



CITY OF HAMILTON

OFFICE OF THE CITY MANAGER

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: October 11, 2011	
SUBJECT/REPORT NO: Independent External Audit Review of HECFI Operations Phase 2 (CM11013(a)) (City Wide)	
SUBMITTED BY: Chris Murray City Manager	PREPARED BY: Tony Tollis 905-546-2424 Ext 4549
SIGNATURE:	

RECOMMENDATION

That report CM11013(a) be received.

EXECUTIVE SUMMARY

The attached Appendix "A" is the terms of reference for Phase Two of the HECFI review as directed by Council. Phase Two can be summarized as follows:

- Stage One - Pre Marketing Stage (October)
- Stage Two – Receipt and Evaluation of Preliminary Offers Stage (December)
- Stage Three – Negotiation / Completion Stage (First Quarter 2012)

Staff will schedule regular GIC meetings throughout the process to solicit input and exchange ideas and information.

The cost for Stage One is \$130,000, Stage Two is \$35,000 plus \$3,000 per proposal received and Stage Three, if necessary, will be on a pay as you go basis, based on rate schedules outlined in the terms of reference. Costs for the review will be funded through the HECFI reserves.

Page 4 of this report contains a section entitled, "Discussion of Mandates". In order that we do not mislead proponents, staff are looking for input on any restrictions Council may want to put forward with respect to the sale or purposing of any of the facilities. As well we are looking for direction with respect to any future subsidization of these facilities. Although our mandate will be to eliminate Municipal Subsidies of any kind, it was not our intent to disqualify anyone who requested some level of subsidization.

Alternatives for Consideration – Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: The cost of Phase 2 will be as follows:

Stage One: \$130,000 (This includes University of Michigan/ Mark Rosentraub, as a subcontractor to KPMG)

Stage Two: \$35,000 plus \$3,000 for each proposal received.

Stage Three: Pay as you go if necessary. Rates are included the terms of reference document attached.

All funds are being paid from HECFI Reserves.

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

At its meeting of June 29, 2011, Council approved the following recommendations pertaining to the HECFI Review:

- (h) *That the City Manager be authorized and directed to proceed with Phase 2 of the HECFI Review Terms of Reference, utilizing the services of KPMG, as follows:*
 - (i) *Prepare and issue a Request for interest (RFI) or Expression of interest for the purchase, lease, or management, of all or parts of HECFI facilities;*
 - (ii) *Summarize options in a report to GIC;*
- (i) *That the City Manager be authorized and directed to negotiate the scope and cost of the Review with KPMG;*

- (j) *That the City Manager report back to the General Issues Committee with the results of Phase 2 by December 31, 2011;*
- (k) *That the cost of Phase 2 be funded from the HECFI Reserve.*

This report is being prepared to update the Committee on the progress made to date and to request information from the Committee in an effort to move forward on the review in an efficient manner.

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

The staff group assigned to the review is as follows:

Peter Barkwell, City Solicitor
Anne Pekaruk, Director of Audit Services
Tony Tollis, City Treasurer
Art Zuidema, Director, Corporate Initiatives

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The attached Appendix "A" is the terms of reference negotiated between the City and KPMG for Phase Two of the HECFI Review. Phase Two will be completed in three stages as follows:

Stage One – Pre-Marketing Stage (October)

The objective of Stage One is to ensure that prospective developers/HECFI managers:

- (1) clearly understand the goals and expectations of the City of Hamilton with respect to the HECFI facilities,
- (2) fully appreciate the value of the HECFI facilities as they relate to downtown Hamilton's revitalization, and
- (3) are cognizant of the trends in the Greater Toronto and Hamilton area that create opportunities for the HECFI facilities and the repositioning of Hamilton and its image.

