

OPERATING AGREEMENT

This Agreement made as of the 21st 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 31st 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. Page 18 of 18

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