

NATURAL AREAS LAND ACQUISITION FUNDING AGREEMENT

THIS NATURAL AREAS LAND ACQUISITION FUNDING AGREEMENT (the "Agreement") is made this day of [insert month], 2015 ("Effective Date").

Between

THE CITY OF HAMILTON
("CITY")

And

NAME OF CONSERVATION ORGANIZATION
("Conservation Organization")

WHEREAS the protection, maintenance and enhancement of the quality and integrity of ecosystems is a shared responsibility between the City and the Conservation Organization;

AND WHEREAS the City, through Council Resolution X, has established the Natural Areas Acquisition Fund and the administration of this fund through the Natural Areas Acquisition Strategy (Council Resolution X). These have been established to assist the Conservation Organization in achieving the goals and policies set out in the Natural Areas Acquisition Strategy and Rural and Urban Official Plans that aim to protect, maintain and enhance the Natural Heritage System through Land Acquisition tools;

AND WHEREAS the parties acknowledge and agree that Land Acquisition is an important tool than can be used for the protection and enhancement of the Natural Heritage System;

AND WHEREAS the Conservation Organization is a non-profit corporate body without share capital under the laws of Ontario and is not a manufacturing business or other industrial or commercial enterprise with full power to fulfill its obligations under this Agreement;

AND WHEREAS pursuant to section 107 (1) of the Municipal Act, and despite section 106 of the Municipal Act, the City and the Conservation Organization, after making reasonable due diligence, agree that the City may make a grant for any purpose that it considers to be in the interests of the City, including the environmental well-being of the City, provided such purpose is consistent with its mandate to provide good government;

AND WHEREAS the City and the Conservation Organization after making reasonable due diligence, agree that the provision of NAAF funds for Land Acquisition to the Conservation Organization does not constitute a prohibited provision of assistance,

either directly or indirectly, to any manufacturing business or other industrial or commercial enterprise, contrary to section 106 of the Municipal Act and that the provision of NAAF funds to the Conservation Organization, and this Agreement, do not involve a municipal capital facility within the meaning of section 110 of the Municipal Act;

AND WHEREAS pursuant to section 9 of the Municipal Act a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act including the power to enter into Agreements;

AND WHEREAS on [insert date], Council endorsed by Council Resolution [insert reference] that the City enter into an Agreement with the Conservation Organization to fund Land Acquisition within the City;

NOW THEREFORE, for good consideration as provided for in this Agreement, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1: INTERPRETATION

1.1 Definitions

In this Agreement and the Recitals unless something in the subject matter or context is inconsistent therewith:

- (a) **"Advance"** has the meaning ascribed to it in Section 5.1;
- (b) **"Agreement"** means this agreement, including its attached Schedules, and all amendments made to it in accordance with its provisions as amended, revised, replaced, supplemented or restated from time to time;
- (c) **"Applicable Law"** means, in respect of a Person, property, transaction, event or other matter, as applicable, all present or future Law relating or applicable to that Person, property, transaction, event or other matter, including any interpretation of Law by any Governmental Authority;
- (d) **"Application"** is an application submitted by the Conservation Organization pursuant to this Agreement for funding from the City's Natural Areas Acquisition Fund for funding to be used by the Conservation Organization to pay for Acquisition Costs;
- (e) **"Acquisition Costs"** means in respect of Land Acquisitions subject to this Agreement the purchase price and taxes applicable to the Land Acquisition transaction;
- (f) **"Business Day"** means a day other than a Saturday, Sunday or any holiday and another day on which the City's City Hall is not open to the public;

- (g) **"Conservation Authority"** means a Conservation Authority established under the Conservation Authorities Act;
- (h) **"Conservation Authorities Act"** means the Conservation Authorities Act, R.S.O. 1990, c.C.27, as amended;
- (i) **"Conservation Organization"** means [insert name of party to Agreement];
- (j) **"Conservation Organizations"** means the Hamilton Conservation Authority, Conservation Halton, Grand River Conservation Authority, Niagara Peninsula Conservation Authority, Royal Botanical Gardens, Bruce Trail Conservancy, Hamilton Naturalists Club and any other Person approved by Council to be part of this definition for the purposes of this Agreement;
- (k) **"Conservation Organizations Working Group"** has the meaning ascribed to it in Appendix "A" attached to the Guidelines;
- (l) **"Conservation Organizations Working Group Terms of Reference"** means the document which is attached as "Appendix "[insert Appendix No.] to the Guidelines;
- (m) **"Conservation Purposes"** means the conservation, protection, management, preservation and restoration of wildlife and natural resources such as forests, soil and water by the Conservation Organization and the City;
- (n) **"Council"** means the Council of the City;
- (o) **"Event of Default"** has the meaning ascribed to it in Section 12.1;
- (p) **"Funds"** means the money from the NAAF the City provides to the Conservation Organization pursuant to this Agreement;
- (q) **"GM"** means the City's General Manager of Planning and Economic Development";
- (r) **"Governmental Authority"** means the Government of Canada, Province of Ontario, City of Hamilton and any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or the application, enforcement, or interpretation of Law;
- (s) **"Guidelines"** means the Natural Areas Acquisition Fund Strategy Implementation Guidelines which are the protocols and standards intended to guide the City and Conservation Organizations in preparing, receiving, reviewing and making recommendations regarding applications submitted to the City as approved by Council on [insert date] and as amended by Council from time to time;