**Stage Two – Request, Receipt and Evaluation of Preliminary Offers Stage
(November/December)**

In the Request, Receipt and Evaluation of Preliminary Offers Stage, the KPMG team will work with representatives of the City to solicit preliminary Alternative Service Delivery (ASD) proposals that include a vision for downtown's revitalization based on HECFI and other assets, a plan and program for the operation of the HECFI facilities, and a strategic vision for realizing Hamilton's development potential in light of the changes in the Greater Toronto and Hamilton Area (GTHA). KPMG will co-ordinate responses to information requests, assist the City in the review and evaluation of proposals received in accordance with the evaluation framework developed in Stage One, and present a draft summary of proposals and related comments to the City Manager's Office. Upon receipt of feedback from the City Manager's Office, a final report will be prepared for presentation to City Council for its consideration and discussion.

Stage Three – Negotiation / Completion Stage (December/Early 2012)

If City Council approves further discussions with one or more parties who have submitted a preliminary offer (the "Preferred Parties"), Stage Three would commence. In this stage, the KPMG team would assist representatives of the City in further negotiations with the Preferred Parties, assist with providing additional information as required, and work towards the finalization of agreements in principle and related documentation with the Preferred Parties. City Council would have final approval of any and all agreements.

Staff will be updating Council throughout the process via GIC to solicit input and to exchange ideas and information.

As directed by Council, staff will endeavour to complete this process by the end of December 2011. It should be noted however that depending on the number of interested parties and the complexity of the offers, the target date for completion could extend into the first quarter of 2012.

DISCUSSION OF MANDATES

In order to ensure that the Request for Expressions of Interest does not mislead potential proponents, staff is requesting clarity, through open discussion, on specific issues related to the operations or divestiture of the HECFI facilities. These are as follows:

- 1) Should the sale of all or parts of the facilities be limited in any way?
- 2) Should the uses of all or parts of the facilities be limited in any way?
- 3) There will be interest in the Convention Centre Parking Garage. Is there any limits to these discussions?

- 4) Staff is assuming that our goal is no Municipal Subsidization of these facilities, although we will not be disqualifying any bids that contain any requirement for the City to maintain a level of subsidy.
- 5) Labour Relations (In – Camera)

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ A culture of excellence

Financial Sustainability

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Intergovernmental Relationships

- ◆ Maintain effective relationships with other public agencies

Growing Our Economy

- ◆ A visitor and convention destination

Social Development

- ◆ N/A

Environmental Stewardship

- ◆ N/A

Healthy Community

- ◆ N/A

APPENDICES / SCHEDULES

Appendix “A” Terms of Reference Phase 2- HECFI Review



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Private & Confidential

Mr. Chris Murray
City Manager
City of Hamilton
71 Main Street West, City Hall, 1st Floor
Hamilton, ON
L8P 4Y5

August 30, 2011

Dear Mr. Murray:

Re: HECFI Review – Phase II – Alternative Operating Scenarios

INTRODUCTION

Between March and June 2011, KPMG LLP and its subcontractor, HLT Advisory Inc., (collectively "KPMG") assisted the City of Hamilton (the "City") by performing an independent external financial and operational review of Hamilton Entertainment and Convention Facilities Inc. ("HECFI") as well as the identification of alternative management / ownership options for HECFI and its underlying facilities. This completed assistance is referred to herein as Phase I.

At this time, City Council has requested that KPMG (inclusive of HLT Advisory Inc. and a second subcontractor, the University of Michigan / Mark Rosentraub) undertake a number of activities to seek out Alternative Service Delivery ("ASD") scenarios (i.e. private management contracts, long-term leases, sale of facilities) for some or all of the operations and facilities of HECFI in conjunction with a goal of revitalizing downtown Hamilton. The required assistance is more fully described under Description of Approach and is hereafter referred to as Phase II.

This engagement letter describes our understanding of your requirements, the scope of our services and the necessary professional arrangements.

DESCRIPTION OF SERVICES

General Background

The City of Hamilton has empowered HECFI, a wholly-owned subsidiary, to manage the operations of Copps Coliseum, the Hamilton Convention Centre and Hamilton Place for the benefit of the City and its residents. HECFI is governed by a newly-appointed Board of Directors that is comprised of five members of City Council.

