

MUNICIPAL CONTRIBUTION AGREEMENT
(the "**Agreement**")

THIS AGREEMENT is made as of the ____ day of _____, 2021 (the "**Effective Date**").

BETWEEN:

CITY OF HAMILTON
(the "**City**")

-and-

HAMILTON NATURALISTS' CLUB
(the "**Recipient**")

(Together the "Parties" and individually a "Party")

WHEREAS on February 19, 2020, the City's General Issues Committee ("**GIC**") passed a motion directing that City staff investigate the feasibility and resources required to develop a Biodiversity Action Plan ("**BAP**"), in collaboration with the local conservation community and provide a report back to GIC with the findings;

AND WHEREAS on April 7, 2021 Report PED21065 was presented to and approved by GIC;

AND WHEREAS Recommendation (b) of Report PED21065 authorized a one-time, maximum financial contribution totaling Forty Thousand Dollars (\$40,000) from the City to the Recipient;

AND WHEREAS the City wishes to make the Financial Contribution to the Recipient pursuant to and subject to compliance with the terms and conditions contained herein.

AND WHEREAS the Recipient wishes to accept the Financial Contribution pursuant to and subject to compliance with the terms and conditions contained herein

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 PREAMBLE. The Parties acknowledge and agree that the statements in the foregoing preamble are true in substance and in fact.

1.2 DEFINED TERMS. All capitalized terms used in this Agreement that are not defined shall have the following meanings:

- (a) "Act of God" means an event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of reasonable foresight or caution;
- (b) "Financial Contribution" means a one-time, maximum financial contribution totaling Forty Thousand Dollars (\$40,000) from the City to the Recipient to be used by the Recipient only for the Permitted Purpose;
- (c) "Governmental Authority" means any federal, provincial, local, municipal or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented by law or by agreement of the Parties with an interest in such dispute;
- (d) "Permitted Purpose" means the Recipient's use of the Financial Contribution to temporarily retain and pay contract staff and/or subcontractors with the necessary professional expertise to perform the duties and obligations set forth in Schedule "A", all in accordance with the terms and conditions set forth herein;
- (e) "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity;

1.3 CURRENCY. All dollar amounts in this Agreement are stated and shall be paid in Canadian currency.

1.4 SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in effect and continue to bind the Parties.

1.5 ENTIRE AGREEMENT. The following schedules that are attached to this Agreement are incorporated by reference and form a part hereof:

Schedule Number	Title
Schedule "A"	Duties and Obligations to be Performed

The Parties acknowledge and agree that this Agreement sets forth the entire understanding of the Parties with respect to the subject matter contained herein and supersedes all previous agreements or understandings between the Parties with respect to the subject matter herein, whether written, oral, expressed or implied.

ARTICLE 2
TERM AND PURPOSE

2.1 TERM. The term of this Agreement shall commence on the Effective Date and remain in effect until October 31, 2022, unless terminated early or extended in accordance with the terms of this Agreement (the "**Term**").

2.2 PURPOSE. The City agrees to enter into this Agreement with the Recipient to provide a one-time, maximum financial contribution of Forty Thousand Dollars (\$40,000) to the Recipient to be used by the Recipient to temporarily retain and pay contract staff and/or subcontractors with the necessary professional expertise to perform the duties and obligations set forth in Schedule "A", all in accordance with the terms and conditions set forth herein.

ARTICLE 3
MAXIMUM CITY CONTRIBUTION AND FINANCIAL CONDITIONS

3.1 Subject to all terms and conditions set forth in this Agreement and conditional upon the Recipient fulfilling all of its obligations hereunder, the City agrees to provide a one-time, maximum financial contribution of Forty Thousand Dollars (\$40,000) to the Recipient to be used by the Recipient for the Permitted Purpose, as more specifically detailed in Schedule "A" hereto.

3.2 If, following the expiry or termination of this Agreement, there are unused funds remaining from the Financial Contribution then such unused funds shall be returned to the City within ten (10) business days of the effective date of expiry or termination of this Agreement, as the case may be.