- (t) **“Indebtedness”** means, with respect to the Conservation Organization, all of the Conservation Organization’s present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the City under, in connection with, relating to or with respect to this Agreement, and any unpaid balance thereof;
- (u) **“Information”** has the meaning ascribed to it in Section 4.1(h);
- (v) **“Land Acquisition”** means the attainment by purchase or donation but not expropriation, by the Conservation Organization of an interest in land for Conservation Purposes, approved by the City and as permitted by this Agreement but only includes the following interests in land: fee simple interest and conservation easement and shall only include lands that contain primary criteria and / or secondary criteria as described in the Guidelines;
- (w) **“Law”** means all laws, (including the common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, judgments and decrees, and all official directives, rules, guidelines, notices, approvals, orders, policies including but not limited to City Official Plans, City urban design guidelines, City built form guidelines and City site plan guidelines and other requirements of any Governmental Authority whether or not they have force of law;
- (x) **“MFFIPA”** has the meaning ascribed to it in Section 15.1;
- (y) **“Municipal Act”** means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
- (z) **“Natural Areas Acquisition Fund”** or **“NAAF”** is a capital account, established by the City to fund Land Acquisition by Conservation Organizations;
- (aa) **“Parties”** means the Conservation Organization, the City, and any other Person that may become a party to this Agreement;
- (bb) **“Person”** is to be broadly interpreted and includes an individual, a corporation, a limited liability company, an unlimited liability company, a partnership, a trust, an incorporated organization, a joint venture, a Conservation Authority established under the Conservation Authorities Act or predecessor of said Act, as the government of a country or any political subdivision of a country, or all agency or department of any such government, any other Governmental Authority and the

executors, and administrators or other legal representatives of an individual in such capacity;

- (cc) **"Planning Act"** means the *Planning Act*, R.S.O. 1990, c.P.13, as amended;
- (dd) **"Staff Working Group"** has the meaning ascribed to it in Appendix "A" attached to the Guidelines;
- (ee) **"Staff Working Group Terms of Reference"** means the document attached as Appendix "[insert Appendix No.]" to the Guidelines and which are attached hereto as Schedule "B";
- (ff) **"Strategy"** is the Natural Areas Acquisition Fund Strategy; and,
- (gg) **"Term"** has the meaning ascribed to it in Section 8.1.

1.2 Headings, Articles, Sections, Schedules

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The term "this Agreement", refers to this Agreement in its entirety, including the Guidelines, and not to any particular article, section or other portion of this Agreement and includes any agreement supplemental to this Agreement. Unless otherwise indicated, references in this Agreement to Articles, Sections, Schedules or Recitals are to Articles, Sections, Schedules and Recitals of this Agreement.

1.3 Gender and Number

If the context of this Agreement requires changes of gender and number this Agreement shall be read such that words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa. However, in this Agreement the term "Conservation Organizations" is not the plural of Conservation Organization.

1.4 Statutory References

Any reference in this Agreement to any Law, or to any section of or any definition in any Law, shall be deemed to be a reference to such Law or section or definition as amended, supplemented, substituted, replaced or re-enacted from time to time.

1.5 Schedules

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule "A" – Conservation Authority Working Group Terms of Reference; and,

Schedule "B" - Staff Working Group Terms of Reference.

The Schedules are attached to and form a part of this Agreement in the same manner and with the same effect whether or not they are included in the body hereof. Should there be a conflict between the content of the body of this Agreement, or the body of this Agreement as it may be amended from time to time, and the Schedules, the terms of the body of this Agreement shall be paramount.

1.6 Guidelines

The Guidelines, as amended from time to time, form part of this Agreement in same manner and with the same effect whether or not they are included in the body hereof except where there is a conflict between the contents of this Agreement and the Guidelines. Should there be a conflict between the content of the body of this Agreement, or the body of this Agreement as it may be amended from time to time, and the Guidelines, the terms of the body of this Agreement shall be paramount. Should there be a conflict between the Guidelines and the Schedules, the terms of the Schedules shall be paramount. The Guidelines may be amended from time to time by Council in its sole, absolute and unfettered discretion. The Conservation Organization may be consulted in respect of amendments to the Guidelines but the Conservation Organization agrees that such consultation is not required and the Conservation Organization shall not dispute or challenge any amendments made to the Guidelines whether or not the Conservation has been consulted and whether or not the Conservation Organization was provided with notice of amendments to the Guidelines or proposed amendments to the Guidelines.

