriate.
Accounts Payable	F&A will route invoices to the Market approvers	Approve invoices
	AP will process and cut vendor cheques	Resolve vendor disputes
Audit	Supply support, financial reports, analysis where required	Coordinate audit, supply auditor with required reports
		Budget for audit in annual Operating Budget
HST	Change VAT table to ensure correct % being reflected in books	Apply for HST Registration (in consult with F&A)
	Supply reports, transaction listings of HST accounts	Submit quarterly claims to CRA using reports supplied by F&A.
		Apply for para-municipal status with CRA.
Government Reporting	Supply reports, transaction listings and aid in analysis as required	Prepare & file government reporting
Year End/Interim Financial Statements	Supply system generated reports for balances and transactions	Determine reporting needs of Board
	Reconcile Balance Sheet accounts.	Prepare statements as required by Board
		Prepare year end statements for the Auditor
Budget	Supply forms/deadlines/procedural guidance	Prepare/confirm budget numbers
	Assist with analysis	Present to Council
	Complete corporate portion of budget i.e. Cost Allocations, salary/benefit calculations	
	Update the Budget system with submitted budget	

### 13 EMPLOYEES

- (a) The General Manager of Market Corporation shall be a City employee but shall report to the Board of Directors with respect to all functional and operational matters of Market Corporation. The General Manager of Market Corporation shall report to the Contract Manager administratively and organizationally. The Board of Directors shall make recommendations to the Contract Manager with respect to the recruitment of the General Manager of Market Corporation, including establishing the employment terms and conditions and performance expectations. The Board of Directors shall also make recommendations to the Contract Manager with respect to the performance evaluation, discipline and termination of the General Manager of Market Corporation. The Contract Manager shall have ultimate discretion for the discipline and termination of the General Manager of Market Corporation, notwithstanding such discipline and termination may be brought as a result of a recommendation of the Board of Directors.
- (b) All other employees currently or in the future employed for the purpose of operating, administering and supporting the Market (the "Market Employees") shall be City employees and shall report through an organizational structure approved by the Contract Manager, in consultation with Market Corporation. All Market Employees shall adhere to and be subject to the Human Resources and Corporate policies and procedures of the City. The Contract Manager shall, after consulting with Market Corporation, have ultimate discretion to determine the scope of services, necessary qualifications and number of Market Employees and the compensation of Market Employees, which Market Corporation shall reflect in its budget.
- (c) Market Corporation shall
- (i) comply with the *Occupational Health and Safety Act* and its regulations, and the *Workplace Safety and Insurance Act, 1997* and its regulations, it being understood that Market Corporation shall be conclusively deemed to be a related employer under the *Occupational Health and Safety Act* and only for the purposes of that Act;
  - (ii) ensure the operating labour conditions at the Market strictly conform to the *Employment Standards Act, 2000*; *Workplace Safety and Insurance Act, 1997*; *Pay Equity Act*; *Human Rights Code*; *Labour Relations Act*; and their regulations; and
  - (iii) comply with all applicable collective agreements and all applicable Human Resources and Corporate policies and procedures of the City.
- (d) In the event that Market Corporation considers that a Market Employee is acting inconsistent with the functions such employee is to be performing on behalf of Market Corporation, the General Manager of Market Corporation shall deliver to the Contract

Manager a written report setting out the details of same. The Contract Manager or, where appropriate, such other City representative as the City shall deem appropriate including but not limited to Human Resources personnel, shall investigate the details contained in the Market Corporation report and advise Market Corporation in due course of its position concerning same and take such action, if any, as the City deems necessary.

- (e) Without limiting the foregoing, the City shall provide the following services:
- retention, management, discipline and termination of all Market Employees
  - health and safety advice
  - harassment and discrimination prevention services related to Market Employees
  - harassment assessments, resolutions and investigations related to Market Employees, whether or not they require third party resources
  - payroll administration, including collection and remittance of statutory and contract deductions made at source
  - assistance, as required, in the preparation of job descriptions and salary assignments for prospective non-union employment positions and CUPE positions
  - job posting and screening support
  - return-to-work services, support and assistance
  - benefit administration for full-time staff
  - employee file retention and maintenance
- (f) All actions, decisions directions, instructions, authorizations, discretions, requests, communications, and information (whether of a policy or operational nature or otherwise, whether occurring formally or informally, and whether pertaining to a single or an ongoing matter) of or on behalf of Market Corporation (whether emanating from its Board of Directors, officers, members, employees, servants, agents, contractors, or others) intended for, intended to be carried out or acted upon by, or in any other way pertaining to City personnel, shall be given only by the General Manager of Market Corporation.

## 14 FACILITIES

- (a) The City shall provide facilities management services as outlined in Schedule "A", at similar levels and standards to that which it provided to the Market prior to the Effective Date, the cost of which shall be borne by the party or parties identified in Schedule "A". Where the cost is identified as the responsibility of Market Corporation, Market Corporation shall reflect same in its budget.
- (b) Notwithstanding any other provision of this Agreement, Schedule "A" may be amended upon the written agreement of the Contract Manager, after consulting with Market Corporation, and the City's Director of Facilities Management and Capital Programs.
- (c) Market Corporation shall comply with all Facilities policies of the City.