3.3 The City reserves the right to audit or cause to have audited the accounts and records of the Recipient relating to the Financial Contribution and/or Permitted Purpose for a period of up to five (5) years after the end of this Agreement to ensure compliance with the terms and conditions of the Agreement. The scope, coverage and timing of such an audit shall be determined by the City and, if conducted, may be carried out by employees of the City or its agent(s). The Recipient shall make available to auditors, in a timely manner, any records, documents and information that the auditors may require.

3.4 The Recipient agrees to adhere to generally accepted accounting practices and principles and shall keep and make available to the City's representatives for examination and audit its books, accounts and registers of all revenues and expenditures in relation to the matters contemplated by this Agreement, as the case may be.

ARTICLE 4
OBLIGATIONS AND ACKNOWLEDGEMENTS

4.1 During the Term of this Agreement, the Recipient shall:

- (a) Take all necessary actions to maintain itself in good standing, to preserve its legal capacity and to inform the City without delay of any failure to do so;
- (b) Upon the request of the City and without delay, make its authorized representative(s) available to meet with an employee(s) of the City for budget review and update meetings. During such meetings the Recipient shall disclose any financial or budget related information relevant to the Permitted Purpose that the City may request;
- (c) Upon the written request of the City and without delay, provide any information as the City may require concerning this Agreement and/or the Permitted Purpose; and
- (d) Disclose to the City, without delay, any fact, development or event that would or might compromise the Recipient's ability to carry out the Permitted Purpose or the Recipient's ability to carry out any of the terms and conditions of this Agreement. For greater certainty, the Recipient shall also disclose to the City, without delay, any fact, development or event that would or might change any aspect of the Permitted Purpose from what is set forth in Schedule "A".

4.2 The Recipient hereby agrees that a public announcement with respect to this Agreement and/or the Permitted Purpose may be made by the City in the form of a press release, press conference or otherwise and that all reasonable and necessary assistance in the organization of the public announcement, as the City sees fit, shall be provided.

4.3 RECIPIENT'S ACKNOWLEDGEMENTS. The Recipient hereby acknowledges and agrees that:

- (a) the Financial Contribution is being provided by the City to the Recipient to assist the Recipient in carrying out the Permitted Purpose and not for any other reason or purpose;
- (b) the City is not responsible for carrying out the Permitted Purpose and nothing in this Agreement gives either Party an interest in the affairs, business or property of the other Party, except as expressly provided herein;
- (c) the City has no financial, contractual or other obligations to the Recipient with respect to the Permitted Purpose, except as expressly provided herein;

- (d) The City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56 ("MFIPPA"). In the event of a conflict between any of the terms and conditions of this Agreement and the City's obligations under MFIPPA, MFIPPA shall prevail.

4.4 MUTUAL ACKNOWLEDGEMENTS. The Parties acknowledge and agree with each other as follows:

- (a) This Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions contained herein;
- (b) The Parties shall not act in any case where there may be any conflict of interest between them;
- (c) The Parties shall maintain in confidence the terms and conditions of this Agreement except and to the extent that a proposed disclosure of any specific term of condition hereof by either Party is: authorized in advance by the other Party; (ii) made to a Party's legal or business advisors; (iii) required by applicable law; or (iv) otherwise permitted by this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 RECIPIENT'S REPRESENTATIONS AND WARRANTIES. The Recipient hereby represents and warrants to the City, as of the Effective Date, as follows:

- (a) Recipient is a not-for-profit corporation, duly organized and validly existing under the laws of Ontario, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. Recipient is duly qualified to operate in the Province of Ontario;
- (b) Neither the execution and delivery of this Agreement by the Recipient nor the performance by the Recipient of its obligations hereunder will: (i) violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any Governmental Authority or court to which the Recipient is subject, or any provision of the articles of incorporation, bylaws or other constating documents of the Recipient, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest, or other agreement to which the Recipient is a party or by which the Recipient or its assets are bound;