Due to its ongoing subsidization of HECFI's operations, the City is interested in formally exploring various operational improvements including the exploration of ASD options for HECFI and its underlying facilities.

Description of Approach

Work on the engagement will formally commence on or about September 1, 2011 with the longer-term expectation of completing or being well along to implementing possible ASD options in early 2012. We envision three stages in Phase II – the Pre-Marketing Stage, the Receipt and Evaluation of Preliminary Offers Stage and the Negotiation / Completion Stage. The Pre-Marketing Stage involves gathering information and preparing documentation before formally soliciting offers from private / public sector parties (i.e. September to mid-October). The Receipt and Evaluation of Preliminary Offers Stage involves the request, receipt and evaluation of preliminary offers from interested parties for presentation to City Council. This stage will occur from late October through November 2011. The Negotiation / Completion Stage, if approved by Council, involves assisting with further negotiations of Council-approved offer(s), presenting updates to City Council and ultimately moving the preferred offer(s) towards completion. This stage will occur during December 2011 and extend into 2012. We note that the timelines described above are tentative, are subject to change, and are dependent upon timely cooperation from City staff and expeditious direction from the City's senior staff and City Council.

The following is the proposed approach that KPMG would follow to complete this assignment.

1. Stage One – Pre-Marketing Stage

The objective of Stage One is to ensure that prospective developers/HECFI managers: (1) clearly understand the goals and expectations of the City of Hamilton with respect to the HECFI facilities, (2) fully appreciate the value of the HECFI facilities as they relate to downtown Hamilton's revitalization, and (3) are cognizant of the trends in the Greater Toronto and Hamilton area that create opportunities for the HECFI facilities and the repositioning of Hamilton and its image.

Accordingly, the Pre-Marketing Stage consists of four separate tasks that involve the gathering and documentation of information required for soliciting ASD proposals for the HECFI facilities. The first two steps of Stage One will largely be performed by the

University of Michigan/ Mark Rosentraub, as a subcontractor to KPMG. Steps three and four in Stage One will be performed by the larger KPMG team.

First, the KPMG team will document for prospective developers/operators/Alternative Service Delivery parties of the HECFI facilities ("Interested Parties") the demographic changes underway in the Greater Toronto and Hamilton area ("GTHA"). Anticipated population changes based on trends for the past few years and Statistics Canada's projections for the next decade will be detailed. These data and those being used for planning purposes by the City of Toronto and selected other public agencies will be synthesized and made available to all Interested Parties.

The population data provided to Interested Parties will include characteristics about projected GTHA population growth and the projected impact on discretionary income. A projection of the number of new housing units required by the expected population growth will be provided. The implications for the building of several hundred thousand housing units in the GTHA for environmental (and Green Space) policies, practices, and plans will be described. Attention will also be directed towards the environmental and Green Space parameters established by the Province and cities in the region.

An analysis of transportation plans in the GTHA will also be produced by KPMG's team and included in the information collected. These transportation maps and outlines will identify commute times to prime job concentrations in the GTHA and the increasing value of land assets in downtown Hamilton, helping Interested Parties to assess the potential of downtown Hamilton to emerge as a regional centre for residential development and a centre for sports, culture and entertainment.

With the assistance of the City's staff (and if seen to be desirable), a land use map of the downtown area can also be included in the information provided to Interested Parties. The purpose of this map and the data included on land uses will be to illustrate the surrounding assets that could complement a visionary plan for adding value to HECFI's assets and holdings that fulfill the economic and development goals for downtown established by the City of Hamilton.

Second, working with City staff, the KPMG team will help draft the introductory wording for the program announcement that underscores the City of Hamilton's objectives for this assignment:

- (1) Re-positioning the downtown area to capitalize on changes taking place in the GTHA

- (2) Re-positioning the downtown area to make it a focal point for the attraction and retention of human capital that will drive future economic development in Hamilton and the GTHA region
- (3) Establishing downtown Hamilton as a regional destination for major sports, entertainment, and cultural events complementing the amenities needed by a metropolitan region of several million residents with expanding levels of discretionary income
- (4) Positioning downtown Hamilton as an asset capable of assisting in meeting the City's responsibilities with regard to housing opportunities for all residents.

