



## City of Hamilton

# SOLE VOTING MEMBER OF THE HAMILTON FARMERS' MARKET REVISED

**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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**9. DISCUSSION ITEMS**

- 9.1. Correspondence from Eric Miller, Chair of the Hamilton Farmers' Market Board of Directors with the Hamilton Farmers' Market Governance Review Report, prepared by 2WA Consulting, June 24, 2020 14
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**10. MOTIONS****11. NOTICES OF MOTION****12. GENERAL INFORMATION / OTHER BUSINESS****13. PRIVATE AND CONFIDENTIAL**

- 13.1. Fee Reductions for Hamilton Farmers' Market Vendors During COVID-19 Pandemic (FCS20077) (City Wide) (Deferred from the September 14, 2020 meeting of the Sole Voting Member)

Pursuant to Section 8.1, Sub-section (k) of the City's Procedural By-law 18-270, as amended, and Section 239(2), Sub-section (k) of the *Ontario Municipal Act*, 2001, as amended, as the subject matter pertains to a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

**14. ADJOURNMENT**



**City of Hamilton  
SOLE VOTING MEMBER  
OF THE HAMILTON FARMERS' MARKET  
ANNUAL GENERAL MEETING  
MINUTES 20-001**

11:30 a.m.

September 14, 2020

Due to COVID-19, this meeting was held virtually.

**Present:** Mayor F. Eisenberger, Deputy Mayor B. Johnson (Chair)  
Councillors M. Wilson, J. Farr, N. Nann, S. Merulla, T. Jackson,  
E. Pauls, J.P. Danko, B. Clark, M. Pearson, L. Ferguson,  
A. VanderBeek, J. Partridge

**Absent:** Councillors T. Whitehead, C. Collins – Other City Business

**THE FOLLOWING ITEMS WERE REFERRED TO COUNCIL FOR CONSIDERATION:**

- 1. Financial Statements of the Hamilton Farmers' Market Corporation, year ended December 31, 2019 (Item 5.1)**

**(Eisenberger/Pearson)**

That the Financial Statements of the Hamilton Farmers' Market Corporation, year ended December 31, 2019, be received.

**Result: Motion CARRIED by a vote of 14 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson
Yes	-	Ward 2 Councillor Jason Farr
Yes	-	Ward 3 Councillor Nrinder Nann
Yes	-	Ward 4 Councillor Sam Merulla
Absent	-	Ward 5 Councillor Chad Collins
Yes	-	Ward 6 Councillor Tom Jackson
Yes	-	Ward 7 Councillor Esther Pauls
Yes	-	Ward 8 Councillor J. P. Danko
Yes	-	Ward 9 Councillor Brad Clark
Yes	-	Ward 10 Councillor Maria Pearson
Yes	-	Ward 11 Councillor Brenda Johnson, Deputy Mayor

Yes	-	Ward 12	Councillor Lloyd Ferguson
Yes	-	Ward 13	Councillor Arlene VanderBeek
Absent	-	Ward 14	Councillor Terry Whitehead
Yes	-	Ward 15	Councillor Judi Partridge

**2. Resolutions of the Sole Voting Member of the Hamilton Farmers' Market  
(Item 7.1)**

**(Danko/Merulla)**

WHEREAS, the Corporation is a corporation without share capital to which the *Corporations Act*, R.S.O. 1990, c.38 (the "Act") applies;

WHEREAS, by the Corporation's Letters Patent, the City of Hamilton is the sole voting member of the Corporation ("Sole Voting Member");

WHEREAS, by section 5 of the Corporation's By-Law No.1, the Board of Directors shall consist of a minimum of seven (7) and a maximum of thirteen (13) or such other number of Directors as may be determined from time to time by the Sole Voting Member; and,

WHEREAS, by section 15 of the Corporation's By-Law No.1, the City of Hamilton, as the sole voting member, is authorized to or may require the Directors of the Corporation to appoint an auditor;

THEREFORE, BE IT RESOLVED:

(a) NOTICE

That the Sole Voting Member hereby waives its right to receive general or special notice of an annual meeting of the members of the Corporation.

(b) MINUTES OF PREVIOUS ANNUAL MEETING

That the minutes of the annual meeting held July 8, 2019 be approved.

(c) DIRECTORS

That the following persons are affirmed or appointed as Directors of the Corporation and shall hold office until the date specified below, unless further extended as permitted by the by-laws of the Corporation or until their respective successors are elected or appointed subject to the by-laws of the Corporation:

- (i) Councillor Esther Pauls, Council Member - November 14, 2022



- (ii) Eric Miller, Citizen Member & Board Chair - May 13, 2021
- (iii) Shane Coleman, Vendor Member & Vice Board Chair - June 9, 2021
- (iv) Gordon Albini, Citizen Member & Board Treasurer - May 22, 2021
- (v) Ron Jepson – Vendor Member - June 9, 2021
- (vi) Charlie , Vendor Member - June 9, 2021
- (vii) Anne Mille, Vendor Member - August 11, 2023
- (viii) Wilfred Arndt – Citizen Member - December 14, 2020
- (ix) Elly Bowen – Citizen Member - December 14, 2020
- (x) Seth Waterman – Citizen Member - May 22, 2021

#### EX OFFICIO MEMBERS

- (i) Bill Slowka – Market Manager
- (ii) Sue Bennison – Meridian Credit Union

#### (d) FINANCIAL STATEMENTS AND AUDITOR'S REPORT

That the financial statements of the Corporation for the fiscal year ended December 31, 2019 together with the auditor's report as prepared by KPMG LLP, be and the same are hereby received and approved.

#### (e) AUDIT APPOINTMENT

That the undersigned, being the Sole Voting Member, hereby authorizes the Directors of the Corporation to appoint an auditor of the Corporation to hold office until the next following annual meeting at such remuneration as may be fixed by the Directors and the Directors are hereby authorized to fix such remuneration.

#### **Result: Motion CARRIED by a vote of 13 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson
Yes	-	Ward 2 Councillor Jason Farr
Yes	-	Ward 3 Councillor Nrinder Nann
Yes	-	Ward 4 Councillor Sam Merulla
Absent	-	Ward 5 Councillor Chad Collins
Yes	-	Ward 6 Councillor Tom Jackson
Absent	-	Ward 7 Councillor Esther Pauls
Yes	-	Ward 8 Councillor J. P. Danko
Yes	-	Ward 9 Councillor Brad Clark
Yes	-	Ward 10 Councillor Maria Pearson
Yes	-	Ward 11 Councillor Brenda Johnson, Deputy Mayor
Yes	-	Ward 12 Councillor Lloyd Ferguson
Yes	-	Ward 13 Councillor Arlene VanderBeek

Absent - Ward 14 Councillor Terry Whitehead  
Yes - Ward 15 Councillor Judi Partridge

**FOR INFORMATION:**

**(a) APPROVAL OF AGENDA (Item 2)**

The Committee Clerk advised that there were no changes to the agenda.

**(Clark/Ferguson)**

That the agenda for the September 14, 2020 Sole Voting Member of the Hamilton Farmers' Market meeting be approved, as presented.

**Result: Motion CARRIED by a vote of 12 to 0, as follows:**

Yes - Mayor Fred Eisenberger  
Yes - Ward 1 Councillor Maureen Wilson  
Yes - Ward 2 Councillor Jason Farr  
Yes - Ward 3 Councillor Nrinder Nann  
Yes - Ward 4 Councillor Sam Merulla  
Absent - Ward 5 Councillor Chad Collins  
Yes - Ward 6 Councillor Tom Jackson  
Absent - Ward 7 Councillor Esther Pauls  
Yes - Ward 8 Councillor J. P. Danko  
Yes - Ward 9 Councillor Brad Clark  
Yes - Ward 10 Councillor Maria Pearson  
Yes - Ward 11 Councillor Brenda Johnson, Deputy Mayor  
Yes - Ward 12 Councillor Lloyd Ferguson  
Yes - Ward 13 Councillor Arlene VanderBeek  
Absent - Ward 14 Councillor Terry Whitehead  
Absent - Ward 15 Councillor Judi Partridge

**(b) DECLARATIONS OF INTEREST (Item 2)**

There were no declarations of interest.

**(c) APPROVAL OF MINUTES OF THE PREVIOUS MEETINGS (Item 4)**

**(i) September 18, 2019 (Item 3.1)**

**(Nann/Partridge)**

That the Minutes of the September 18, 2019 meeting of the Sole Voting Member of the Hamilton Farmers' Market be approved, as presented.