- (c) All proceedings required to be taken by or on behalf of the Recipient to authorize the Recipient to execute and deliver this Agreement and to perform the covenants, obligations and agreements of the Recipient hereunder have been duly taken. No consent to the execution and delivery of this Agreement by the Recipient or the performance by the Recipient of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority to which the Recipient is subject or any other Person, other than any such consent which has already been given;
- (d) To the extent that any third party intellectual property rights are required to perform its obligations hereunder, the Recipient has obtained all necessary permissions, licenses, consents and has the authority and right to provide such third party intellectual property rights to the City in connection with this Agreement and no intellectual property rights created by the Recipient for the City or furnished to the City by the Recipient pursuant to this Agreement will infringe upon or violate any intellectual property rights of any third party or Person.
- (e) This Agreement constitutes the valid and legally binding obligation of the Recipient, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity;
- (f) To the best current actual knowledge of the Recipient, there is no action, suit, claim, proceeding or investigation pending or currently threatened against the Recipient that questions the validity of this Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs, or prospects of the Recipient, or any Person for whom the Recipient is legally responsible, financially or otherwise.
- (g) The Recipient has no interest, pecuniary or otherwise, in any matter that would put it in an actual or apparent conflict of interest;
- (h) That the description of the duties and obligations in Schedule "A" accurately reflects the duties and obligations that the staff and/or subcontractors with the necessary professional expertise shall be contracted to perform for the Recipient, that the information contained therein is accurate, and that all relevant information has been disclosed to the City;
- (i) The Recipient is not now and has not been subject to any proceeding commenced by or against the Recipient, whether voluntary or involuntary,

seeking to have an order for relief entered against the Recipient as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief or debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Recipient or its assets;

- (j) To the best of the Recipient's knowledge, no representation or warranty made in this Agreement by the Recipient contains any untrue statement of a material fact or omits to include any material fact necessary to make such representation or warranty not misleading to the City in light of the circumstances in which such representation or warranty is made.

5.2 The Recipient acknowledges and agrees that it shall immediately notify the City of any material change to the representations set out in Section 5.1 herein.

5.3. CITY'S REPRESENTATIONS AND WARRANTIES. The City represents and warrants to the Recipient, as of the Effective Date, as follows:

- (a) The City is a municipality created by the *City of Hamilton Act*, 1999, S.O. 1999, c.14, Sched. C, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated;
- (b) Neither the execution and delivery of this Agreement by the City nor the performance by the City of its obligations hereunder will: (i) violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge, or other restriction of any Governmental Authority or court to which the City is subject, or any provision of any by-laws or the City, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument or indebtedness, security interest, or other agreement to which the City is a party or by which the City or its assets are bound;
- (c) This Agreement constitutes the valid and legally binding obligation of the City, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity;
- (d) All proceedings required to be taken by or on behalf of the City to authorize the City to execute and deliver this Agreement and to perform the covenants, obligations and agreements of the City hereunder have been

duly taken. No consent to the execution and delivery of this Agreement by the City or the performance by the City of its covenants, obligations and agreements hereunder is required from any mayor, councillor, parliament, partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been given;

- (e) To the best current actual knowledge of the City, there is no action, suit, claim, proceeding or investigation pending or currently threatened against the City that questions the validity of this Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs, or prospects of the City, financially or otherwise.

ARTICLE 6

INSURANCE, INDEMNIFICATION AND WSIB

6.1 INSURANCE REQUIREMENTS. During the Term, each Party shall obtain and maintain at its own expense, commercial general liability insurance that:

- (a) is written on IBC Form 2100 or its equivalent;
- (b) covers against any and all claims for libel, slander, false arrest, bodily injury, including death, personal injury, and property damage or loss, including acts or omissions of employees, agents and invitees;
- (c) has a limit of coverage of not less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, and
- (d) includes, but may not be limited to the following provisions:
 - (i) Standard form automotive liability insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence for third party liability;
 - (ii) non-owned automobile liability insurance in standard form having an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence or such greater amount as the City may from time to time request, in respect of vehicles not owned by the Recipient, that are used or operated on its behalf for the provision of services under this Agreement;
 - (iii) cross-liability, and
 - (iv) severability of interest.

The Recipient shall provide the City with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, before the execution of this Agreement by the City, and renewal replacements on or before the expiry of the insurance. The Recipient shall obtain the insurance policies described in this Agreement with an insurance company acceptable to the City, and its commercial general liability insurance policy shall be endorsed to include the City of Hamilton as an additional insured. Certificate holder for the City will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 attn: Director, Planning and Chief Planner. Upon the request of the City, a copy of each insurance policy shall be made available to it.