The request to Interested Parties will be clear in expressing our understanding of the City of Hamilton's desire for a visionary partner to help the City (a) re-position its downtown assets, (b) change its image, (c) expand the residential base in the downtown that complements current revitalization efforts in the downtown area, and (d) continue its long-standing efforts to secure leading sports, entertainment, and cultural amenities for the City.

Third, the KPMG team will work with representatives of HECFI and the City to create a base of performance information and documentation on each of the HECFI facilities that will be provided to Interested Parties. The work to be performed in this third section of Stage One includes:

- (1) Establishing clear terms of reference / mandates for each HECFI facility, complete with establishing a clear understanding of what the City of Hamilton is prepared to accept and not accept with respect to the potential devolution of operating responsibility for (and/or ownership of) each HECFI facility, including:
 - (a) the level of ongoing City subsidization of operations (if any)
 - (b) the valuation and other considerations in respect of an outright sale of facilities and/or potential changes of use;
 - (c) the responsibility for future sustaining capital investments
 - (d) the extent of the City's efforts to develop a master developer status with the prospective operator/developer and to make required land for accepted and approved plans available to the operator/developer;
 - (e) a discussion of human resource issues;
 - (f) the identification of allowable ASD parties;

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- (g) the role and use of the City-owned parking operations and facilities in contributing to the broader vision for a revitalized downtown; and
 - (h) the opportunities for local cultural and arts organizations to participate in the broader vision for downtown Hamilton and the presentation of works at and in the revitalized venues.
- (2) Coordinating a high-level condition assessment of HECFI facilities. KPMG would work with the City to coordinate the retention of an accredited party to undertake this condition assessment. [KPMG will act as a conduit for coordinating the facility condition assessment, but will not be liable for the report and its conclusions].
 - (3) Creating a database of salient information that will be required for the ASD search process. City input will be required in this process.
 - (4) Liaising with management of HECFI to better understand its operations and areas for possible economic savings.
 - (5) Holding preliminary discussions with Interested Parties in respect of their vision for downtown Hamilton and their expectations for a HECFI ASD transition. It is anticipated that global development and facility management firms would be among the Interested Parties; firms located in Hamilton will also have access to the KPMG team.
 - (6) Assist in the creation of draft documents (the supporting material described above) for the City's written approval that will be issued as part of the Request for Expressions of Interest ("RFI") package. The RFI package will be put forward by the City with the KPMG team designated as the agency-recipient for responses from Interested Parties.
 - (7) Provide regular updates to the City Manager, designated City staff, and City Council.

Four, the KPMG team will support the City of Hamilton in developing an evaluation framework that will be used to evaluate the RFIs which are received in response to the RFI packages made available to Interested Parties. The evaluation framework will need to enable a comparison of proposals for one HECFI facility vs. all HECFI facilities.

In summary, completion of the Pre-Marketing Stage will allow KPMG and the City to approach Interested Parties in an efficient, informed, fair and coordinated basis.

2. Stage Two – Receipt and Evaluation of Preliminary Offers Stage

In the Receipt and Evaluation of Preliminary Offers Stage, the KPMG team will work with representatives of the City to solicit preliminary ASD proposals that include a vision for

downtown's revitalization based on the HECFI and other assets, a plan and program for the operation of the HECFI facilities, and a strategic vision for realizing Hamilton's development potential in light of the changes in the GTHA. KPMG will co-ordinate responses to information requests, assist the City in the review and evaluation of proposals received in accordance with the evaluation framework developed in Stage One, and present a draft summary of proposals and related comments to the City Manager's office. Upon receipt of feedback from the City Manager's office, a final report will be prepared for presentation to City Council for its consideration and discussion.

