

MEMORANDUM OF UNDERSTANDING (the "MOU")

BETWEEN

CITY OF HAMILTON (the "City")

-AND-

HAMILTON100 COMMONWEALTH GAMES BID CORPORATION ("Hamilton100")

Each a "**Party**" and collectively the "**Parties**"

WHEREAS:

- a. the City is a municipal corporation with its offices located in Hamilton, Ontario;
- b. Hamilton100 is a corporation incorporated under the *Canada Not-for-profit Corporations Act* and was created for the purpose of organizing, facilitating, preparing, financing and submitting a bid to secure the rights to host the 2030 Commonwealth Games in Hamilton, Ontario (the "**Bid**");
- c. the City, as the hosting municipality, is required to sanction the Bid;
- d. the City has agreed to support Hamilton100's proposal to submit the first phase of the Bid ("**Phase 1**") on the express condition that the City shall not assume any liability of any kind, be it legal, financial or otherwise, and Hamilton100 has agreed to that condition;
- e. on June 12, 2019, Hamilton City Council authorized and directed staff to negotiate a draft MOU with Hamilton100 for Council's review and consideration; and
- f. on August 16, 2019, Hamilton City Council approved this MOU.

NOW THEREFORE, in consideration of the foregoing, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, the City and the Builder agree as follows:

I. PRIMARY OBJECTIVES AND TIMELINES

The primary objective of this MOU is to permit Hamilton100 to prepare, organize, facilitate, coordinate and finance in its entirety, and to the City's satisfaction, Phase 1 of the Bid for the 2030 Commonwealth Games. To the end, Hamilton100 shall submit:

- a. a draft Phase 1 proposal to the City by August 6, 2019;
- b. a final Phase 1 proposal to the City for consideration by City Council at its General Issues Committee meeting scheduled for November 6, 2019; and
- c. its final Phase 1 proposal to Commonwealth Games Canada by November 22, 2019 after obtaining the approval of City Council.

The Parties further agree that the Bid, including Phase 1, shall:

- a. celebrate Hamilton's legacy with the Commonwealth Games and, particularly, the 100th anniversary of the initial British Empire Games held in Hamilton in 1930;
- b. align with the City's vision ("To be the best place to raise a child and age successfully"), plans, values and priorities including, in particular, its:

- i. commitment to equality, diversity, accessibility, tolerance, Green/climate change initiatives, social procurement and social housing; and
 - ii. Strategic Plan and Recreational Indoor/Outdoor Master Plan;
- c. enhance Hamilton's reputation, identity and civic pride;
- d. maximize investment in Hamilton wherever possible;
- e. utilize existing facilities in the City of Hamilton where appropriate;
- f. engage in public/private partnerships where appropriate; and
- g. identify and create long-term legacy projects that will facilitate serving the needs of the Hamilton community.

II. AREAS OF COLLABORATION

It is expressly agreed by the Parties that the City shall assume no liability for any obligations arising out of the preparation, finalization and submission of the Phase Bid. However, the City does agree to provide advice and expertise in various areas including affordable and social housing, community health and wellness, tourism, economic development, sport development, recreation, security, hospitality, and special events. It is further agreed that the City shall have the unfettered right and discretion to designate a person or persons to serve as the City's representative(s) on the Hamilton100 Committee, with the express understanding that any designated City representative shall assume absolutely no liability for any obligation undertaken by Hamilton100.

III. DUE DILIGENCE

At the City's request, Hamilton100 shall provide copies of any relevant documents to ensure that Hamilton100 meets appropriate standards of capacity, competence and financial accountability. These documents include, but are not limited to, the following: a certificate of good standing; a list of the names of all of its directors, committee members and principal officers; and copies of Hamilton100's by-laws and articles of incorporation. Hamilton100 agrees to notify the City immediately of any change in Hamilton100's status or operations, or if any official, judicial, legislative, or administrative proceeding is commenced against Hamilton100.

IV. COMMUNICATIONS

On City Council's approval of Hamilton100's Phase 1 proposal, Hamilton100 may establish a social media and public communications presence in support of the Bid including a website and participation in various platforms such as Facebook, Twitter and Instagram. The City shall have ongoing access to the social media and public communications information posted by Hamilton100 which Hamilton100 will revise as directed by the City.

V. **PRINCIPAL CONTACTS**

The Principal Contacts for each Party are:

City of Hamilton:

Mike Zegarac
General Manager Finance and Corporate Services
71 Main St W 1st Floor
Hamilton, ON L8P 4Y5
(905) 546-2424 x6150

Hamilton100 Commonwealth Games Bid Corporation:

PJ Mercanti
President
Suite 300 – 77 James Street North
Hamilton, ON L8K 2K3
(905) 383-4100

Each Party shall immediately advise the other Party in writing of any change it in the contact information for its Principal Contacts.

VI. **EFFECTIVE DATES**

This MOU shall take effect on August 1, 2019 and shall remain in effect until consideration by City Council of the draft Phase 1 Hosting Proposal, at which time City Council will either authorize, or deny authorization, to Hamilton100 to submit its Phase 1 Bid to the Commonwealth Games Canada by its November 22, 2019 deadline.

In the event the City does authorize Hamilton100 to submit the Phase 1 Bid to Commonwealth Games Canada, the Parties undertake to then enter into good-faith discussions and negotiations regarding the terms of a subsequent MOU to govern preparation of phase 2 of the Bid ("**Phase 2**") the submission of which will likely be required in 2020. It is expressly understood and agreed by the Parties that the City will have the unfettered and absolute discretion to authorize submission of Phase 2.

It is agreed and understood by the Parties that the City has the absolute right and discretion to withdraw its permission to allow Hamilton100 to proceed with the Bid at any time and for any reason.

VII. **NO JOINT VENTURE**

The Parties agree that, notwithstanding this MOU, they are not entering into a partnership, joint venture or other such business arrangement, nor is the intent of the Parties to enter into a commercial undertaking for monetary gain.

EXECUTION PAGE FOLLOWS

IN WITNESS WHEREOF this Agreement has been executed by the authorized representative of each Party.

City of Hamilton

Hamilton100 Commonwealth Bid Corporation

Mike Zegarac
General Manager, Finance & Corporate Services

PJ Mercanti
President

Date

Date