**Result: Motion CARRIED by a vote of 14 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson
Yes	-	Ward 2 Councillor Jason Farr
Yes	-	Ward 3 Councillor Nrinder Nann
Yes	-	Ward 4 Councillor Sam Merulla
Absent	-	Ward 5 Councillor Chad Collins
Yes	-	Ward 6 Councillor Tom Jackson
Yes	-	Ward 7 Councillor Esther Pauls
Yes	-	Ward 8 Councillor J. P. Danko
Yes	-	Ward 9 Councillor Brad Clark
Yes	-	Ward 10 Councillor Maria Pearson
Yes	-	Ward 11 Councillor Brenda Johnson, Deputy Mayor
Yes	-	Ward 12 Councillor Lloyd Ferguson
Yes	-	Ward 13 Councillor Arlene VanderBeek
Absent	-	Ward 14 Councillor Terry Whitehead
Yes	-	Ward 15 Councillor Judi Partridge

**(d) COMMUNICATIONS (Item 4)****(Ferguson/Jackson)**

That the Correspondence from Eric Miller, Chair, Hamilton Farmers' Market Board of Directors requesting that City Council Support the Hamilton Farmers' Market with an Equivalence of the Canadian Commercial Rent Assistance (CECRA) Program (Item 4.1), be received and referred to consideration of Item 10.1.

**Result: Motion CARRIED by a vote of 14 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson
Yes	-	Ward 2 Councillor Jason Farr
Yes	-	Ward 3 Councillor Nrinder Nann
Yes	-	Ward 4 Councillor Sam Merulla
Absent	-	Ward 5 Councillor Chad Collins
Yes	-	Ward 6 Councillor Tom Jackson
Yes	-	Ward 7 Councillor Esther Pauls
Yes	-	Ward 8 Councillor J. P. Danko
Yes	-	Ward 9 Councillor Brad Clark
Yes	-	Ward 10 Councillor Maria Pearson
Yes	-	Ward 11 Councillor Brenda Johnson, Deputy Mayor
Yes	-	Ward 12 Councillor Lloyd Ferguson
Yes	-	Ward 13 Councillor Arlene VanderBeek
Absent	-	Ward 14 Councillor Terry Whitehead
Yes	-	Ward 15 Councillor Judi Partridge

**(e) PRESENTATIONS (Item 6)****(i) Hamilton Farmers' Market Board Annual Presentation (Item 6.1)**

Eric Miller, Chair of the Hamilton Farmers' Market Board of Directors; and, Gordon Albini, Board Treasurer provided the presentation for Item 6.1.

**(Pauls/Farr)**

That the presentation, provided by Eric Miller, Chair of the Hamilton Farmers' Market Board of Directors; and, Gordon Albini, Board Treasurer, respecting the Hamilton Farmers' Market Board Annual Presentation, be received.

**Result: Motion CARRIED by a vote of 14 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson
Yes	-	Ward 2 Councillor Jason Farr
Yes	-	Ward 3 Councillor Nrinder Nann
Yes	-	Ward 4 Councillor Sam Merulla
Absent	-	Ward 5 Councillor Chad Collins
Yes	-	Ward 6 Councillor Tom Jackson
Yes	-	Ward 7 Councillor Esther Pauls
Yes	-	Ward 8 Councillor J. P. Danko
Yes	-	Ward 9 Councillor Brad Clark
Yes	-	Ward 10 Councillor Maria Pearson
Yes	-	Ward 11 Councillor Brenda Johnson, Deputy Mayor
Yes	-	Ward 12 Councillor Lloyd Ferguson
Yes	-	Ward 13 Councillor Arlene VanderBeek
Absent	-	Ward 14 Councillor Terry Whitehead
Yes	-	Ward 15 Councillor Judi Partridge

**(f) PRIVATE & CONFIDENTIAL (Item 10)****(Ferguson/Clark)**

That Committee move into Closed Session respecting Item 10.1, pursuant to Section 8.1, Sub-section (k) of the City's Procedural By-law 18-270, as amended, and Section 239(2), Sub-section (k) of the *Ontario Municipal Act*, 2001, as amended, as the subject matter pertains to a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

**Result: Motion CARRIED by a vote of 12 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson

Yes	-	Ward 2	Councillor Jason Farr
Yes	-	Ward 3	Councillor Nrinde Nann
Yes	-	Ward 4	Councillor Sam Merulla
Absent	-	Ward 5	Councillor Chad Collins
Yes	-	Ward 6	Councillor Tom Jackson
Absent	-	Ward 7	Councillor Esther Pauls
Yes	-	Ward 8	Councillor J. P. Danko
Yes	-	Ward 9	Councillor Brad Clark
Yes	-	Ward 10	Councillor Maria Pearson
Yes	-	Ward 11	Councillor Brenda Johnson, Deputy Mayor
Yes	-	Ward 12	Councillor Lloyd Ferguson
Yes	-	Ward 13	Councillor Arlene VanderBeek
Absent	-	Ward 14	Councillor Terry Whitehead
Absent	-	Ward 15	Councillor Judi Partridge

**(Pauls/Ferguson)**

That the Sole Voting Member of Hamilton Farmers' Market recess in order to convene the Special General Issues Committee meeting that was to begin at 1:00 p.m. today.

**CARRIED**

The Sole Voting Member of Hamilton Farmers' Market reconvened in Open Session.

**(Pauls/Pearson)**

That Committee move back into Closed Session respecting Item 10.1, pursuant to Section 8.1, Sub-section (k) of the City's Procedural By-law 18-270, as amended, and Section 239(2), Sub-section (k) of the *Ontario Municipal Act*, 2001, as amended, as the subject matter pertains to a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

**CARRIED**

**(i) Fee Reductions for Hamilton Farmers' Market Vendors During COVID-19 Pandemic (FCS20077) (City Wide) (Item 10.1)**

**(Ferguson/Pauls)**

- (a) That Report FCS20077, respecting the Fee Reductions for Hamilton Farmers' Market Vendors During COVID-19 Pandemic, be DEFERRED to a future Sole Voting Member Hamilton Farmers' Market Special Shareholder meeting, pending the receipt of additional information; and,
- (c) That Report FCS20077, respecting the Fee Reductions for Hamilton Farmers' Market Vendors During COVID-19 Pandemic, remain confidential.

**Result: Motion CARRIED by a vote of 12 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson
Yes	-	Ward 2 Councillor Jason Farr
Yes	-	Ward 3 Councillor Nrinder Nann
Yes	-	Ward 4 Councillor Sam Merulla
Absent	-	Ward 5 Councillor Chad Collins
Yes	-	Ward 6 Councillor Tom Jackson
Absent	-	Ward 7 Councillor Esther Pauls
Yes	-	Ward 8 Councillor J. P. Danko
Yes	-	Ward 9 Councillor Brad Clark
Yes	-	Ward 10 Councillor Maria Pearson
Yes	-	Ward 11 Councillor Brenda Johnson, Deputy Mayor
Yes	-	Ward 12 Councillor Lloyd Ferguson
Yes	-	Ward 13 Councillor Arlene VanderBeek
Absent	-	Ward 14 Councillor Terry Whitehead
Absent	-	Ward 15 Councillor Judi Partridge

**(g) ADJOURNMENT (Item 7)****(Ferguson/Pearson)**

That there being no further business, the Sole Voting Member of the Hamilton Farmers' Market be adjourned at 1:55 p.m.

**Result: Motion CARRIED by a vote of 12 to 0, as follows:**

Yes	-	Mayor Fred Eisenberger
Yes	-	Ward 1 Councillor Maureen Wilson
Yes	-	Ward 2 Councillor Jason Farr
Yes	-	Ward 3 Councillor Nrinder Nann
Yes	-	Ward 4 Councillor Sam Merulla
Absent	-	Ward 5 Councillor Chad Collins
Yes	-	Ward 6 Councillor Tom Jackson
Absent	-	Ward 7 Councillor Esther Pauls
Yes	-	Ward 8 Councillor J. P. Danko
Yes	-	Ward 9 Councillor Brad Clark
Yes	-	Ward 10 Councillor Maria Pearson
Yes	-	Ward 11 Councillor Brenda Johnson, Deputy Mayor
Yes	-	Ward 12 Councillor Lloyd Ferguson
Yes	-	Ward 13 Councillor Arlene VanderBeek
Absent	-	Ward 14 Councillor Terry Whitehead
Absent	-	Ward 15 Councillor Judi Partridge

Respectfully submitted,

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Deputy Mayor Brenda Johnson  
Chair, General Issues Committee

Stephanie Paparella  
Legislative Coordinator,  
Office of the City Clerk

## Request to Speak to Committee of Council

Submitted on Tuesday, November 17, 2020 - 2:36 pm

==Committee Requested==

**Committee:** Sole Voting Member of the Hamilton Farmers' Market

==Requestor Information==

**Name of Individual:** Jennifer Hompoth

**Name of Organization:** Friends of the Hamilton Farmers' Market

**Contact Number:**

**Email Address:**

**Mailing Address:**

**Reason(s) for delegation request:** Friends of the Hamilton Farmers' Market will be requesting a delegation to the Hamilton Farmers' Market Sole Voting Members' meeting on Monday Nov. 23<sup>rd</sup> in order to provide our citizens' organizations' perspective on the recently released consultant's report, as well as to present findings from a report conducted by the organization on small businesses in the Hamilton Farmers' Market.

**Will you be requesting funds from the City?** No

**Will you be submitting a formal presentation?** Yes



September 12, 2020

Dear Eric,

I am writing to inform you of my decision to resign as Citizen Director on the Board of The Hamilton Farmers Market, effective September 15th 2020.