1.7 Recitals

All of the Recitals preceding Article 1 of this Agreement are true and correct.

1.8 References to City Staff and Administrative Units

Any reference to the title or position of a member of City staff in this Agreement shall include any change to the title or position or any successor title or position or any new title or position which assumes the responsibilities of the title or position referenced in this Agreement. Any reference to a City administrative unit shall include any change to the name or any administrative unit which assumes the responsibilities of the administrative unit referenced herein.

ARTICLE 2: DISCRETION

2.1 Discretion

The Parties acknowledge that this Agreement shall not in any manner fetter the discretion or authority of the City or the Conservation Organization (if it is a Conservation Authority), under the Municipal Act, the Planning Act or the Conservation Authorities Act or any other legislation or existing agreements regarding development and land use regulations.

ARTICLE 3: COVENANTS OF THE PARTIES**3.1 Covenants**

The Parties agree that all obligations or agreements contained in this Agreement shall be deemed to be covenants.

3.2 Covenants of the Conservation Organization

The Conservation Organization covenants and agrees that as long as this Agreement is outstanding, the following shall apply:

- (a) the Conservation Organization shall cooperate with the City, provincial agencies, other conservation organizations and agencies and landowners to protect, maintain and enhance the quality and integrity of ecosystems in the City through Land Acquisition;
- (b) the Conservation Organization shall obtain permission from its board or governing body prior to approaching the City for funding specific projects;
- (c) the Conservation Organization shall comply with all requirements, roles and responsibilities applicable to Conservation Organizations in the Guidelines and prior to any funds being provided to it from the NAAF pursuant to this Agreement the Conservation Organization shall comply with all requirements for the release of NAAF funds contained in the Guidelines;
- (d) the Conservation Organization shall participate on a Conservation Authorities Working Group as required by the Guidelines;
- (e) the Conservation Organization shall comply with the Conservation Organization Working Group Terms of Reference. This includes, but is not limited to:
 - i) working with the City to develop, maintain and annually review a priority listing of possible properties for Land Acquisition under this Agreement, while not excluding other opportunities for Land Acquisition that may arise during the term of this Agreement, which have been mutually agreed to by the Parties unless in situations for which funding from the City is not required; and,
 - ii) consulting with staff prior to gathering information to complete an Application.
- (f) the Conservation Organization shall provide the City with all relevant information and respond to any additional reasonable requests by the City related to Applications;

- (g) when funding has been granted from the City to help facilitate a Land Acquisition, the Conservation Organization shall obtain the written approval from the City in accordance with the Guidelines, before commencing any land transactions;
- (h) the Conservation Organization shall use its best efforts and to the extent possible shall use funding from the City to leverage funding from other sources to make up for any remaining balance required to complete a Land Acquisition;
- (i) if funding cannot be obtained from other sources, the Conservation Organization shall provide the City with justification why additional funding cannot be obtained;
- (j) the Conservation Organization shall conduct itself in compliance with all Applicable Law;
- (k) the Conservation Organization shall register on title any Land Acquisition in the name of the Conservation Organization, unless otherwise agreed to by the Parties;
- (l) the Conservation Organization shall provide documentation of all expenditures related to Land Acquisitions under this Agreement to the City;
- (m) the properties secured with NAAF funding shall be held by the Conservation Organization in perpetuity for Conservation Purposes and no interest in any such properties may be disposed of by the Conservation Organization without the prior written consent of the City. Should the Conservation Organization in the future deem it necessary to dispose of such a property it must first offer the property to the City for purchase for the purchase price of \$2.00 and if the City does not purchase the property the Conservation Organization shall use its best efforts to sell the property to another land trust or government organization with a Conservation Purposes mandate for a purchase price of \$2.00, prior to offering such a property for sale to any other Person;
- (n) the Conservation Organization shall only use Funds for Acquisition Costs; and,
- (o) the Conservation Organization shall complete a Land Acquisition within 120 days of the Advance that applies to the Land Acquisition.