**15 INFORMATION TECHNOLOGY SERVICES**

- (a) The City shall provide technical infrastructure and support services as outlined in Schedule "B", at similar levels and standards to that which it provided to the Market prior to the Effective Date, the cost of which Market Corporation shall reflect in its budget.
- (b) Notwithstanding any other provision of this Agreement, Schedule "B" may be amended upon the written agreement of the Contract Manager, after consulting with Market Corporation, and the City's Director of Information Technology Services.
- (c) Market Corporation shall comply with all Information Technology policies of the City.

**16 EXISTING CONTRACTS**

The City shall use reasonable efforts to assign to Market Corporation all existing contracts relating to the Market, and to the extent assigned, Market Corporation shall assume all rights and obligations thereunder. To the extent that existing contracts are not assigned, Market Corporation shall administer and assure compliance with the terms and conditions therein.

**17 TERMINATION**

This Agreement may be terminated:

- (a) in accordance with paragraph 3(f) of this Agreement;
- (b) by the City, if Market Corporation fails to comply with any provision of this Agreement, including if it fails to continuously and actively operate the Market; and/or
- (c) by either party, upon at least 90 days' written notice to the other party.

**18 MISCELLANEOUS MATTERS**

- (a) A reference to any statute, law, by-law, rule, regulation, policy, guideline, ordinance, notice, ruling or order or to a provision thereof will be deemed to include a reference to any substitution therefor or amendment thereof.
- (b) Where there is any conflict between the terms of this Agreement, including its schedules, and Market Corporation's corporate by-laws, the provisions of this Agreement shall prevail and be given effect to.
- (c) Market Corporation and the City shall, from time to time, execute and deliver all further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent

and meaning of this Agreement.

- (d) Where in this Agreement any notice, request, direction or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail or facsimile transmission addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:
- (i) if delivered personally, on the date of such delivery;
  - (ii) if by registered mail, on the day the postal receipt is acknowledged by the other party;
  - (iii) if by facsimile transmission, when transmitted (if received before 4:30 p.m. local time at the recipient's office or failing which on the next business day).

Any notices intended for the City shall be delivered and addressed to:

City of Hamilton  
City Hall, 71 Main Street West  
Hamilton, Ontario L8P 4Y5  
Attention: Contract Manager, Hamilton Farmers' Market

Any notices intended for Market Corporation shall be delivered and addressed to:

Hamilton Farmers' Market Corporation  
35 York Boulevard  
Hamilton, Ontario L8R 3K7  
Attention: General Manager

The address of either party may be changed by notice in the manner set out above.

- (e) Market Corporation shall not assign all or any portion of its rights or obligations under this Agreement to a third party without the City's prior written consent. Where any responsibilities or obligations of Market Corporation in this Agreement are carried out, with the written consent of the City, by Market Corporation and a third party, all obligations of Market Corporation shall be joint and several unless otherwise specifically provided.
- (f) Whenever and to the extent that the City shall be unable to fulfil or shall be delayed or restricted in fulfilling its obligations or any of them under this Agreement in any respect by reason of an act of God, fire, labour dispute, riot, civil commotion, war, insurrection, act of sabotage, vandalism, malicious mischief or any other cause beyond the City's control, the City shall be relieved from the fulfillment of its obligation throughout the period during which it is unable to fulfil or is delayed or restricted in fulfilling the obligation. The City shall not be liable to Market Corporation for any claim, action, loss,



expense, cost, damage, liability or cost of defence of any nature or kind whatsoever which Market Corporation, its officers, employees, servants or agents may suffer as a result of the non-fulfillment by the City of the obligation.

- (g) No amendment to this Agreement shall be valid or binding unless set out in writing and executed by the parties hereto. The Contract Manager shall have the authority to amend this Agreement on behalf of the City, save and except for any material amendments (including but not limited to the objects of the Corporation, financial accountability, and any matter contained in the Corporation's corporate by-laws) shall require approval by City Council.
- (h) If the City is required to give any approval or consent, make any decision or take any action, the Contract Manager shall be the person to deliver the approval, consent, or decision, or take the action on behalf of the City, unless expressly provided otherwise in this Agreement.
- (i) Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not be used as an aid in the interpretation of this Agreement.
- (j) If any of the provisions of this Agreement shall be illegal or invalid, such illegality or invalidity shall not render the whole agreement illegal or invalid, but this Agreement shall be construed as if it did not contain the illegal or invalid provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.
- (k) Nothing in this Agreement shall constitute Market Corporation a local board of the City, or constitute the City and Market Corporation general partners or joint venturers, or constitute either the City or Market Corporation the agent of the other, or be deemed to authorize either the City or Market Corporation to contract for or incur any obligation on behalf of the other.

**[signature page follows]**

IN WITNESS whereof the City and Market Corporation have duly signed this Agreement.