Among the steps involved are:

- Assist the City with approaching Interested Parties and facilitating the flow of information (e.g. a bidders meeting or meetings with individual bidders) required to receive ASD proposals.
- Manage a process of securing confidentiality agreements from Interested Parties, as appropriate.
- Meet with Interested Parties to explain data issues and provide clarity with regard to the City's objectives, goals and expectations.
- Set up and maintain a data room (physical and virtual) for use by Interested Parties throughout the process.
- Assist the City with the review and evaluation of proposals as received based on the evaluation framework, and request clarifications as required.
- Assist in making presentations to the City Manager, appropriate City staff, and City Council as required, to evaluate the proposals and facilitate the selection of Preferred Parties.
- Prepare, with City staff input, a written summary of viable ASD offers for City Council consideration based on the evaluation framework established in Stage One.
- Attend at a meeting of City Council to discuss the preliminary ASD offers received and provide appropriate recommendations. This City Council meeting will likely occur in November / December 2011.

Ideally, the Receipt and Evaluation of Preliminary Offers Stage will result in City Council approving further discussions with one or more Interested Parties. The number of participants who submit offers in Stage Two is uncertain. It is also possible that the ASD process for HECFI could be abandoned by the City after this stage due to insufficient market interest, inadequate third party offers, or other reasons.

3. Stage Three – Negotiation / Completion Stage

If City Council approves further discussions with one or more parties who have submitted a preliminary offer (the "Preferred Parties"), Stage Three would commence. In this stage, the KPMG team would assist representatives of the City in further negotiations with the

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Preferred Parties, assist with providing additional information as required, and work towards the finalization of agreements in principle and related documentation with the Preferred Parties. City Council would have final approval of any and all agreements.

Among the steps involved are:

- Assist in follow-up negotiations with the Preferred Parties to clarify and improve/finalize their agreements in principle.
- Assist in responding to additional information requests from Preferred Parties, as required.
- Provide periodic updates of the process to the City Manager and City Council. This will involve both oral and written submissions.
- If approved by Council, assist the City's legal counsel with the finalization of closing issues and documentation, as required.
- Assist in the preparation of a final report that summarizes the ASD search process.

Ideally, the Negotiation / Completion Stage will result in the City concluding agreements with one or more Preferred Parties. The number of Preferred Parties approved by City Council, and the length and complexity of any subsequent discussions and negotiations with these parties is difficult to determine at this time. It is also possible that discussions with one or more Preferred Parties could be discontinued during this stage.

City Council will be responsible for making final decisions on final agreements with all potential Proponents.

A more detailed summary of the steps and timelines of Stages I, II and III our proposed work plan has been included in Appendix B.

INFORMATION

In completing this engagement, KPMG will be relying upon information and material provided to us by representatives of the City and HECFI. Our review of this information will consist primarily of enquiry, analysis and discussions with management. Our review will not encompass an audit of the financial position or operating results of HECFI.

We are committed to meeting the general timelines proposed for this project; however, the ASD search process is also dependent upon the speed and timelines of Interested Parties / Preferred Parties and their advisors. Our ability to meet the timelines of this project will also rely, in part, on the ability of City and HECFI personnel to provide required documents and assistance to us on a timely basis, and the requisite approval of important decisions in the ASD process by City Council.

PROFESSIONAL FEES AND EXPENSES

The fees for undertaking Stage I will be fixed at \$130,000, plus any out-of-pocket expenses (e.g. extraordinary pre-approved travel, and the subcontracted cost of a facility condition assessment). Our fee quote includes the delivery of the services outlined in the Pre-Marketing Stage of the work plan, culminating with the completion of a final listing of Interested Parties and completed RFI documents. Completion of this stage is expected in mid to late October 2011.