3.3 Covenants of the City

The City covenants and agrees that as long as this Agreement is outstanding, the following shall apply:

- (a) the City shall comply with all requirements, roles and responsibilities applicable to the City in the Guidelines;
- (b) the City shall participate in a Staff Working Group to coordinate efforts of the City;

- (c) the City shall adhere to the Staff Working Group Terms of Reference. This includes but is not limited to:
 - (i) working with the Conservation Organization to develop, maintain and annually review a priority listing of possible properties for Land Acquisition under this Agreement, while not excluding other opportunities for Land Acquisition that may arise during the term of this Agreement, which have been mutually agreed to by the Parties unless in situations for which funding from the City is not required;
 - (ii) request and review all relevant information related to Land Acquisition under this Agreement provided by the Conservation Organization for the purpose of making appropriate recommendations;
 - (iii) evaluate funding applications; and,
 - (iv) make recommendations on all Applications made by the Conservation Organization under this Agreement to the Director of Planning and Planning Committee.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1 Conservation Organization Representations and Warranties

The Conservation Organization represents and warrants to the City that:

- (a) it is and shall continue to be for the term of this Agreement, is a non-profit corporate body without share capital under the laws of Ontario with full power to fulfill its obligations under this Agreement and is not a manufacturing business or other industrial or commercial enterprise;
- (b) it has the full power and authority to enter into this Agreement;
- (c) it has taken all necessary actions to authorize the execution of this Agreement;
- (d) the recitals to this Agreement are true and correct to the knowledge of the Conservation Organization, which has performed such reasonable due diligence as necessary to permit it, in good faith, to make this representation and warranty;
- (e) no Event of Default has occurred, or appears reasonably likely to occur as of the Effective Date;
- (f) the Conservation Organization is not a party to any agreement under the terms of which the Conservation Organization is prohibited or restricted from entering into this Agreement or any of the liabilities imposed, or restrictions accepted by the Conservation Organization under this Agreement;

- (g) this Agreement has been duly executed and delivered and constitutes legal, valid and binding obligations of the Conservation Organization (with regard to each agreement or instrument to which it is a party) enforceable in accordance with its terms; and,
- (h) all information, representations, statements and declarations (collectively referred to as the "Information") furnished by or on behalf of the Conservation Organization to the City for purposes of, or in connection with, this Agreement is or will be true, accurate and complete in all material respects on the date as of which the Information is given and shall continue to be true, accurate and complete for the term of this Agreement and not incomplete by omitting to state any material fact necessary to make the Information not misleading at such time in light of then-current circumstances.

4.2 Survival and Repetition of Representations and Warranties

The representations, warranties and covenants contained in this Agreement, including any Schedule hereto shall be considered to be relied upon by the City and shall not merge and shall survive the execution and delivery of this Agreement and notwithstanding any investigations made by or on behalf of the City shall survive and continue in full force and effect for the term of this Agreement.

ARTICLE 5: ADVANCE OF FUNDS

5.1 Amount of Advance

Any advance of Funds for Land Acquisition ("Advance") shall only be made after an Application has been submitted to the City by the Conservation Entity and approved by City Council. Only one Advance will be made for an approved Application and the amount of the Advance shall be determined by the City in its sole, absolute and unfettered discretion. The amount of the Advance shall not be greater than fifty percent (50%) of the Acquisition Costs and shall not exceed fifty thousand dollars (\$50,000.00). For greater clarity if fifty percent (50%) of the Acquisition Costs associated with an Application are greater than fifty thousand dollars (\$50,000.00) the maximum amount of an Advance that can be approved in respect of an Application is fifty thousand dollars (\$50,000.00).

5.2 Conditions To An Advance

An Advance shall only be after all of the following conditions have been satisfied;

- (a) An Application has been submitted and approved by the GM in his/her sole, absolute and unfettered discretion;
- (b) The Conservation Organization has complied with all the terms and conditions of this Agreement and the Guidelines that are required to be complied with prior to any Advance being made;
- (c) No Event of Default has occurred or continues to occur; and,

- (d) An Agreement of Purchase and Sale has been entered into for the Land Acquisition that is the subject of the approval in Section 5.2(a) and a copy has been provided to the GM.

5.3 Timing of Advances

Advances will be made on the date of Land Acquisition subject to the Conservation Organization providing 15 days notice of the closing date of the Land Acquisition and only if all the terms and conditions necessary for an Advance under this Agreement have been satisfied by the Conservation Organization to the GM's satisfaction as determined in his sole, absolute and unfettered discretion.

ARTICLE 6: LEGAL AND REAL ESTATE SERVICES

6.1 Legal and Real Estate Services

The Conservation Organization shall be responsible for obtaining their own legal and real estate services to carry out Land Acquisitions under this Agreement. The City will not act as an agent to secure land.

ARTICLE 7: FUNDING

7.1 Source of Funding and Application Approval

The source of any Funds to be provided to the Conservation Organization under this Agreement is the NAAF and Applications will only be approved if the NAAF contains monies to cover the Costs Acquisition Costs associated with an Application. However, even if the NAAF contains monies to cover the Acquisition Costs associated with an Application, Council may still not approve the Application. There is no obligation on the City to approve any Application and Council has the sole, absolute and unfettered discretion to approve or reject any Application.

7.2 No Obligation By City

The City is not obligated to provide funding for a project if the Conservation Organization has signed an offer of purchase and sale or a similar legal document.