APPROVED  
AS TO FORM  
*[Signature]*  
LEGAL SERVICES

CITY OF HAMILTON

Per: *[Signature]*  
Fred Eisenberger, Mayor

Per: *[Signature]*  
Rose Gaterini, City Clerk  
Acting

HAMILTON FARMERS' MARKET CORPORATION

Per: *[Signature]*  
Marisa Di Censo, President

Per: *[Signature]*  
Eric Miller, Secretary

I/We have authority to bind the corporation.

OFFICE OF THE CLERK  
APPROVED BY COUNCIL  
DATE December 9, 2015  
AUTHORITY GT 15-025 Pt 11  
INTL [Signature] YEAR/FILE 2015-11222

HFMC Board Financials**Farmer's Market Fiscal Operations as per KPMG Audited Financial Statements for  
2016-2019 (2020 Forecast only)**

	2016	2017	2018	2019	2020 Forecast (Without Rent Reduction) <sup>1</sup>	2020 Forecast (With 3- Month Rent Reduction) <sup>1</sup>
<b>Revenue</b>						
Merchandise Sales	5,538	7,292	3,654	3,512	1,250	1,250
Rental Income <sup>2</sup>	472,197	512,830	530,453	519,225	469,566	378,618
Other Revenues	28,184	8,093	44,514	40,542	43,000	43,000
Sponsorship <sup>3</sup>	-	125,000	125,000	125,000	125,000	125,000
Levy funded deficit	107,510	109,450	111,000	112,800	112,800	112,800
<b>Total Revenue</b>	<b>613,429</b>	<b>762,665</b>	<b>814,621</b>	<b>801,079</b>	<b>751,616</b>	<b>660,668</b>
<b>Expenses</b>						
Employee Related Costs	338,422	279,127	310,275	328,804	318,007	318,007
Building and Grounds	157,294	257,210	237,495	306,187	289,795	289,795
Contractual	182,747	104,181	133,738	115,402	87,500	87,500
Materials & Supplies	77,042	40,458	78,683	92,553	30,250	30,250
Financial	9,343	10,096	10,761	16,322	15,347	15,347
Consulting	-	-	4,250	-	-	-
<b>Total Expense</b>	<b>764,848</b>	<b>691,072</b>	<b>775,202</b>	<b>859,268</b>	<b>740,899</b>	<b>740,899</b>
<b>Operating Profit (Loss)</b>	<b>(151,419)</b>	<b>71,593</b>	<b>39,419</b>	<b>(58,189)</b>	<b>10,717</b>	<b>(80,231)</b>
<b>Operating Profit (Loss) Less Sponsorship</b>	<b>(151,419)</b>	<b>(53,407)</b>	<b>(85,581)</b>	<b>(183,189)</b>	<b>(114,283)</b>	<b>(205,231)</b>
<b>Operating Profit (Loss) Less Sponsorship &amp; Levy Funded Deficit</b>	<b>(258,929)</b>	<b>(162,857)</b>	<b>(196,581)</b>	<b>(295,989)</b>	<b>(227,083)</b>	<b>(318,031)</b>
<b>Reserve Fund (104006)<sup>4</sup></b>	-	-	75,687	120,717	72,365	72,365
<b>COVID Expenses<sup>5</sup></b>					124,416	124,416

**Notes:**

<sup>1</sup> Due to COVID pandemic the market has experienced significantly lower visitor volumes and has had to operate with customer count capacity limitations within the market. In addition several vendors have left the market due to COVID and it there is potential that further vendors may leave the market going forward. If those vendors cannot be replaced that will place further fiscal pressures on the market operations due to vacant stalls. There is also potential risk for rent defaults that would further add pressures.

<sup>2</sup> The market has overall increased rent rate by 2% in the past 3 years.

<sup>3</sup> The current sponsorship agreement expires in March 2022.

<sup>4</sup> The reserve fund was first established in 2018.

<sup>5</sup> Cleaning \$50,231, cleaning supplies \$1,000, and additional security and visitor count management \$73,185.

### Current Board Makeup and Term Details

- The board currently has 9 members made up of 4 vendors, 4 citizens, and one council member. To aid in operations, the HFMC also has the help of City staff, which include the Market Manager, Administration Clerk, Marketing Co-ordinator and cleaning staff support. All current City support staff are part time.
  
- Details:
  - Esther Pauls – Council Member (November 14, 2022 – initial term)
  - Eric Miller – Citizen Member & Board Chair (May 13, 2021- final 3<sup>rd</sup> term)
  - Shane Coleman – Vendor Member & Vice Board Chair (June 9, 2021 – final 3<sup>rd</sup> term)
  - Gordon Albin – Citizen Member & Board Treasurer (May 22, 2021 – initial term)
  - Wilfred Arndt – Citizen Member (December 14, 2020 - end of 2<sup>nd</sup> term)
  - Elly Bowen – Citizen Member (December 14, 2020 – end of 2<sup>nd</sup> term)
  - Charlie Chiarelli – Vendor Member (June 9, 2021 – final 3<sup>rd</sup> term)
  - Ron Jepson – Vendor Member (June 9, 2021- final 3<sup>rd</sup> term)
  - Anne Miller – Vendor Member (August 11, 2023 – initial term)