When I joined in 2019, I was eager to serve my community using my professional skills and personal passion to make a positive impact on both customers and vendors.

Although there is much to be proud of during my tenure, including gaining trust and respect from many of my fellow directors, much of my efforts have been deterred by a very tangible adversarial culture on the board.

Simply put, what's stopping us from fully embracing forward looking leadership is an unwillingness to move on from historical issues.

Despite challenges, it has been a pleasure being a part of the Board. I'm hopeful the Board will work together to tackle the significant obstacles facing the retail industry as a result of COVID-19 with a singular focus on Market customers.

As the only Black Citizen Director and one of only two visible minorities, I strongly encouraged the city's selection committee to make a concerted effort to ensure my replacement, and Board membership as a whole, reflects the diversity of our community.

You have my very best regards,

A handwritten signature in black ink, appearing to read 'Seth Waterman', with a stylized flourish at the end.

Seth Waterman

September 16, 2020

To the Legislative Coordinator in the Office of the City Clerk:

Attached is the "Governance Review" report that was requested by Council on September 14, 2020.

The report was undertaken by a consulting firm under the direction of John Hertel, Director, Strategic Partnerships & Communications. John Hertel commissioned the report on his own volition; the Hamilton Farmers' Market did not ask for such a report and was not involved in selecting the consultant and did not receive or review a draft.

City staff arranged for the consultant to present their report to the Board at a special meeting on Monday September 28, 2020, starting at 5PM online. The report and agenda (with videoconference and alternative dial-in options) are posted online on the Market's public-access file share, available through the "minutes" link on the market's website: [hamiltonfarmersmarket.ca](http://hamiltonfarmersmarket.ca)

This upcoming meeting will be the first opportunity for the Board to raise questions and comments about the report's content with the consultant.

For now, the Hamilton Farmers' Market has no position on the consultant's findings and recommendations.

Sincerely,

Eric Miller  
Chair of the Board, Hamilton Farmers' Market

# HAMILTON FARMERS' **MARKET**

## **Governance Review**

### **Final Report**

June 24, 2020

**Michael H Howes & Anne Bermingham**  
**2WA Consulting, Inc.**  
**Hamilton, Ontario**

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## Executive Summary

This governance review of the Hamilton Farmers' Market (HFM) was initiated on the 5 year anniversary of the governance model refresh, initiated in 2014. The review looked at 4 areas and made 1 set of recommendations:

1. Review of HFM Governance Material
2. Understanding the Governance Model Efficacy
3. Evaluation of Customer Surveys
4. Research on Other Markets
5. Recommendations

This report makes the following recommendations:

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

## Introduction

This document is a summary of the Hamilton Farmers' Market (HFM) governance review conducted by 2WA Consulting Inc. The project was initiated because 5 years had passed since this governance model was introduced and that is an opportune time to identify what is working and what could be improved. The aim is to ensure that the HFM would continue to be well-led by its Board and management.

The report has 5 sections:

- 1. Review of HFM Governance Material** - This is a review of the existing governance materials (letters patent, bylaws, policy manuals, Board meeting minutes) that encompasses the HFM governance model to understand what is expected, in terms of how the organization is run. This will be contrasted with how the organization is actually operating, which is identified in the second section.
- 2. Understanding the Governance Model Efficacy** - This section is derived from a series of interviews of current and former Board members, which provides a view of how effective the governance model is, particularly the functioning of the Board of Directors.
- 3. Evaluation of Customer Surveys** - This section examines the documentation offered up by the markets that were interviewed (stallholder agreements, operating agreements, bylaws, etc.), as well as consultant reports that relate to strengthening markets, focused on Ottawa's ByWard Market.
- 4. Research on Other Markets** - Four other markets were examined through interviewing the market managers, to identify how they are organized, what they do to be successful and other lessons learned that relate to governance.
- 5. Recommendations** - The report contains recommendations on what should be done to strengthen the overall governance model of the HFM.

## 1. Review of Hamilton Farmers' Market Governance Model

Governance material for the HFM was reviewed (letters patent, bylaws, governance policies, organization structure, etc.) to understand how the model works. To summarize:

- The Market as an entity resides within a non-profit corporation; the City of Hamilton is the sole voting member of that Corporation
  - City Council selects all Board members; approves the annual budget; approves a subsidy; provides staff services (cleaning, etc.); maintains the building and infrastructure; and employs the General Manager / Market Manager
- There are to be between 7 and 13 Board members, all selected by City Council
  - There are currently 4 vendor representatives; 4 citizen representatives; 1 council member; 1 chairperson
- The Board is set up to be a policy board - the Board is to consider the issues and situation of the Market and define policies that management will then implement
- There is a committee structure
  - HFM Executive Agenda Setting Committee
  - Marketing Advisory Committee
  - Market Manager Performance Evaluation Committee
- The management of the Market is made up of a Market manager, who reports: to a Director who works in the City of Hamilton; and to the Board of Directors

### Summary

The governance documentation is comprehensive; all aspects of the governance model are identified and addressed. If anything, there is duplication or multiple references to the same thing. For instance, the letters patent, the operating agreement and the bylaws all cover off the mission / intent of the market's existence (objects); the operating agreement and the bylaws both cover off the fact that the City is the sole voting member of the Corporation; etc. The duplication is not problematic. If anything, it underscores that all of the governance documentation has been tightly integrated and all aspects of governance have been properly dealt with.

## 2. Understanding the Governance Model Efficacy

### Methodology

To gather input, we interviewed Board members, former Board members and the Market Manager. An interview guide was used that included questions on Vision & Mission; Governance and Strategic Plans. The aim of the interviews was to have a common starting point (the questions) but to provide latitude for interviewees to discuss any relevant topic to the Farmers' Market governance / Board of Directors. The full set of questions are listed in Appendix B.

There is also supporting documentation and references for points made during the interviews.

### Interviewees

All current Board members were interviewed:

- Gordon Albini – Citizen Director
- Wilf Arndt - Citizen Director & Chair
- Elly Bowen - Citizen Director & Secretary
- Charlie Chiarelli – Vendor Director
- Shane Coleman – Vendor Director
- Ron Jepson – Vendor Director
- Ann Miller – Vendor Director
- Eric Miller – Citizen Director & Treasurer
- Esther Pauls – City Councillor
- Seth Waterston – Citizen Director

Former Board member interviewed:

- Jason Farr – City Councillor

The Market Manager was interviewed:

- Bill Slowka

Each of the interviewees were given the same interview guide in advance and the guide was followed for the start of each interview. The conversation did not follow the interview guide; each person bypassed the questions, to provide me their perspective on what was wrong with the market. Therefore, the following report will outline the consensus items that interviewees shared.

### **Issue: The Board has an operational rather than a policy governance role**

The Board governance model had been designed and created to produce a Board that set policy and left implementation to management. In reality, the Board has become an operational board because it is bogged down with operational issues and decisions such as



the cleaning of the facility, the state of the elevator, the marketing efforts, the work of the manager and the marketing coordinator, etc. The result has been that the Board does not focus on its policy responsibilities, which has resulted in an ineffective Board.

Specifically, an analysis of Board meeting minutes indicates a very operational focus. Discussions revolve around such situations as:

- The state of the Market facility cleanliness
- The operational status and the maintenance of the elevator
- The performance of the Market Manager (in-camera agenda item)
- The street parking situation
- The declining revenue of vendors
- The use of contract buses to bring more customers to the market

These and similar themes are regularly brought up for discussion at the Board meetings, without any resolution of issues. No discernible progress on issue resolution is apparent, given the continual discussion of these matters.

The vendor representative interviews revealed that the vendors do not agree with being a policy Board:

- They believe that operational, day-to-day issues are what the Board agenda and meeting discussion should focus on
- They continually want to discuss issues in-camera, that usually deal with one or more of the staff
- Issues and situations relating to the renovation of the Market footprint are repeatedly raised and identified as historical injustices, with the vendors highlighting that they have been treated very badly. This is either an effort to gain a more sympathetic view of the issues they want to discuss, or a deliberate obfuscation that drags out meetings to the point that everyone becomes frustrated and the agenda cannot be completed

**Issue: The Board spends relatively little time setting policy or reviewing the policies in place, such as the current strategic plan.**

There have been attempts to educate all Board members on what it means to be on a policy board and what the role of a Board member is, starting with the creation of the current Board governance model in 2014, continuing through the creation of a strategic plan, and most recently as 2016 with discussion at the Board table about such issues as board director orientation, visioning and the idea of a retreat to consider the current strategic plan and determine future directions. In May 2018, revisions to the Board governance policies were adopted by the Board, which reinforce that the Board is to take a policy approach to overseeing the market. None of these measures seem to have moved the needle on the Board aligning with its mandate of being a policy board.