The fees for undertaking Stage II will be fixed at \$35,000 plus a charge of \$3,000 per preliminary offer received, plus any out-of-pocket expenses (e.g. extraordinary pre-approved travel) incurred. Our fee quote includes the delivery of the services outlined in the Request and Evaluation of Preliminary Offers Stage of the work plan, culminating with the preparation of a summary report and its presentation to City Council in November / December 2011.

Due to various uncertainties (e.g. time commitments) associated with the Negotiation / Completion portion of the engagement (i.e. Stage III), we will invoice the City based on the personnel employed and the following per diem rates (7.5 hours per day).

Rockx, Hall, Rosentraub / other KPMG partners	\$2,500
Peever and other KPMG senior managers	\$2,000
Raso and other managers	\$1,800

HST, if applicable, will be charged on our invoices for professional services.

Our professional fees will be billed on a semi-monthly basis as the engagement progresses. Our invoices are payable within 30 days of receipt.

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STAFFING

The project will be led by **John Rockx** of KPMG with assistance from **HLT Advisory Inc. / Lyle Hall** and **the University of Michigan / Mark Rosentraub**. Other KPMG personnel (Will Lipson / Bruce Peever / Vince Raso) will also be involved as necessary to assist with the project. The key members of our team as identified above may be contacted as follows:

Name	Phone	Fax	E-mail
John Rockx	(905) 523-2247	(905) 523-2200	jrockx@kpmg.ca
Bruce Peever	(905) 523-8200	(905) 523-2200	bpeever@kpmg.ca
Lyle Hall	(416) 924-2080	(416) 961-7737	llylehall@hlta.ca

OTHER TERMS AND CONDITIONS

This engagement is subject to KPMG's Terms and Conditions for Advisory and Tax Services attached as Appendix A and incorporated herein by reference.

Furthermore, we understand that the proposed RFI process for seeking ASD scenarios will not be bound by normal City procurement rules.

CONFIDENTIALITY

Confidentiality is critical to our reputation. KPMG members (and subcontractors) are expected to be familiar with our Statement of Policy on Confidential Information that, among other things, requires all firm members to keep confidential all information concerning a client's business affairs. KPMG members shall not discuss financial or business affairs of any client or other information gained through their work with any person outside the firm. All staff are required to sign an annual declaration indicating their compliance with our confidentiality policies.

INDEPENDENCE / CONFLICTS OF INTEREST

KPMG, HLT Advisory and the University of Michigan have a large client base in the Canadian municipal and public sectors and, at any given time, have a number of ongoing engagements. We do not believe that any of our current work entails a conflict of interest with this assignment. We treat all client information as strictly confidential and we do not allow our evaluation of any particular client's circumstances to be influenced by work we may be doing for other clients.

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CONCLUSION AND ACCEPTANCE

We look forward to working with you in relation to this assignment. Please confirm your acceptance of these arrangements, by signing and returning this letter directly to the undersigned.

Yours truly,

KPMG LLP

Handwritten signature of KPMG LLP in black ink, with a horizontal line underneath.

John Rockx, CA, CBV
Associate Partner
(905) 523-2247

Accepted for and on behalf of the City of Hamilton ("Client") by:

Signature: _____

Name: _____

Date: _____



TERMS AND CONDITIONS FOR ADVISORY AND TAX SERVICES

APPENDIX A

1. TERMS AND CONDITIONS.

a. The Terms and Conditions are an integral part of the accompanying Proposal or Engagement Letter from KPMG that identifies the engagement to which they relate.

b. In the event of conflict between the Proposal or Engagement Letter and the Terms and Conditions, the Terms and Conditions shall prevail unless specific reference to a provision is made in the Proposal or Engagement Letter. Other capitalized words in the Terms and Conditions shall have the meanings given to them in the Proposal or Engagement Letter.

2. SERVICES.

KPMG will use reasonable efforts to complete the performance of the services within any agreed-upon time-frame. It is understood and agreed that KPMG's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Client. KPMG will not perform management functions or make management decisions for Client. Nothing in the Terms and Conditions shall be construed as precluding or limiting in any way the right of KPMG to provide services of any kind or nature whatsoever to any person or entity as KPMG in its sole discretion deems appropriate.