For greater certainty, the Recipient acknowledges and agrees that any contractors and/or sub-contractors retained by the Recipient for purposes of fulfilling the Recipient's obligations under this Agreement are required to provide proof of insurance confirming General Liability coverage written on IBC Form 2100 or its equivalent with limits of no less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate and adding the City of Hamilton as an additional insured.

6.2 INDEMNIFICATION. The Recipient shall defend, indemnify and save harmless the City and its employees, elected officials, representatives and agents from and against all claims, liabilities, losses, damages, costs and expenses (including solicitor/client fees on a substantial indemnity basis, administrative fees and disbursements); and all claims, demands, actions and other proceedings made, sustained, brought, prosecuted, or threatened to be brought or prosecuted in any manner, based upon, occasioned by, or attributable to an injury to a person, the death of a person, intellectual property rights infringement, an environmental effect, damage to (or loss of) property, whether arising directly or indirectly, or due to the result of a wilful or negligent act, omission or delay, on the part of the Recipient, its employees, subcontractors, agents or voluntary workers in carrying out its obligations under this Agreement. The City shall not claim indemnification, under this Section 6.2, to the extent that the injury, loss or damage has been caused by the negligent acts or omissions of the City or its employees, elected officials or agents.

6.3 LIMITATION OF LIABILITY. In no event shall the City be liable to the Recipient under any provision of this Agreement for lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary or punitive damages, in contract, tort or otherwise, whether or not caused by or resulting from the City's own, sole or concurrent negligence or the negligence of its affiliates or related parties, including claims of the Recipient arising out of third party claims; provided, however, that the foregoing in this Section 6.3 shall not be construed to limit the City's liability for actual damages.

6.4 WSIB. The Recipient shall provide, prior to the Effective Date:

- (a) A valid, current and original Clearance Certificate from the Ontario Workplace Safety and Insurance Board ("WSIB") declaring that the

Recipient is registered with the WSIB and has an account in good standing;
or

- (b) A letter of Good Standing issued by WSIB.

The Recipient shall provide additional certificates with respect to the coverage referred to above as often as the City deems necessary during the Term to ensure continued good standing with the WSIB.

6.5 If WSIB coverage is not required by law to be carried by the Recipient, the Recipient shall provide one of the following (as the case may be):

- (a) An exemption letter from WSIB, satisfactory to the City's solicitor, acting reasonably;
- (b) An independent operator's status certificate issued by WSIB; or
- (c) Such further and other evidence as may be satisfactory to the City's solicitor, acting reasonably.

6.6 Without restricting the indemnities provided by the Recipient elsewhere in this Agreement, the Recipient agrees to indemnify the City and its respective elected officials, officers, employees, agents, successors and assigns for all losses, claims, expenses (including reasonable legal fees) or other charges related to the Recipient's status with WSIB.

ARTICLE 7

TERMINATION

7.1 EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an event of default by the Recipient or a "Recipient Default":

- (a) Subject to Section 7.8 below, the failure of the Recipient to perform any covenant of the Recipient with respect to insurance policies and coverages to be maintained by the Recipient pursuant to and in accordance with Section 6.1 herein;
- (b) Subject to Section 7.8 below, the failure of the Recipient to comply with and maintain in good standing any professional certificates, permits, licenses or approvals required by this Agreement or required in order to fulfill its obligations under this Agreement;
- (c) Subject to Section 7.8 below, the failure of the Recipient to keep, observe or perform any of the other terms, representations, warranties, covenants

or agreements set forth in this Agreement on the Recipient's part to be kept, performed or observed.