An analysis of Board meeting minutes reveals the topics that the Board spent time on. While in 2015 and 2016 there were topics raised about orientation, committee structure, Board governance models, etc, these types of 'policy' and 'governance' topics disappeared completely in 2017, 2018 and 2019. Main discussion topics are identified below, by year:

Year	Topics
2015	Parking concerns; board member orientation; committee structure and membership; strategic planning
2016	Parking concerns and Board proposals to re-add metered parking (6 plus meetings); York Blvd space design (5 plus meetings); redesign of Market kitchen
2017	Question of whether or not Board is governance or management was raised; on-street parking questions; elevator repairs; requests for all budgets of committees to come to the Board; concerns of separation of members into factions (vendors, citizens) appear; cleaning staff level of service quality; vendor contract template creation; upgrading of electrical service
2018	Upgrading the security system; installing a traffic counting system; parking; validating parking tickets; electrical usage data to vendors; directions to the Market manager on filling empty stalls; creation of a 'York Street Lay-by Parking Committee'; obtaining green bins for interim recycling efforts; Market operating hours; bussing; website development; conducting comparable rent analysis
2019	Security system updates; validating parking tickets; updates on the traffic counting system; website updates; social media marketing coordinator issues; York Street retrofit; vendor concerns about poor business; etc.

In April 2018, the Board package documents started to include a document titled 'Outstanding Business List', which was a compendium of operational tasks that were to be completed. The nature of the list is operational and not in keeping with the expected focus of a policy board. Management should be expected to report on progress of a broad array of activities, issues and tasks relating to the operations, but not to the degree and detail as illustrated by this list. The Board is clearly focused on holding the Market manager accountable to specific tasks, which is not appropriate for its role and proper functioning.

A further note here is on the repetition of topics that is apparent from a reading of the board meeting minutes over the years. Parking continually comes up as a problem, yet there is no concrete plan to change anything to do with the parking, either on York Street or in the parking garage. Any changes are to the account of the City Council and none are planned. This does not stop the Board from continually discussing the issue. Interviews with vendor representatives contained multiple references about parking, in which individual representatives forcefully pointed out that the lack of metered parking on York Street has a major negative impact on business for vendors.

The trend of becoming solely focused on operations is strongly supported by the vendor director interviews who want to run the market, like they run their businesses, rather than have the Market manager run the market, while they set policy.

### **Issue: The Board does not strictly operate as bylaws and policy dictate**

In-camera sessions during Board meetings is a standard and acceptable practice during meetings when sensitive topics are being discussed, usually matters dealing with legal issues or with personnel issues. They are typically rarely used for two reasons: one, such topics do not generally come up regularly; and two, the lack of transparency of in-camera discussions can create concerns among stakeholders.

The Farmers' Market Board has in-camera sessions at over 80% of their meetings, according to the minutes from 2015 to 2019, and the use of this tool has increased in 2018 and 2019. Looking specifically at 2019, this picture emerges:

- 10 of the 11 board meetings held included an in-camera session (January 2019 meeting was cancelled due to lack of quorum)
- Reasons stated for in-camera sessions (multiple reasons were stated for some meetings):
  - Vandalism (4 meetings)
  - Roles & responsibilities (4 meetings)
  - Managers' performance review (3 meetings)
  - No reason stated (2 meetings)

Vandalism is not a reason to be in-camera, nor is 'no reason stated'. Roles and responsibilities is a vague reason. This overuse of the in-camera component raises questions about whether it is being used for legitimate reasons or if it is being used to have conversations that the Board doesn't want made public but should be.

The bylaws set out clear timelines for meetings. They are to end at the 3-hour point, yet over 50% of the meetings go past 4 hours. Despite the long-running session, the meeting minutes frequently note that a number of agenda items are not discussed.

### **Issue: The Board vendor representatives are in a conflict of interest situation**

During the 2014 design period that led to the current Board governance model, it was recognized that vendor representatives on the Board could be in a conflict situation for certain matters that the Board would have to deal with, sooner or later. Therefore a by-law was written in to deal with this eventuality:

*10.04 Conflict of Directors Who Are Stallholders of the Hamilton Farmers' Market - Without limiting anything in this Article 10, no Director who is a stallholder of the Hamilton Farmers' Market shall be permitted to participate in a discussion of*

*confidential information or vote involving another stallholder of the Hamilton Farmers' Market*

This bylaw is not being observed or enforced. The vendor representatives are discussing and voting on such issues as;

- Whether or not to take action against a delinquent vendor
- Vendors who don't follow the operating hours
- Vendors who have essentially abandoned their stall
- Vendors who are in arrears
- Vendors paying / not paying for electrical upgrades

**Issue: Established operating rules and policies / procedures are not followed, because the Board overrules the manager or because there isn't the political will to enforce them**

The growing trend of dealing with operational matters by the Board has led to a situation where the Market manager reports to the Board to get direction. This situation, in tandem with the existing vendor conflict of interest, has resulted in the operating rules not being followed, specifically those that deal with vendors:

- Vendors don't follow the guidelines, and rules are not disciplined by the Market Manager at the direction of the Board including:
  - In one instance, a vendor abandoned their stall and the Board blocked their removal from the Market as a vendor by the Board, arguing that other vendors have not been removed in the past and that a precedent had thus been set
  - Many vendors do not follow the operating hours without feeling any negative consequences
  - Video cameras installed to monitor the loading dock have illustrated the fact that certain vendors are not following the rules for dock usage
  - Fines levied for improper loading dock usage have not been paid by the vendor representative who was found in default of the rules

**Issue: The composition of the Board has resulted in a significant degree of intransigence**

What the vendor representatives want to discuss at Board meetings is different from what the citizen representatives want to talk about. The vendors are operational in their focus, while the citizens have a more strategic view of the Boards mandate.

Director interviews revealed that:

- The vendors have adopted a partisan approach to Board activities, with the focus on protecting vendors and focusing on operational issues.

- An 'us versus them' mentality among Board members that pitted the vendors against the citizen members, resulting in deadlocked votes. This adversarial mentality appears to stem from two broad issues. One, the vendors do not believe that citizen representatives who do not shop at the Market regularly, do not know enough about it to have a perspective or opinion that matters. Two, the vendors see the citizens as being political appointees of City Council, and therefore having a political agenda that is detrimental to the market.

There is no evidence to back-up either of these claims.

- The majority of the current vendor representatives have vested interests in maintaining the status quo. They are long-term vendors who either use the Market base to sell products outside the market, or who provide produce to other vendors, who resell it. While this is not true of all vendor representatives, it is for the more vocal and domineering ones. This approach is a major factor in the operational focus of the Board and of the lack of progress of the Board in moving the Market forward successfully.
- There has been significant churn among the citizen representatives with a number of recent and impending resignations. These representatives have been and are subject to denigrating commentary from the vendor representatives and do not see that the current operation of the Board to be effective. To illustrate, the resignation letter from Marisa Di Censo (former citizen representative on the Board) highlighted two major issues for her resignation: one was the fact that the vendor representatives essentially represented themselves, not the broader vendor community; the other was that due to inconsistent operating hours, she could no longer shop at the Market and therefore did not feel she could represent the 'Market consumer' segment. The allegations of self-centred behaviour from the vendor representatives have been echoed by other interviewees.

### **Issue: The Board does not pursue its strategic plan**

The Board's 2016 - 2020 strategic plan is not discussed regularly in any detail. The strategies are:

1. Label and Map the Market - the goal is to make it easier to navigate the market
2. Improve Market Convenience - the goal is to have more people shop at the market, by making it more convenient in terms of hours of operation, etc.
3. Revamp York Street - the goal is to make the streetscape attractive & accessible, to attract more shoppers
4. Market, Market, Market - the goal is to ensure more people are aware of what the Market offers

As noted, discussions are operational at the Board table. Moreover, the enablers for success identified in the strategic plan's March 4, 2018 update are:

1. A clear articulation of the expectations and accountabilities of each vendor. The Board needs to have a clear articulation of what each vendor must be adhering to in order to be a vendor in good standing (and) a clear process by which these standards are measured and non-compliance situations handled.
2. A strong Market manager who has a clear job description and yearly goals which relate to the strategic plan and to the day-to-day Market operations.
3. A fiscal plan that enables the Market to generate the revenue it needs to achieve this vision. This includes a clearly priced capital improvement plan and a well thought out budget designed to move the Market ever closer to the vision now articulated.
4. A Board of Directors that is adhering to the policies and otherwise working to model the characteristics of a high-performance board. This includes a comprehensive and supportive process for evaluating the performance of the Market Manager and the regular review of the status of the strategic plan.

This fourth enabler is not being rigorously enforced and met.

**Issue: The leadership of the Board is weak, with the chair attempting to appease vendor representatives, by reopening decisions, allowing certain issues on the agenda, etc.**

Relating to the operational nature of the Board and the tortuously long Board meeting, the chair has acted to try and appease (admission by the Board chair) the vendor representatives, by ignoring the time limits, allowing an exclusively operational focus during discussions and to all the use of in-camera sessions when they are not required. The result is that discussions do not cover off the strategic and policy requirements of the organization; operational issues dominate the discussions; decisions are overturned and revisited at subsequent Board meetings; etc.