7.3 Funding Subject to Council Approval

Withdrawals of any Funds from the Natural Areas Acquisition Fund under this Agreement shall be subject to approval by the GM of an Application.

7.4 Guidelines

The Guidelines, developed by Development Planning, Heritage and Design staff and approved by City Council, will be used for reviewing and making decisions by the GM regarding Applications.

7.5 Annual Funding of NAAF

Annual funding for the NAAF shall be determined by the Council in its sole, absolute and unfettered discretion and the approval of any Applications will be subject to monies being available in the NAAF.

7.6 Decision of GM Final

The decision that the GM makes regarding an Application under this Agreement shall be in his/her sole, absolute and unfettered discretion and shall be final and shall not be disputed or challenged by the Conservation Organization.

7.7 Right To Audit, Inspect and Disclosure

- (a) The Conservation Organization shall keep and maintain:
- (i) all financial records (including invoices) relating to the provision of Funds and any Land Acquisition pursuant to this Agreement in a manner consistent with Canadian Generally Accepted Accounting Principles; and,
 - (ii) all non-financial documents and records relating to the provision of Funds and any Land Acquisition pursuant to this Agreement.
- (b) For the purpose of ensuring compliance with the terms of this Agreement, the City, its authorized agents or representatives or an independent auditor identified by the City may, at the City's own expense, upon on 24 hours' notice and during regular business hours, enter upon the Conservation Organization's premises, and the Conservation Organization shall cooperate fully, to:
- (i) inspect and take extracts from the accounts, records including financial records and invoices, and books and data, whether such aforesaid accounts and records are stored in any format whatsoever including but not limited to paper or electronic format, of the Conservation Organization related to this Agreement, the Funds and any Land Acquisition made pursuant to this Agreement; and,
 - (ii) conduct an audit or investigation of the Conservation Organization of any Land Acquisitions made pursuant to this Agreement and / or the expenditure of Funds. The City shall provide the results of the audit to the Conservation Organization within a reasonable time of its completion. Any audit performed under this Section shall be at the sole expense of the City.
- (c) To assist in respect of the rights set out in Sections 7.7 (a) and (b) the Conservation Organization shall promptly disclose and provide, without limitation, any information requested by the City, its authorized representatives or an independent auditor identified by the City, and shall do so in a form requested by the City, its authorized representatives or an independent auditor identified by the City, as the case may be.

7.8 Funds Not To Be Used For Expropriation

No Funds provided to the Conservation Organization pursuant to this Agreement and any approved Application shall be used by the Conservation Organization to expropriate any lands.

ARTICLE 8: TERM**8.1 Term**

The term of this Agreement will be for a period commencing on the Effective Date and ending on a date that is one year from [Insert Date of NAAF Approval].

ARTICLE 9: SEVERABILITY**9.1 Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions.

9.2 Change in Circumstances

Notwithstanding the provisions of section 9.1 if, after the Effective Date, the adoption of or change to any Law, or any change in the interpretation or application thereof by any court or by any Governmental Authority, now or hereafter makes it unlawful or impossible for the City to make an advance of Funds under this Agreement, or makes any Advance already made unlawful, the City may, by written notice to the Conservation Organization, declare its obligations under this Agreement to be terminated, whereupon the same shall forthwith terminate, and the Conservation Organization shall pay within the time required by such Law any advances of Funds made. If any such change shall only affect a portion of the City's obligations under this Agreement which is, in the opinion of the City and the City's Counsel in their sole, absolute and unfettered discretion, acting reasonably, severable from the remainder of this Agreement, so that the remainder of this Agreement may be continued in full force and effect without otherwise affecting any of the obligations of the City or the Conservation Organization under this Agreement, the City shall solely declare its obligations under that portion so terminated.

ARTICLE 10: RELEASE, DISCHARGE AND INDEMNIFICATION**10.1 Release, Discharge and Indemnification by Conservation Organization**

In addition to any liability the Conservation Organization to the City under any other provision of this Agreement, the Conservation Organization releases and discharges the City, its officers, employees, agents, contractors, invitees, representatives, and elected and appointed officials from every claim of any kind, including but not limited to any claim for liability, that anyone may make, suffer, sustain or incur as a result of, or in connection with, or by reason of, the entering into of this Agreement or the use of any

lands acquired by the Conservation Organization through the provision of funding from the NAAF after the Land Acquisition is completed. The Conservation Organization shall indemnify, defend and save harmless the City, its officers, employees, agents, contractors, invitees, representatives, and elected and appointed officials from every claim of any kind, including but not limited to any claim for liability, and any obligations, damages, costs, suits, claims, demands, fines, actions, causes of action, assessments in respect of required withholding losses, proceedings, expenses and obligations of any kind that may at any time be incurred by, or asserted against, any of them (including by any Governmental Authority) as a result of, or in connection with, or by reason of, the entering into of this Agreement, the use of any lands acquired by the Conservation Organization through the provision of funding from the NAAF, or the breach of or non-performance by the Conservation Organization or those for whom it is in law responsible of any laws, bylaws, rules or regulations which may be applicable in connection with this Agreement, the use of any lands acquired by the Conservation Organization through the provision of funding from the NAAF and for any wrongful or negligent act or omission by the Conservation Organization or those for whom it is in law responsible in connection with this Agreement or the use of any lands acquired by the Conservation Organization through the provision of funding from the NAAF, including any negligence by the City, its officers, employees, agents, contractors, representatives, and elected and appointed officials or invitees. A certificate of the City as to the amount of any such loss or expense shall be prima facie evidence as to the amount thereof, in the absence of manifest error.