7.2 RIGHT OF TERMINATION. This Agreement may be terminated in any of the following circumstances:

- (a) By the Recipient if the City fails to observe or perform any material provision of this Agreement and does not: (i) cure such breach within thirty (30) days following receipt of written notice of such breach from the Recipient (if such breach can be remedied) or, (ii) provide a reasonable rectification plan to the Recipient within thirty (30) days of receipt of written notice of such breach, or such longer period of time as may be granted by the Recipient to the City.
- (b) By either Party, where the other Party:
 - i. Becomes insolvent;
 - ii. Terminates all or substantially all of its business or operations;
 - iii. Is the subject of a voluntary or involuntary filing of a bankruptcy petition or similar proceeding, under the law of any jurisdiction;
 - iv. Makes any assignment or proposal for the benefit of its creditors;
 - v. Takes any step to dissolve, liquidate or wind itself up; or
 - vi. Has appointed in relation to some of all of its property a receiver, receiver and manager or some similar person.
- (c) By either Party if the occurrence of a Force Majeure Event continues for thirty (30) days following the delivery of Force Majeure Notice to the other Party.
- (d) By the City, by written notice to the Recipient, at any time if, at the City's sole and unfettered discretion, there is a change in risk that would jeopardize the Recipient's ability to fulfill its obligations under this Agreement.
- (e) By the City, by written notice to the Recipient, at any time if the Recipient, either directly or through its representatives, makes or has made a false or misleading statement or representation in respect of any matter related to this Agreement, other than in good faith, to the City.

- (f) By the City if the Recipient commits an act of Recipient Default which remains uncured pursuant to the terms and conditions set forth in Section 7.8 herein.

7.3 Subject to the terms and conditions of this Agreement, in the event that the Agreement is terminated by the City for any reason, the funding obligations of the City shall cease as of the date of such notice. Further, the City shall not be responsible for: (i) any losses, expenses, costs, charges, damages, indemnities and/or liabilities, which may be sustained, paid or incurred by the Recipient or any other person or persons, by reason of such termination of this Agreement by the City, and/or (ii) any damages, losses, injuries or deaths, however caused, or for any compensation whatsoever to the Recipient or others resulting from such termination of this Agreement by the City.

7.4 Upon the expiration or early termination of this Agreement pursuant to this Article 7, all rights and opportunities granted by each Party to the other shall immediately terminate and automatically revert to the granting Party. Furthermore, each Party shall immediately destroy all copies of the other Party's confidential information in its possession and shall certify in writing to the other Party that such action has been taken.

7.5 All obligations of the Recipient herein shall, expressly or by their nature, survive termination or expiry of this Agreement for a maximum period of ten (10) years, until and unless they are fulfilled or by their nature expire.

7.6 Where there is a breach by the Recipient or a Recipient Default or where, in the City's sole and unfettered opinion, there is likely to be a breach by the Recipient or a Recipient Default under this Agreement, the City may reduce the Financial Contribution, suspend any payment, rescind this Agreement and immediately terminate any financial obligation arising out of it and require repayment of amounts already paid.

7.7 The fact that the City refrains from exercising a remedy or any right herein shall not be considered to be a waiver of such remedy or right and, furthermore, partial or limited exercise of a remedy or right conferred on the City shall not prevent the City in any way from later exercising any other remedy or right under this Agreement or other applicable law.

7.8 Notwithstanding anything else provided for in this Article 7, the City may not terminate this Agreement pursuant to Section 7.1 unless it has served written notice to the Recipient of the Recipient Default and the Recipient has failed to remedy such default within a period of thirty (30) days from the date that the written notice was served, however, if such default cannot reasonably be remedied within such thirty (30) day period, then a longer period of time may be afforded to remedy such default, up to a total of ninety (90) days, provided that the Recipient is diligently seeking a remedy and the City is not irreparably harmed by the extension of the remedy period. At the expiration of the thirty (30) days, or ninety (90) days, as the case may be, the City may terminate this Agreement and rely on any remedy provided for under this Agreement if it deems that the Recipient has not remedied the Recipient Default in a satisfactory manner.

ARTICLE 8 **FORCE MAJEURE**

8.1 Neither Party will be liable to the other Party for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including, without limitation, Acts of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, pandemic, outbreak of a communicable disease, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the transactions described in this Agreement, or any other cause or occurrence outside the reasonable control of the Party claiming an inability to perform which by the exercise of due diligence could not be reasonably prevented or overcome and which would frustrate such Party from performing its obligations under this Agreement or the threat of any of the foregoing (a "Force Majeure Event").