**Issue: The Vendors believe the City is responsible for their individual and collective success**

Through the interview process and in reviewing Board meeting minutes, a clear theme emerged regarding the perceived role of the City in the success of the market. The historical injustices that were mentioned and tied to the renovation of the Market space in 2012 / 2013 have been laid at the feet of the City Council. Resolution of those perceived injustices seems to drive the vendor representatives behaviour. They speak about how they should not be run as a city department, but as a business; they talk about the citizen representatives being agents of Council; they repeatedly raise the changes made to the Market and the impact those changes had on their business; they want the City to undo many of the changes made, because they are convinced that such changes as the loss of the York Street on-street parking is a key driver of the market's economic demise; etc.

What has happened in the past is not relevant to the proper operations of this policy governance Board and the continued focus on past injustices erodes the working ability and working relationships of Board members.

## Summary

- A. The Board is not functioning as designed, and it isn't effectively leading the market
  - i. The focus on operational issues means that the strategic issues relating to changing the Market to be more successful, are ignored
  - ii. The overuse of in-camera sessions eliminates transparent Board operations
  - iii. The frustration level among board members suggests more churn and increasing dysfunctionality
  
- B. There is a conflict of interest for the vendors to be on the Board
  - i. They are making decisions about other vendors, in violation of bylaw 10.4
  - ii. They appear to be acting in their own interest, rather than the broad vendor group
  
- C. The vendor representatives and the citizen representatives see each other as the main reason that the Board is dysfunctional
  - i. Given voting patterns (one citizen member votes with the vendors) many votes are deadlocked, causing inaction and frustration
  - ii. There is little apparent trust between the vendor and citizen directors
  
- D. The vendors appear to be deliberately working against the spirit of the Board's design
  - i. They continually raise historical grievances
  - ii. They reopen decisions made at previous meetings
  - iii. They verbally abuse the Board chair
  - iv. Individual vendor representatives have been accused of bullying
  - v. They demean the citizen representatives
  - vi. There has been churn among citizen representatives, due to the lack of progress by the Board and the Market
    - 1) Board meetings go on much longer than the appointed ending time and items are rehashed at multiple meetings
  
- E. By not pursuing the strategic Plan the Board is not providing forward leadership
  - i. The Market is not particularly successful and the vendors are not all doing well
  - ii. There were a number of identified benefits (outlined in the June 12, 2014 presentation to Council to form the current governance model for the HFM) that should have been realized through the Board's pursuit of strategic objectives, that have not yet materialized.

- F. The Market Manager is not able to properly do his job, due to the excessive operational direction coming from the Board
- i. Decisions he should be making, are being made by the Board
    - 1) Security system decisions
    - 2) Parking validation
    - 3) Elevator repairs
    - 4) Electrical upgrades
    - 5) Direction to staff
- G. Vendor representatives do not see the need to be responsive to changing consumer tastes and demand, leading to a Market that is increasingly irrelevant in a vibrant, dynamic downtown environment
- i. Vendor representatives reference all the upheavals and changes that have happened to the market, going back to 2012's renovation and the need to move the Market during that period
  - ii. Their perspectives are that the City needs to make them successful, by doing what they want done, which is bring in a larger volume of customers

### 3. Evaluation of Customer Surveys

A customer survey was conducted by the Farmers' Market in 2018 and 2019 aimed at gathering feedback and input about the operations of the Market from the consumers' perspective. One of the qualitative questions asked probed for suggested changes and improvements to the operations of the market. There were 701 comments made and they break down this way:

- 31% of respondents wanted changes to the hours of operation, including:
  - Consistent hours of operation, which includes having all vendors open for the published hours
  - Longer hours of operation, particularly on Sundays

The general thrust of the comments is that hours needed to be consistent and longer so that people could shop at the market. Specific comments include:

- "I have to phone ahead to find out if certain stalls are open, because it is impossible to predict which ones will and which ones won't"
- "I work Monday to Friday and if I can't get there Saturday, I am out of luck"
- "It's frustrating to go to the Market at 5:00pm and find that many of the shops are already closed, yet the Market closes at 6:00pm"
- "It's confusing that the Market is open Tuesday, but not Wednesday, yet it is open Thursday, Friday, Saturday. Should be open Thursday to Sunday."



- 19.7% of respondents wanted changes to the content of the market, including:
  - More vendors overall
  - More variety of offerings, including organic food, meat and cheese, nuts, jewellery, crafts, etc
  - More local farmers / fewer vendors offering Ontario Food Terminal produce

The general thrust of the comments deal with the need for more local farmers, greater variety of food, including international and organic offerings. Also, people asked for artisanal goods, clothing, jewellery, etc. Specific comments include:

- “There are not enough farmers, very little local produce and is incredibly expensive compared to other farmers’ markets...”
  - “Don’t sell stuff that can be bought at a supermarket”
  - “How about a smoothie place, with all local fruits and veggies from the market?”
  - “I would like to see more heritage or specialty produce instead of the same things we see at the supermarket”
  - “We need a bulk food supplier”
  - “More opportunities for farm vendors, local handmade products (i.e., like the handmade soap seller in the Market recently) not people selling leftover fruit / produce from food distribution centres in Toronto ...”
  - “More local farm produce and products, especially organic meat ... more local products like soaps (e.g., Weir’s Lane)”
- 14.6% of respondents wanted no change / indicated ‘nothing’ when asked for suggestions about changes to improve the market

The takeaway from the comments is that change is being requested by those that shop at the market. Yet, the Board is not spending time discussing improvements, rather spending its meeting time either discussing ways to make the current set-up and composition of the Market work through bussing, people counters, etc., or focussing on manager and staff performance, historical injustices and the sensitive topics that are discussed in the in-camera meeting components.

The Board needs to refocus on one of its key roles, which is implementing the strategic plan, which has specific strategies around changing the market’s operation to be more attractive to shoppers.

#### 4. Research on Other Markets

To properly conduct this review, we needed to include an examination of how other markets organize themselves, to see if there are similar situations and common solutions that this Market needs to consider implementation.

To that end, we looked in detail at six markets: 4 in Ontario, 1 in Nova Scotia and 1 in Michigan:

- ByWard Market in Ottawa
- St. Lawrence Market in Toronto
- Covent Garden Market in London
- Halifax Seaport Farmers' Market in Halifax
- Guelph Market
- Eastern Market, Detroit, Michigan

### **ByWard Market (Ottawa)**

*Mathieu Blanchard, Market Manager*

#### Description

The ByWard Market is a retail and entertainment district in downtown Ottawa, Ontario, Canada. It is located east of the government and business district. The Market district includes the Market buildings and open-air Market along George, York, ByWard, and William street.

The Market itself is regulated by a City of Ottawa *municipal services corporation* named Marchés d'Ottawa Markets, which also operates the smaller west-end Parkdale Market. The corporation is run by a nine-member board of directors. The Market building is open year-round, and open-air stalls offering fresh produce and flowers are operated in the warmer months.

Vendors operate 363 days per year (closed on Christmas Day and New Year's Day). Typically, agri-food vendors are open May to November, 7:00am and remain open until 5:30pm. Art and craft vendors usually operate May to October and start at 9:00am sometimes until 8:00 or 9:00pm.

#### Governance model

The Market is run by a municipal services corporation which is wholly owned by the City of Ottawa. It is run at arm's length with an emphasis on fostering entrepreneurial spirits. A service level agreement exists between the City and the Market corporation that outlines the corporation's deliverables in-line with City Council expectations. There is a Board of volunteers, appointed by the City Council, that oversees the Market corporation management.

The infrastructure is maintained by a property management company that is paid by the Market corporation. The City provides a subsidy in the form of free rent for the infrastructure, and revenues generated are the subsidy.

#### Vendor participation / vendor committee

Vendor representatives sit on the Board, along with citizen representatives.

### Role of management

The Market corporation is run by a management team, led by a Market manager who gathers input from vendors, makes changes, etc. The Market manager reports to the Board and to Council.

### Overall success of the market's operation and future

The ByWard Market is struggling to a degree and is in decline as more farmers are retiring and few are choosing to sell in the market, according to the Market manager. However, an alternate perspective, gathered through a review of newspaper articles from the Ottawa media, indicates that farmers do not feel welcome at the Market due to the numbers of produce re-sellers; the framers created their own market called the Ottawa Farmers' Market in Lansdowne Park along with four other locations.

Other issues the Market has to deal within include:

- Aging infrastructure
- Limited parking
- Competition from big box stores
- The City of Ottawa imposes changes that have negative impacts on the Market and its vendors (e.g., moving the Market / moving vendors locations)

### Comments

The ByWard Market is seen to be generally working well but its focus on local food sold by local farmers is increasingly difficult to deliver; Hamilton Farmers' Market is in a similar situation although, in Hamilton, it is not clear of the reasons for few farmers as vendors. The ByWard Market manager did not have any complaints about the governance model or any of the functioning of the Market that relates to governance.