10.2 Environmental Indemnification

In addition to any liability of the Conservation Organization to the City under any other provision of this Agreement, the Conservation Organization covenants to defend and indemnify and hold harmless the City and its officers, employees, agents and representatives at all times from all and against any and all losses, damages and costs (including reasonable legal fees and expenses) resulting from any legal action commenced or claim made by a third party, or administrative order issued by a Governmental Authority against the City, related to or as a result of actions on the part of the Conservation Organization related to, or as a consequence of, environmental matters or a failure to comply with any requirements of any law that applies to any environmental matter.

10.3 Survival

The agreements in Article 10 shall survive the termination of this Agreement.

ARTICLE 11: WAIVERS AND AMENDMENT

11.1 Amendments

No provisions of this Agreement, except the Guidelines, shall be amended or altered except by further written agreement between the City and the Conservation Organization, executed by all parties with the same formalities, including all necessary prior approvals. The Guidelines shall only be amended by the City and Section 1.6 herein shall apply to amendments of the Guidelines.

11.2 Waivers

No covenant or condition in this Agreement shall be deemed waived or consented to by any of the Parties, unless such waiver or consent is in writing and signed by the authorized representative of the Party providing the waiver or consent. Any waiver granted by a Party, shall be effective for the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of such Party under this Agreement as a result of any other default or breach under this Agreement. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall a waiver constitute a continuing waiver or waiver of the same provision on a future occasion.

ARTICLE 12: EVENTS OF DEFAULT AND TERMINATION

12.1 Events of Default

Events of Default

The occurrence of any one or more of the following events (each, an "Event of Default") shall constitute a default under this Agreement:

- (a) where lands or a part thereof, whose acquisition was assisted by Funds provided pursuant to this Agreement, are offered for sale in a manner inconsistent with the requirements in Section 3.2(m), sold, conveyed or otherwise transferred or disposed of by the Conservation Organization without the prior written consent of the City;
- (b) where a mortgage, charge, lien, execution or other encumbrance affecting the lands, whose acquisition was assisted by Funds provided pursuant to this Agreement, becomes enforceable against said lands;
- (c) there is a breach by the Conservation Organization of any other term, covenant or condition contained in this Agreement;
- (d) a writ of execution against the Conservation Organization is or becomes binding against any lands whose acquisition was funded pursuant to this Agreement and the use of NAAF funds;
- (e) adverse change, determined by the City in its sole, absolute and unfettered discretion, occurs in the environmental condition of any of lands, whose acquisition was assisted by Funds provided pursuant to this Agreement;
- (f) any representation, warranty, statement, declaration or information provided to the City by the Conservation Organization in connection with this Agreement or in this Agreement is incorrect, false, misleading or erroneous in any material respect as of the time it was made or given;

- (g) the enactment of any legislation or the entering or obtaining of any decree or order of a court, statutory board or commission which renders any of this Agreement or any material provision of it unenforceable, unlawful or otherwise changed, if the Conservation Organization does not, within ten (10) days of receipt of notice of this Agreement or material provision becoming unenforceable, unlawful or otherwise changed, replace this Agreement with a new agreement that is in form and substance satisfactory to the City in its sole, absolute and unfettered discretion, or amend this Agreement to the satisfaction of the City in its sole, absolute and unfettered discretion;
- (h) the denial by the Conservation Organization of its obligations under the Agreement, or the claim by the Conservation Organization that the Agreement is invalid or has been withdrawn in whole or in part;
- (i) the failure of the Conservation Organization to observe or perform any covenant or obligation applicable to it under this Agreement;
- (j) an assignment of this Agreement without the prior written consent of the City which may be arbitrarily withheld by the City;
- (k) use by the Conservation Organization of Funds other than for Acquisition Costs;
- (l) a Land Acquisition for which Funds have been provided has not been completed within 5 days of the Advance which applies to the Land Acquisition; and,
- (m) there is, as determined by the City in its sole, absolute and unfettered discretion, a Violation of any Applicable Law in respect of the Property.