8.2 A Party seeking to excuse its non-performance as a result of a Force Majeure Event shall have the burden of proof to demonstrate that the Force Majeure Event prevents its performance and must, upon becoming aware of a Force Majeure Event that prevents its performance, provide written notice to the other Party specifying the details in such regard within thirty (30) days of the date on which such Party gains actual knowledge of such Force Majeure Event (a "Force Majeure Notice").

ARTICLE 9 **MFIPPA**

9.1 MFIPPA REQUIRED DISCLOSURE. The disclosure of information relating to this Agreement and the Agreement itself are governed in accordance with the disclosure requirements of the applicable laws, including MFIPPA. In accordance with MFIPPA, this will notify Recipient that all correspondence, documentation and information provided to the City or its employees, agents or representatives by Recipient in connection with or arising out of this Agreement shall become a record of the City. City records are subject to the provisions of MFIPPA, and the City's obligations under MFIPPA may require records to be released. Recipient acknowledges that the City is subject to the collection, use and disclosure obligations set out in MFIPPA and that this Agreement is therefore subject to MFIPPA. Recipient agrees to comply with all applicable privacy legislation, including MFIPPA and the *Personal Information and Electronic Documents Act*, 2000, c.5 ("PIPEDA").

9.2 DISCLOSURE NOTIFICATION. In accordance with MFIPPA, this will notify Recipient that any personal information that Recipient provides to the City during the Term of the Agreement is being collected under the authority of the *Municipal Act* (Ontario).

9.3 MFIPPA PUBLIC RECORD. Recipient's name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to City of Hamilton Council and accordingly may become part of the public record.

ARTICLE 10
GENERAL CONTRACT TERMS AND PROVISIONS

10.1 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

10.2 LANGUAGE. The Parties have required that this Agreement be drawn up in the English language.

10.3 NOTICE. All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile or email with the word "NOTICE" written in the subject line. Notices must be sent to a Party at the following addresses, or to such other place as the Party may subsequently designate for its receipt of notices in accordance with this Section:

To City of Hamilton:

Attention: Stephen Robichaud, Director, Planning and Chief Planner
Department: Planning and Economic Development
Office Phone No.: 905-546-2424 Ext. 4281
Email: Steve.Robichaud@hamilton.ca

Mailing Address:

Planning Division
City of Hamilton, Planning and Economic Development Department
71 Main Street West, 5th Floor
Hamilton, Ontario L8P 4Y5

With a copy to:

Attention: City Clerk
Department: Corporate Services, City Clerk's Office
Phone No.: +1-905-546-2424 Ext. 4408
Email: Clerk@hamilton.ca

Mailing Address:

City Clerks Office,
City of Hamilton,
71 Main Street West, 1st Floor
Hamilton, Ontario L8P 4Y5 Hamilton, Ontario L8P 4Y5

To Hamilton Naturalists' Club:

Attention: Chris Motherwell, President
Hamilton Naturalists' Club
Office Phone No.: 416-830-2119
Email: president@hamiltonnature.org

Mailing Address:

P.O. Box 89052
Hamilton, ON
L8S 4R5

10.4 AMENDMENTS. This Agreement may be amended, supplemented or modified only by written agreement signed by each Party.

10.5 COMPLIANCE WITH APPLICABLE LAWS. The Recipient acknowledges and agrees that it shall comply in all respects with all applicable legal requirements governing its duties, obligations and practices respecting its obligations under this Agreement, including without limitation compliance with: (i) privacy laws, (ii) the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, (iii) all laws dealing with or relating to accessibility, (iv) Human Rights Code, R.S.O. 1990, c. H.19, and (v) WSIB rules and regulations.

10.6 RELATIONSHIP OF THE PARTIES. The relationship of the Recipient and City under this Agreement is that of independent parties, each acting in its own best interests. Notwithstanding anything in this Agreement to the contrary, this Agreement does not constitute and shall not be construed as constituting a partnership, joint venture or agency between the City and the Recipient. No Party shall have any right to obligate or bind the other Party in any manner whatsoever. The Recipient shall not represent itself as being a partner, co-contractor, co-producer, employee or agent of the City in carrying out its obligations under this Agreement.