## **St. Lawrence Market (Toronto)**

*Daniel Picheca, Market Manager & Samantha Wiles, Marketing Coordinator*

### Description

Since 1803, the St. Lawrence Market has been the community's beating heart and culinary focal point of the city of Toronto. It's the living symbol and anchor of the neighbourhood and for the families who live here. It's a place to connect, to share stories and of course to taste and to discover great food. It has 120 vendors who collectively sell fresh foods, ready-made foods, specialty foods, artisanal goods, antiques, clothing, etc.

### Governance model

St. Lawrence Market is wholly owned by the City of Toronto and is run by the Real Estate Services Division, in an arm's length manner. The City owns and maintains the physical asset(s). The manager manages the tenants (vendors).

Daniel Picheca and Samantha Wiles are City of Toronto employees, in the Real Estate division.

There is no Board; the Market manager reports directly to the City. There is an advisory committee of 13 people:

- 4 tenant / vendor representatives
- 1 City representative (member of Council)
- 2 neighbourhood representatives
- 6 public representatives, who have one or another demonstrated skill / experience in such areas as marketing, tourism & hospitality, event management, facilities management, environmental management, etc.

This committee advocates on behalf of the collective tenant group and advocates for the neighbourhood precinct within which the Market operates. The Committee will provide recommendations for specific causes and policies to the City's Real Estate Services Division on the mandate, strategic direction, growth, planning, budgeting, and operations of the Market Precinct.

This committee is not particularly effective due to poor attendance which suggests it is not relevant. Market management is in the midst of setting up a merchant committee that will be more narrowly focused on the Market itself. It is advisory in nature.

#### Vendor participation

The tenants / vendors provide input only, through the advisory committee

#### Role of management

The decision-making authority lies with the Market manager, including:

- Lease renewal
- Products that vendors can provide (the mix of products is carefully monitored by the manager / staff to ensure the Market is relevant)
- How vendors 'use' their stall is laid out in their lease and the manager sets that out
- As growth occurs and tastes change, the manager makes changes to the vendor and therefore the product offering mix
- Determine individual vendor monthly rent by using a base and then an additional amount depending on the monthly sales (vendors report their monthly sales)
- Operating hours (note: the hours haven't changed in 20 years and so, shoppers are used to them. Changes to hours will be piloted in 2020, following input gathered from shoppers, vendors, etc.)
- Tenant alignment with the operation hours

### Overall success of the market's operation and future

Interestingly, this Market is run by a City of Toronto department and is thriving. This fact highlights the fact that the issue with Hamilton's Farmers' Market is about how it is run, not by the entity that runs it.

### Comments

This model demonstrates that the nature of the organizational structure and ownership is not the key success factor for any market. The key success factor is the work done by management to ensure that the Market is responding to changing consumers tastes

## **Covent Garden Market (London)**

*Bob Usher, Market Manager*

### Description

Established in 1845, it is a 7 day a week in-door Market located right in downtown London, that offers an abundance of food, services, a local farmers' market twice weekly and an array of cultural festivals and events. During the growing season, an outdoor Market component is added at the same location.

It sells ready-made food, fresh food, art objects, services, theatre performances, etc. There are 47 permanent vendors; 60 part-time (twice a week) vendors; and 100 small artisans, community partners, business people, etc to are temporary vendors. It is open from 8am to 6pm on Saturdays; 11am to 4pm on Sundays; and Monday to Friday from 8am to 7pm

### Governance model

The City owns and runs the property / the infrastructure; they are the guarantors of everything. The Market is set-up as a not-for-profit corporation. The Council appoints a board of 9, two of which are Councillors. The Board elects the Chair. The Market manager reports to Council and to the Board. There used to be vendor representatives on the Board. A decision was made to not have them on the Board; no information stated as to why, but the Market manager inferred that they did not bring value to the Board proceedings. Vendors do not come to Board meetings, unless they are making presentations.

### Vendor participation

Vendor perspectives are gathered by the bi-annual meetings between the Market manager and each vendor, in an informal manner. Further, the manager talks regularly with the vendors during his daily Market walk-about. Vendors can send questions to the Board at any time; they are encouraged to reach out to Board members; it rarely happens. Most vendors are long-term tenants.

### Role of management

The Market manager has been in place for the past 18 years. His background is with the mall industry - having previously worked for Cadillac Fairview - and he has instituted a model that closely aligns with that of mall management. Decisions and responsibilities include:

- Meets with every vendor every 6 months to discuss what is working what doesn't and how things might be improved for the vendor
- Receives and reviews each vendor's monthly revenue numbers, to ensure that the vendor can be successful and also to calculate the monthly stall rental fee
- Leads the Board in that he has all the experience and the Board members do not; this is an amicable 'leading'
- An external accounting firm audits 4 or 5 vendors per year re: accuracy of sales figures (each vendor's sales figures are sent in by the 10th of the following month and is analyzed by the Market manager and his finance person)
- The Market manager changes out vendors as data dictates. Where customer tastes change, based on vendor sales numbers, he suggests vendors leave and he recruits others that seem to align with the customers tastes.

#### Overall success of the market's operation and future

The Market is very busy and very successful. Sales have dramatically improved since the current Market manager took over. By way of illustration, there is a \$4 million reserve fund. The Market Manager emphasized that the Market positions itself as not being responsible for vendor success. The vendors have to make changes to be responsive to the changes in customer tastes and preferences that change over time. Given that only one or two vendors change per year, the current situation appears to work well for the market, the vendors and therefore, for shoppers.

### **Halifax Seaport Market**

*Rebecca MacDonald, Marketing Coordinator*

#### Description

In 1848 the City of Halifax was incorporated and the original City Charter conveyed the Country Market property to the city "for the public and common benefit and use of the City of Halifax according to the true interest and meaning of the original grant." The Market has operated in several locations across the City since its inception in 1750, but moved to the Halifax Seaport in 2010 where it is now known as the Halifax Seaport Farmers' Market. There are between 150 and 250 vendors. It operates 7 days a week from May to November; 6 days a week from December to April. The mandate is to have locally produced products, which means produced in Nova Scotia.

#### Governance model

The Market was taken over by the Halifax Port Authority in 2012, and is currently the responsibility of the Real Estate Department of the authority; it is part of the Real Estate department. The manager of Real Estate runs the market; there was an Executive Director who left voluntarily in 2018 and the role was then eliminated, during a governance review and subsequent reorganization. Part of that reorganization was the creation and application of administrative processes (e.g., vendor payments, rules, policies, procedures, vendor guidelines) that regulated vendor behaviour.

There is not a Board in place; it was removed in 2012 as part of the reorganization  
The Port Authority provides the space; the vendors are responsible for their success

#### Vendor participation

There is a Market Advisory Committee, consisting of 10 vendors, that meets every quarter with management to provide input.

#### Role of management

The Real Estate manager runs the day-to-day operations, which consists of keeping the facilities properly functioning and of managing the vendors' behaviours. Specific decision-making includes:

- Setting vendor categories and the number of vendors per category
- Selecting vendors and approving what they sell to ensure minimal duplication
- Changes to what vendors sell, has to be approved by management
- Addressing any problems vendors are having, that relate to infrastructure, other vendors, etc

#### Overall success of the market's operation and future

The winter season starts at the end of December and concludes at the end of March. It is a time of relatively slow business activity; weekdays are slow, but weekends are noticeably busy.

The summer season starts in late April / early May, as the week days get busier, due to increased local and tourist shoppers returning to the waterfront.

Generally speaking, there are fewer farmers, over time, as vendors. There are many more artisans (jewellery, artwork) and prepared food vendors, with a mix of ethnic food offerings.

### **Guelph Farmers' Market**

*Stacey Dunnigan, Manager of Culture & Tourism*

#### Description

The Guelph Farmers' Market is a Saturday morning-only Market that has operated continuously since 1827. Its focus is on local food emphasized by its website proclamation, "Buy Local - Buy Fresh", which is a growing trend. The Market occupies a single building and surrounding outdoor space, housing approximately 60 vendors in winter, with numbers swelling to over 120 vendors during the summer and early fall. Vendors at the Market offer a variety of products and services, including fresh produce, baked goods, crafts, personal care products, clothing, photography and a collection of works by local artists. The venue also plays host to a number of charitable events throughout the year.

Working from input gathered from citizens and shoppers the Market is to be a hub of the community, moving it beyond being strictly a food market.

### Governance model

The City directly operates the market, including vendor administration, facility maintenance and capital improvements. The Market is governed by a bylaw (30+ years old) that is in the process of being updated in 2020. The update will result in a clearly defined 'landlord and tenant' relationship between the City and the vendors. Specifically, the bylaw update will:

- Create a vendor association to replace the Executive Committee
- More formal liaising between city staff and the vendor association
- Clarify that the City is 100% responsible for the market's operation

There is a vendor selection panel that includes objective people from the university, local farmers, community members, etc., but not current vendors. This panel is responsible for reviewing incoming vendors, reviewing documentation, and taking a vote based on the criteria. Staff run the process, but the panel decides who becomes a vendor.