3. CLIENT RESPONSIBILITIES.

a. Client agrees to cooperate with KPMG in the performance of the services under the Engagement Letter and shall provide or arrange to provide KPMG with timely access to and use of the personnel, facilities, equipment, data and information to the extent necessary for KPMG to perform the services under the Engagement Letter. Client shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to KPMG for purposes of the performance by KPMG of its services hereunder. The Proposal or Engagement Letter may set forth additional responsibilities of Client in connection with the engagement. Client acknowledges that Client's failure to perform these obligations could adversely impact KPMG's ability to perform its services.

b. Client agrees that Client, and not KPMG, shall perform the following functions: (i) make all management decisions and perform all management functions; (ii) designate an individual who possesses suitable skill, knowledge and experience, preferably within senior management, to oversee the performance of the services under the Engagement Letter, and to evaluate the adequacy and results of such services; (iii) accept responsibility for the results of such services; and (iv) establish and maintain internal controls over the processes with which such services are concerned, including, without limitation, monitoring ongoing activities.

c. Client acknowledges and agrees that KPMG will, in performing the services, base its conclusions on the facts and assumptions that Client furnishes and that KPMG may use data, material, and other information furnished by or at the request or direction of Client without any independent investigation or verification and that KPMG shall be entitled to rely upon the accuracy and completeness of such data, material and other information. Inaccuracy or incompleteness of such data, material and other information furnished to KPMG could have a material effect on KPMG's conclusions.

d. Client acknowledges that information made available by it, or by the others on Client's behalf, or otherwise known to partners or staff of KPMG who are not engaged in the provisions of the services shall not be deemed to have been made available to the individuals within KPMG who are engaged in the provision of the services hereunder. Client undertakes that, if anything occurs after information is provided by Client to KPMG to render such information untrue, unfair or misleading, Client shall promptly notify KPMG.

4. REPORTING.

a. During the performance of the services, KPMG may supply oral, draft or interim advice, reports or presentations but in such circumstances KPMG's written advice or final written report shall take precedence. No reliance should be placed by Client on any oral, draft or interim advice, reports or presentations. Where Client wishes to rely on oral advice or oral presentation, Client shall inform KPMG and KPMG will provide documentary confirmation of the advice concerned.

b. Subsequent to the completion of the engagement, KPMG will not update its advice, recommendations or work product for changes or

modification to the law and regulations, or to the judicial and administrative interpretations thereof, or for subsequent events or transactions, unless Client separately engages KPMG to do so in writing after such changes or modifications, interpretations, events or transactions.

5. WORKING PAPERS AND USE OF REPORTS.

KPMG retains all rights in all methodologies, know-how, knowledge, applications and software developed by KPMG either prior to or during the engagement. KPMG also retains all rights (including copyright) in all reports, written advice and other working papers and materials developed by KPMG during the engagement. Unless contemplated by the Engagement Letter, all reports and written advice are intended solely for Client's internal use and, where applicable, government taxation authorities, and may not be edited, distributed, published, made available or relied upon by any other person without KPMG's express written permission. If such permission is given, Client shall not publish any extract or excerpt of KPMG's written advice or report or refer to KPMG without providing the entire advice or report at the same time. Subject to the restrictions of Section 6, KPMG is entitled to use or develop the knowledge, experience and skills of general application gained through performing the engagement.