10.7 ASSIGNMENT. Neither Party may assign this Agreement nor the rights granted herein without the express written consent of the other Party. Any assignment that fails to comply with this provision shall be deemed invalid.

10.8 BINDING AGREEMENT. The Parties acknowledge and agree that this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions contained herein.

10.9 ENUREMENT. The Parties acknowledge that the terms and conditions of this Agreement shall be binding upon, and enure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein nor any standing or authority to enforce the terms and conditions of this Agreement.

10.10 CONFLICT OF INTEREST. The Parties shall not act in any case where there may be any conflict of interest between them. Immediately upon becoming aware of a conflict of interest situation or a potential conflict of interest situation, the affected Party shall notify the other Party in writing, and both Parties shall forth-with work collaboratively to remove the cause(s) of the conflict of interest.

10.11 SUBCONTRACTORS. In the event that any of the Recipient's obligations under this Agreement are subcontracted to a third party the Recipient shall retain the entire responsibility for the obligations subcontracted as well as for each subcontractor's compliance with this Agreement. Recipient understands, acknowledges and agrees that its use of subcontractors shall not in any way alter its obligations, representations and warranties made herein. Recipient shall be fully responsible for all acts and omissions of its subcontractors. Nothing in this Agreement shall be construed to create any contractual relationship between City and any subcontractor, nor any obligation on the part of City, to pay or to ensure the payment of any money due to any subcontractor. Any subcontractor engaged by Recipient to fulfill Recipient's obligations under this Agreement must agree to be bound by reasonable and customary confidentiality provisions, but only to the extent such subcontractor may receive or have access to City's Confidential Information hereunder.

10.12 COUNTERPARTS. This Agreement and any other document delivered in connection herewith may be executed and delivered in counterparts and by scan or facsimile and each such counterpart, taken together, will constitute one and the same agreement.

10.13 DISPUTE RESOLUTION. In the event of a dispute arising under the terms of this Agreement, the Parties agree to make a good-faith attempt to settle the dispute.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CITY OF HAMILTON

By: _____

Name: Dan McKinnon

Title: General Manager, Public Works

By: _____

Name: Jason Thorne

Title: General Manager, Planning and Economic Development

HAMILTON NATURALISTS' CLUB

By: _____

Name: Chris Motherwell

Title: President

I/we have the authority to bind the corporation.

SCHEDULE “A”
DUTIES AND OBLIGATIONS TO BE PERFORMED

Researching/Writing

- Act as head researcher and writer for BAP
- Produce a background report summarizing the state of biodiversity in Hamilton in consultation with the Working Group and with Stakeholders
- Summarize the existing and City and Community led projects related to biodiversity
- Provide a summary of the public / stakeholder engagement
- Incorporate working group comments and public/stakeholder feedback into final draft
- Draft of the final BAP document including actions, timeline, and the lead agency/organization

Administrative

- Organize and facilitate bi-weekly BAP Working Group meetings during BAP development, including preparation of agenda and minutes and distribution to Working Group members
- Distribute draft written materials to BAP working group members for comment
- Seek out additional funding opportunities for the BAP development and manage BAP funds. Maintain transparent accounting for BAP funds.
- Distribute draft written materials to BAP working group members for comment
- Manage electronic project files on behalf of Working Group on OneDrive

Communications/Public Engagement

- Act as lead contact person for all communications related to the BAP development
- Develop communications plan in partnership with Working Group members for building public awareness of the BAP (social media, websites, etc.)
- Coordinate with Working Group members on public engagement activities / open houses (in-person and/or virtual)
- Present final BAP to Council alongside presentation and report by City Staff. Present final BAP to Boards of Working Group members if requested.
- Attend (virtually or in-person) all City meetings related to the BAP and make delegations to Committee and Council (if needed)

Facilitator

- Lead the BAP Working Group through the formulation of the draft actions and summary of Hamilton’s Biodiversity to prepare for stakeholder engagement sessions
- Lead stakeholder/public workshops for BAP and prepares a summary report that will inform the Plan.