12.2 Remedies

In the event of the happening of one or more of the Events of Default, the City may at its sole, absolute and unfettered discretion, at any time, take one or more of the following actions:

- (a) cancel any further advances of any Funds under this Agreement;
- (b) provide the Conservation Organization with an opportunity to remedy the Event of Default;
- (c) suspend the advance of any Funds or portion thereof for such period as the City in its sole, absolute and unfettered discretion determines appropriate;
- (d) reduce the amount of the Funds to be advanced pursuant to any Application;
- (e) deny any Application that has been made but not yet decided upon by the City;

- (f) in respect of Events of Default identified in Subsections 12.1(a), (b), (d) and (l), demand the repayment of a portion or all, as determined by the City in its sole, absolute and unfettered discretion, of Funds advanced to the Conservation Organization by the City in respect of lands which are the subject matter of the Event of Default;
- (g) in respect of Events of Default identified in Subsection 12.1(k) demand the repayment of an amount equal to any Funds the Conservation Organization used other than for Acquisition Costs;
- (h) in respect of Events of Default identified in Subsections 12.1(c), (e), (f), (g), (h), (i), (j) and (m) demand the repayment of all or a portion of, as determined by the City in its sole, absolute and unfettered discretion, any Funds provided to the Conservation Organization pursuant to this Agreement; and,
- (i) terminate this Agreement at any time, including immediately, upon giving Notice in accordance with Article 13 to the Conservation Organization.

12.3 Remedies Cumulative

For greater certainty, it is expressly understood and agreed that the rights and remedies of the City under this Agreement are cumulative and are in addition to, and not in substitution for, any rights or remedies provided by Law or by equity; and any single or partial exercise by the City of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the City may be lawfully entitled for such default or breach. No delay or omission by the City in exercising any such right or remedy shall operate as a waiver of them or any other right or remedy.

12.4 Opportunity to Remedy

If, in accordance with Section 12.2(b), the City provides the Conservation Organization with an opportunity to remedy the Event of Default, the City shall provide Notice to the Conservation Organization of:

- (a) the particulars of the Event of Default; and,
- (b) the time period in which the Conservation Organization is required to remedy the Event of Default.

12.5 Perform Obligations

If an Event of Default has occurred and is continuing, and if the Conservation Organization has failed to perform any of its covenants or agreements in this Agreement, the City may, but shall be under no obligation to, perform any such covenants or agreements in any manner deemed fit by the City without thereby waiving any rights to enforce this Agreement. The expenses (including any legal costs) incurred

by the City in respect of the foregoing shall be an indebtedness included in the Indebtedness.

12.5 Debt Due Immediately

If the City demands the repayment of any Funds pursuant to Sections 12.2(f), (g) and (h) or otherwise under this Agreement, from the Conservation Organization; or the Conservation Organization owes any Funds or any other money to the City, whether or not their return or repayment has been demanded by the City, then:

- (a) such Funds or other money shall be deemed to be a debt due and owing to the City by the Conservation Organization, and all Funds and monies owing shall immediately become due and payable upon demand all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Conservation Organization. All indebtedness and liability of the Conservation Organization to the City that becomes payable on demand in accordance with the terms herein, is repayable by the Conservation Organization to the City at any time on demand. Without limiting any of its covenants and obligations set out elsewhere in this Agreement the Conservation Organization agrees to pay all costs and expenses in connection with:
 - (i) all out-of-pocket costs and expenses (including without limitation reasonable legal, expert and consulting fees) of the City in connection with enforcing the rights of the City under the Agreement;
 - (ii) the preparation or review of waivers, consents and amendments to this Agreement; and,
 - (iii) all costs and expenses incurred by the City as a result of the Conservation Organization's failure to perform or observe any its obligations under this Agreement; and,
- (b) the City may, in its sole, absolute and unfettered discretion, exercise any right or recourse and / or proceed by any action, suit, remedy or proceeding against the Conservation Organization authorized or permitted by law for the recovery of all the Indebtedness and no such remedy for the enforcement of the rights of the City shall be exclusive of, or dependent on, any other remedy, but any one or more of such remedies may from time to time be exercised independently or in combination.

12.6 Termination Without Cause By Conservation Organization

The Conservation Organization may terminate this Agreement as against the City at the Conservation Organization's discretion by giving Notice to the City in accordance with Article 13. However, if the Conservation Organization terminates this Agreement the City shall have no further obligation for funding or otherwise in relation to any Applications made and not approved by the City and the City shall no longer accept any

further applications from the Conservation Organization. In addition, if the City has approved an Application but not yet advanced any monies for the approved Land Acquisition, the City at its sole, absolute and unfettered discretion may refuse to advance any monies pursuant to this Agreement for the Land Acquisition if the Land Acquisition was not completed at the time of termination of this Agreement by the Conservation Organization.