### Management

The Manager of Culture and Tourism runs the Market and reports to the General Manager of Culture, Tourism & Community Investment Department within the City of Guelph administration. There are four part-time roles that support her managing the market. Stacey makes all the decisions about who sells at the Market and who has to leave. There is an annual application period; there is a vendor handbook on rules and regulations, including the City's code of conduct, that is used to correct poor behaviour. There are regular conversations between the vendors and the manager about whether or not the Market is a good fit for individual vendors.

### Vendor Participation

An Executive Committee exists and consists of five vendors. It has no authority of how the Market is run; it provides input and raises issues.

### Overall Market Success

Formally and officially the vendors do not run the market, but informally they do. Management tries to enforce the rules, but there is a lot of pushback from long-term vendors who believe they hold sway over the market, and have and continue to call the mayor or a senior staff member to work around the manager. To overcome this situation, the manager worked with the mayor and council to get them to direct vendors back to staff, rather than having direct meetings with vendors. The Market only runs 5 days a week, but takes up a disproportionate amount of senior management time.

Other issues include:

- Vendors subletting their stalls and bringing in their own ATMs. In both cases, that vendor was put on notice.
- Resellers from outside Wellington County / Guelph who in affect are being subsidized by the very low Market fees, creating frustration and anger amongst downtown artisanal cheese makers.



- Note: there are resellers of fruit and vegetables who self-identify and that is deemed acceptable by vendors and the City. There is a recognition that given the short growing season, a complete focus on local food can cause problems and that the Market has to survive during the winter.
- Regular vendor pushback on the mission of showcasing the 'best of Wellington County & Guelph'; vendors do not always align with the mission so the City is taking a more top down approach to running the market. The message is that the City will provide a safe and clean space for vendors to utilize and it is up to the vendor to make money.
- There is a growing number of farmers moving into 'micro winter growing'.
- Certain vendors are part of the Community Shared Agriculture program, where they do not sell food but sign up shoppers who will receive food directly from farmers as part of the program.

## **Eastern Market**

*Dan Carmody, President*

### Description

Eastern Market is a historic commercial district in Detroit, Michigan. The district was designated a Michigan State Historic Site in 1974 and listed on the National Register of Historic Places in 1978; the district's boundary was increased in 2007. The Market is located on the City's central east side near St. Joseph Roman Catholic Church and the Lafayette Park neighbourhood. The Market was transferred from City management in 2006, and now operates through a public-private partnership with the Eastern Market Corporation. Eastern Market is the largest historic public Market district in the United States, and the Eastern Market farmer's distribution center is the largest open-air flowerbed Market in the United States and has more than 150 foods and specialty businesses. On Saturdays, about 45,000 people shop the City's historic Eastern Market.

The Market presently covers 43 acres (17 ha) and is the largest historic public Market district in the United States. Eastern Market is a selling point for a wide variety of produce, meat, spice and other products. It is particularly busy on Saturdays when farmers tend to bring in their poultry and livestock along with fresh produce for sale. In addition to food sales, there are commercial food businesses, shared access kitchens, community gardens, aid and grant programs that make up the full suite of services that the Market provides.

### Governance model

The Market is operated by the private sector though a public-private partnership with the Eastern Market Corporation. The Eastern Market Corporation has operated the property since 2006 and is overseen by a 21-person Board (4 officers, 16 members at large, 2 ex-officio staff), and a 25-person management team (including the president). It is a policy board.

#### Vendor participation / vendor committee

There are 7 vendor representatives on the Board of 21 members. There are no other vendor-specific roles of committees.

#### Role of management

Management reports up to the Board through the President. There are a typical set of management functions within the organization: administration, operations, grants, marketing, programs, development, events, financial services, etc.

#### Overall success of the market's operation and future

The current incarnation of the Market began in the mid 1980's when the current partnership took over the markets and the Market was privatized in 2006. Since then the Market has "renovated infrastructure, increased attendance and has become a catalyst for development in the [surrounding] neighbourhood."

"Local and internationally recognized art galleries, studios and makerspaces have recently established spaces nearby, including The Red Bull House of Art, OmniCorp Detroit, Inner State Gallery, Riopelle and Project. Independent eateries, shops and performance spaces such as Trinosophes, Antietam, and People's Records have arrived in storefront spaces along Gratiot Avenue, and light manufacturing and e-commerce retailers including 1xRun and Cyberoptix continue to operate out of upper floors."

They have also started building housing units.

It is a \$6 million dollar operation, investing approximately \$4 million per year (raised through fundraisers) into the facilities.

#### Comments

The Eastern Market is a much larger scale operation, compared to the Hamilton Farmers' Market. It was included here to provide a sense of what is possible. The Market has galvanized a broad cross section of the community and is really a development organization, rather than merely a market.

#### **Summary**

The governance model of the HFM is not particularly different from any of the six markets studied. There is variation in each of them (e.g., some are part of a City department, as the HFM used to be; some are operated within not-for-profit corporations, as the HFM is now), yet success or failure does not seem to be tied to the operating structure.

What seems to be common amongst the successful markets is:

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 decisions-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:
  - a. Food, both fresh and ready-made
  - b. Art instruction and sales
  - c. Theatre performance
  - d. Live entertainment
  - e. Antiques
  - f. Business services

The Hamilton Farmers' Market does not do an effective job in organizing itself to align with the seven points immediately above.

### **Market Studies**

This section discusses reports provided by other markets, that were conducted by a consulting firm - Project for Public Spaces - that was hired to advise the City of Ottawa with regards to the ByWard Market.

### **Reports from Projects for Public Spaces**

*New York-based consultancy hired by the City of Ottawa to study the ByWard Market*

#### **1. Strengthening the Future of the ByWard Market (May 2013)**

The parts of the report relating to governance said this:

*"New policies and regulations are needed to implement the greater vision (maintaining a local fresh food focus). A transparent governance and management structure with a strong mission can lead to a set of clear and concise regulations for vendors. In addition, a new set of policies will be needed to help attract fresh food vendors in addition to maintaining the historic look of the ByWard Market. To physically support the growth of the public Market and overall vision for the district, return the Market Building to City control for the purpose of transitioning to a non-profit organization or other governance structure that has a clear mandate for building fresh food uses."*

In thinking of these points, in relation to the Hamilton Farmers' Market, the following are areas in which it aligns

- Transparent governance and management structure
- Strong mission
- Clear set of vendor regulations
- Control by a non-profit organization

These are areas where the Hamilton Farmers' Market needs to improve:

- Attracting new fresh food vendors
- Strong mandate for fresh food uses

## 2. ByWard Market Governance, Design & Business Plan (May 2015)

This is a report related to the 2013 document. The governance elements of the report said this:

*In general, a governance entity for ByWard's public Market needs to have the following broad qualities and characteristics:*

- *Entrepreneurial and nimble in repositioning and operating the Market;*
- *Inclusive and collaborative, representative of key Market stakeholders and community leaders;*
- *Able to make decisions quickly and efficiently;*
- *Transparent in decision making while recognizing that not every decision is one that must involve the public;*
- *Able to balance business and community objectives;*
- *Self-sustaining financially, and able to use surpluses for Market projects and programs; and*
- *Apolitical and able to operate independently from City agencies*

The Hamilton Farmers' Market aligns in:

- Being inclusive and collaborative
- Transparent in decision making

The Hamilton Farmers; Market does not align in these areas:

- Entrepreneurial and nimble in positioning and operation the market
- Able to make decisions quickly and efficiently
- Self-sustaining financially
- Being apolitical → it is arms' length from the City, but the vendor representation on the Board makes it political, in that they have great sway

The report went on to speak to specific operational objectives and related tasks:

*To allow effective control over all aspects of the public market, the new management entity must:*

- *Establish a system for decision and policy making that includes representation of customers and stakeholders in the management process of the management entity;*

- *Solicit the input of the City, customers, business owners, farmers, vendors, BIA's and neighbourhood constituencies for the process of making policies;*
- *Include the perspective of a diversity of members from the community (age, gender, race, income level, employees, owners) to achieve broad input*
- *Establish good communications with Market constituencies so that decisions are well disseminated and;*
- *Establish a link between the Mayor, City Council, and the management entity through annual reporting and other means*

Areas for the Hamilton Farmers' Market to consider:

- Gaining greater input from the community, in particular the BIA's and neighbourhood constituencies

*To run the public Market efficiently and cost-effectively, the new management entity must:*

- *Immediately implement generally accepted accounting principles for all financial areas of operation*
- *Create an annual market-operating budget and provide monthly reports*
- *Establish the annual operating plan for the guiding focus of daily operations including enforcing rules, regulations and policy, as well as Market activities and events*
- *Bill tenants and collect rents with a strict non-payment policy*
- *Hire and train employees with a sense of urgency to accomplish specific tasks*
- *Establish challenging work goals for all staff*
- *Hold individuals accountable for their performance*

Areas for the HFM to consider:

- Holding people accountable for their actions, as vendors and as board members

*To run the public Market entrepreneurially, the new management entity must:*

- *Establish strategic partnerships with like-minded businesses*
- *Abandon bureaucratic processes in order to react quickly to changes in the retail environment*
- *Establish relationships with the local food community and food press and media*
- *Watch the bottom-line of all expense categories*
- *Use cost-benefit analysis of work*
- *Try new concepts quickly, embrace change as a positive force and*