12.7 Termination By City In Absence of Event of Default

In addition to any rights of termination the City has as provided for in Section 12.2 the City may without cause and in the absence of an Event of Default and in its sole, absolute and unfettered discretion terminate this Agreement, at any time, as against the Conservation Organization upon giving notice to the Conservation Organization in accordance with Article 13. Such termination however shall not act to cancel or rescind any approvals and funding authorizations which may have been previously approved by City Council prior to the date of termination and where the associated Land Acquisition may not yet have been completed. The provisions of this Agreement shall survive the termination and apply to any such uncompleted Land Acquisition until the Land Acquisition is completed or as provided for in this Agreement.

ARTICLE 13: NOTICE

13.1 Notice

Any notice, demand, acceptance or request required to be given hereunder in writing, shall be deemed to be given if either personally delivered or mailed by registered mail, postage prepaid and addressed to the Parties as follows, or such change of address as the Parties have by written notification forwarded to each other.

To the City at:

City of Hamilton
71 Main Street West
Hamilton, Ontario L8P 4Y5
Attention: City Clerk

And To:

City of Hamilton
[insert address for GM]
Attention: General Manager, [insert department]

To Conservation Organization:

[Insert name of Conservation
Organization] Conservation Partner
Address:
Attention: [Insert name of contact person]

13.2 Time

Any notice shall be deemed to have been given to and received by the Party to which it is addressed on the date it is received.

13.3 Title of Staff Person

The Conservation Organization acknowledges that the title and address for the staff person at City to which notice must be provided may change from time to time and that it is the responsibility for the Conservation Organization to obtain the correct information prior to any notice being provided to the City to ensure that notice is provided in compliance with this Agreement.

ARTICLE 14: SUCCESSORS AND ASSIGNS**14.1 Successors and Assigns**

This Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

ARTICLE 15: FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**15.1 Disclosure**

The Conservation Organization acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended ("MFIPPA") and that this Agreement and any information provided to the City in connection with this Agreement may be subject to disclosure in accordance with MFIPPA.

ARTICLE 16: NO RELATIONSHIP**16.1 No Relationship**

No partnership is created by this Agreement. Nothing contained in this Agreement shall or shall be deemed to constitute the City and the Conservation Organization, agents, joint venturers, employees or any other relationship whereby either could be held liable for any act or omission of the other. The Conservation Organization shall not take any actions that could imply one of the foregoing relationships. Neither the City nor the Conservation Organization shall have any authority to act for the other or incur any obligation or responsibility on behalf of the other.

ARTICLE 17: CONSENT**17.1 Consent**

The City may impose any terms and / or conditions on any consent the City may grant pursuant to this Agreement.

ARTICLE 18: GOVERNING LAW

18.1 Governing Law

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada.

ARTICLE 19: ENTIRE AGREEMENT

19.1 Entire Agreement

This Agreement contains the entire and only understanding between the Parties relating to the subject matter of this Agreement and supersedes all prior agreements, arrangements, promises, representations or other understandings, whether written or oral, between them.

ARTICLE 20: SURVIVAL

20.1 Survival

The provisions in Article 1, any other applicable definitions, Sections 3.2(m), 7.8, 10.1, 10.2, 12.1, 12.2(f), (g) and (h), 12.3, 12.5, Articles 9, 13, 18, 19, and 21 and all applicable cross-referenced provisions and schedules shall survive the termination of this Agreement and continue in full force and effect for such time as the Conservation Organization retains an interest in lands acquired through Funds provided pursuant to this Agreement.

ARTICLE 21: NO DRAFTER

21.1 No Drafter

If it is necessary for an arbitrator or a court to interpret any provision of this Agreement, neither Party to this Agreement shall be considered the drafter of it and therefore neither Party shall have this Agreement construed against it on such grounds.

ARTICLE 22: FURTHER ASSURANCES

22.1 Further Assurances

The Organization and the City shall promptly cure any default by it in the execution and delivery of this Agreement, the Credit Documents or any other agreements provided for in this Agreement to which it is a party. The Organization at its own expense, shall promptly execute or cause to be made, done or executed, and delivered to the City all further and lawful acts, deeds, things, devices, conveyances, documents, agreements, opinions, certificates, instruments, consents, notices and assurances whatsoever for effecting the intent of this Agreement the Credit Documents or any other agreements provided for in this Agreement to which it is a party as the City shall advise or request. The City reserves its right to require financial disclosure respecting both the Organization and lands the Conservation Organization has acquired through the use of Funds.

ARTICLE 23: TIME

23.1 Time

Time shall be of the essence in this Agreement.

IN WITNESS WHEREOF each of the Parties hereto has duly executed this agreement by the hands of their officers, duly authorized in this regard this day of .

City of Hamilton

Per:

Per:

I/We have authority to bind the City of Hamilton

[Insert name of Conservation Organization]

Per:

Per:

I/We have authority to bind the **[Insert name of Conservation Organization]**