- *Revisit all Market bylaws and update as required*

Areas for the Hamilton Farmers' Market to consider:

- Reacting quickly to changes in the retail environment
- Trying new concepts quickly and being proactive in making changes

*To grow the public market, the new management entity must:*

- *Evaluate the current business product mix*
- *Establish a targeted leasing plan*
- *Develop partnerships with local, small business lenders and entrepreneurial educators*
- *Prepare for close working relationships with new business owners*
- *Tap into existing local business training programs for entrepreneurial start-up support*
- *Develop measurements and goals for growth and document the progress*
- *Expand the vision of the public Market to add additional days and hours of operations for indoor and outdoor vendors*
- *Undertake a coordinated plan for marketing / promoting the ByWard market*

Areas for the Hamilton Farmers' Market to consider:

- Evaluate the current product mix
- Expanding the vision of the Market and moving to additional days and hours

## 5. Recommendations

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

The vendors are the life-blood of the Market and have a role to play in how the Market is run. While any conflict of interest that arises from their representatives being on the Board should be avoided, their perspectives need to be heard and considered by management and the Board. To that end, this recommendation sets up an advisory board that will focus on operational issues within the market. Specifically:

- The advisory committee would be comprised of 12 representatives selected from among the active vendors
- There should be representation from big and small; fresh food and ready-made; food and non-food; etc, to ensure that diverse points of view are shared
- The committee would meet 6 times a year
- The Market manager would chair this committee and a report on each meeting would go to the Board
- Advice / input from the advisory committee would flow through the Market manager up to the Board for consideration

The advisory committee should not replace important conversations between the Market manager and individual vendors. An informal relationship and interaction needs to be in place to create a parallel working relationship between the manager and the vendors. Rather, this committee will be a formal setting where vendors can table and discuss issues that are important to the vendor community and therefore to customers.

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

The current model realistically puts Vendor Directors in the position of being in a direct or indirect conflict of interest when discussing and voting on most Market directions. While policies are in place that speak to minimizing conflict of interest situations, the nature of the current Board composition makes it challenging to follow those policies and in most cases, they are not followed. Therefore, the composition of the Board needs to be changed to remove the potential for conflicts of interest. Specifically, the Board composition should be:

- 12 Board members
  - 1 vendor representative from a merchant / vendor committee (voting)
  - 6 citizen at large members (voting)
  - 4 citizen members who have experience in one or more areas such as marketing, retail, advertising, etc. (voting)
  - 1 Market manager who is the sole ex-officio member (non-voting)

This recommendation goes hand-in-hand with the second recommendation, immediately below.

### **C. Establish a customer service / customer focused advisory board to keep the Market in touch with consumer tastes**

The Market has not responded in a meaningful manner to the feedback provided by existing and prospective shoppers, regarding the hours of operation and the days of the week that the Market is open. To ensure that the vendor community, the Market Manager and the Board have a clear understanding of how the Market needs to adapt to current and changing consumer tastes, the following is recommended:

- Establish an advisory board comprised of a cross-section of people who shop at the Market and those that don't
  - Change the composition of the advisory board regularly to ensure that the input gathered is as broad as possible
  - Include a broad cross-section of stakeholders
    - Consumers / Market shoppers
    - BIA's
    - Neighbourhood associations
- Ask questions about current Market offerings, trends in the larger consumer environment, possible new offerings, etc
- Have the Market Manager lead this committee to ensure that the Market is operating with its ear to the ground
- Have the Board receive regular reports from the advisory board, including recommendations from the Market Manager for future actions

### **D. Make the Board of Directors solely accountable to City Council for the Market**

The Market needs to be accountable to the City Council, in its current configuration and governance structure. The current situation has a *de facto* role oversight role played by the Contract Manager. The result is that the Market Manager has dual reporting duties - one to the Contract Manager and the other to the Board. This is not tenable; matrix reporting relationships blur the accountability line and result in substandard performance. The Board of Directors should be accountable to City Council for the success or failure of the Hamilton Farmers' Market. Specifically:

- Rewrite the governance policies and bylaws to clearly define the line of accountability between the Board of Directors and Council.
- Further, clarify that the Market Manager is fully accountable to the Board of Directors
- Remove all City staff from the Board, through policy and bylaw revision, and have the Board report directly to Council



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

The Market does not meet the expectations of the people who currently shop there and / or the people who might shop there. Concerns identified in the customer survey (noted above) identify a large number of concerns including:

- Operating hours that do not reflect the shopping needs and habit of customers
- Vendors not open during the posted operating hours
- Lack of variety of offerings

To increase the number of customers to the market, there needs to be a predictable performance by the vendors. Posted hours that reflect what customers want and vendors open during the posted hours; these are the two issues that need immediate attention. To do so, the Board must exert its expectations on the vendor community. To that end, the recommendation is:

- Review of all agreements, policies and procedures that relate to vendors to be updated and rolled into a set of expectations / handbook that will be enforced objectively, such as:
  - Adherence to operating hours
  - Operating within their allotted stall footprint
  - Being current with financial obligations

Note: Many Ontario-based markets require their vendors to report monthly sales, to help the Market Manager and Board ensure that the Market offerings are relevant to customers and that the vendors can be successful. This is not currently recommended, but is a strong suggestion for consideration by the Board.

### **F. Revitalization of the Governance Principles**

There are a number of issues that relate to how the Board operates, beyond its *mandate, its composition and its role*. The leadership of the Board needs to be appropriately strong and the Board members have to be aligned with the Board's mandate and vision. Further, the strategic plan needs to be revisited and implemented. Broadly, the Board needs to return to its policy governance role and away from its current operational focus. This should be accomplished through governance training and orientation, creation of a strategic plan, creation of vendor and Market Manager expectations, etc.

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

There are many different types of markets in Canada and the US. Typically, they began as farmers' markets in the late 19th and early 20th century and evolved and developed over time. The Eastern Markets of Detroit (noted above) is a prime example of a very

different evolution, based on community needs (both geographic and socio-economic) and what current and future environmental pressures are and will be exerted upon the community and therefore the market. Hamilton Farmers' Market would benefit from a wide-ranging discussion that looks at any and all possibilities; currently the focus as denoted by the strategic plan is on maximizing the footprint and available resources. The future could be and will be more vibrant if the focus shifts to 'what is possible' rather than 'what is'.

## Appendix A: Hamilton Farmers' Market Documentation

Operating bylaws

Operating agreement and addendums

Board minutes

## Appendix B: Interview Questions

### Governance

- Does the board focus on operations, management or policy?
- How is time used during board meetings? How could time be used more effectively?
- Is the majority of the meeting time spent discussing and deciding key items that are best addressed by the board? Or is the majority of the time spent receiving information?
- Does the existing governance model provide the organization the direction and stewardship it requires? Are members clear as to what they should and should not be focusing upon – given your governance model?
- Does the governance structure focus on strong board representation and effectiveness (e.g., board evaluation, term limits, board development committee?)
- Is there an effective selection and / or regular performance appraisal process for the manager? Is there an effective board member selection and regular performance appraisal process?
- Is the committee structure assisting the board to perform its key roles?
- Is there a clear delineation between the board and management and do each have unique and separate roles and responsibilities?

### Vision & Mission

- Does the organization have a formalized vision that provides the appropriate direction?
- Is it a vision / picture of the future that is continually updated and pondered by the board – in partnership with the vendors? Staff? The city?
- Is the board using knowledge of the trends in the community (the Market community, the public) to make key decisions regarding the types of goals and targets that the organization is striving to achieve each year?
- Does the vision provide appropriate guidance for decision-making?
- Does the mission make it clear who you are, what business you are in and who you are serving? Is it a unique statement, one that no other organization has?

### Strategic Planning

- Is there a formalized planning process that draws from a wide spectrum of stakeholders (vendors, staff, City officials)?
- Does the plan incorporate 3 to 5 strategic directions, complete with measurable goals and a monitoring process?

## Appendix C: External Market Interviewees

- ByWard Market, Ottawa, Mathieu Blanchard, Market Manager
- St. Lawrence Market, Toronto, Daniel Picheca, Acting Market Manager & Samantha Wiles, Marketing Coordinator
- Covent Garden Market, Bob Usher, Market Manager
- Halifax Seaport Farmers' Market, Rebecca MacDoald, Marketing Coordinator
- Guelph Market, Stacey Dunnigan, Manager of Culture & Tourism
- Eastern Market, Detroit, Michigan, Dan Carmody, President

## Appendix D: Market Studies


Strengthening the Future of the ByWard Market (May, 2013)

ByWard Market Governance, Design & Business Plan (May 2015)





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

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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.

**SUBJECT: Hamilton Farmers' Market Governance Report and Recommendations (CM20010) (City Wide) – Page 8 of 9**

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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.

**SUBJECT: Hamilton Farmers' Market Governance Report and  
Recommendations (CM20010) (City Wide) – Page 9 of 9**

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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)