6. CONFIDENTIALITY.

a. Except as described in section 5 above, Client will treat in confidence any KPMG methodologies, know-how, knowledge, application or software identified by KPMG as confidential information of KPMG, and will not use or disclose such confidential information of KPMG to others.

b. KPMG will treat as confidential all proprietary information and personal information obtained from Client in the course of the engagement and, except as described in this section, KPMG will only use such information in connection with the performance of its services.

c. The above restrictions shall not apply to any information that: (i) is required by law or professional standards applicable to KPMG to be disclosed; (ii) that is in or hereafter enters the public domain; (iii) that is or hereafter becomes known to Client or KPMG, as the case may be, without breach of any confidentiality obligation; or (iv) that is independently developed by Client or KPMG, as the case may be.

d. KPMG shall be entitled to include a description of the services rendered in the course of the engagement in marketing and research materials and disclose such information to third parties, provided that all such information will be rendered anonymous and not subject to association with Client.

e. KPMG shall be entitled to share all information with all other member firms of KPMG International Cooperative ("KPMG International") performing services hereunder. KPMG may also use such information to offer services that may be of interest to Client. KPMG may retain and may disclose to other member firms of KPMG International, subject to terms of this section, such information required for compliance with applicable professional standards or internal policies or quality reviews.

f. Professional standards require KPMG personnel performing any audit or assurance services for clients to discuss or have available to them all information and materials that may affect the audit or assurance engagement. Client authorizes, if Client is or becomes an assurance Client, KPMG personnel performing services under the engagement to make available to the KPMG assurance engagement team and other KPMG personnel, the findings, observations and recommendations from the engagement and agrees that KPMG may use all such findings, observations and recommendations in KPMG's assurance engagement.

7. PERSONAL INFORMATION CONSENTS AND NOTICES.

KPMG may be required to collect, use and disclose personal information about individuals during the course of this engagement. Client represents and warrants that: (i) it will obtain from individuals all consents required by law to permit KPMG to collect, use and disclose all personal information reasonably required in the course of the engagement, and (ii) it has provided notice of KPMG's potential processing of information outside of Canada (as described in paragraph 8 below) to all individuals whose personal information is disclosed to KPMG.

8. INFORMATION PROCESSING OUTSIDE OF CANADA.

Personal and/or confidential information collected by KPMG during the course of this engagement (e.g. entries into KPMG's time and billing system and into KPMG's conflicts database) may be processed and stored outside of Canada by KPMG, KPMG International member firms providing



services hereunder or third party processors. Such personal and/or confidential information may be subject to disclosure in accordance with the laws applicable in the jurisdiction in which the information is processed or stored, which laws may not provide the same level of protection for such information as will Canadian laws. KPMG's Privacy Officer noted in KPMG's Privacy Policy is able to answer any individual's questions about the collection of personal information required for KPMG to deliver services hereunder.

9. TAXES/BILLING/EXPENSES/FEES.

a. All fees and other charges do not include any applicable federal, provincial, or other goods and services or sales taxes, or any other taxes or duties whether presently in force or imposed in the future. Any such taxes or duties shall be assumed and paid by Client without deduction from the fees and charges hereunder.

b. Bills, including, without limitation, a charge on account of all reasonable expenses, including travel, meals, accommodations, long distance, telecommunications, photocopying, delivery, postage, clerical assistance and database research will be rendered on a regular basis as the engagement progresses. Accounts are due when rendered. Interest on overdue accounts is calculated at the rate noted on the invoice commencing 30 days following the date of the invoice.

c. Without limiting its rights or remedies, KPMG shall have the right to halt or terminate entirely its services until payment is received on past due invoices.

d. In the event that the engagement is terminated and Client proceeds to complete the transaction or financing within 18 months from the termination date, then the full amount of any Completion Fee shall be payable on closing of the transaction or the completion of financing, regardless of whether KPMG provided further service.

10. LIMITATION ON WARRANTIES.

THIS IS A SERVICES ENGAGEMENT. KPMG WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH WITH QUALIFIED PERSONNEL IN A COMPETENT AND WORKMANLIKE MANNER IN ACCORDANCE WITH APPLICABLE INDUSTRY STANDARDS. KPMG DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. LIMITATION ON LIABILITY.

a. Client agrees that KPMG shall not be liable to Client for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the services performed hereunder for an aggregate amount in excess of the fees paid by Client to KPMG under the engagement. On a multi-phase engagement, KPMG's liability shall be based on the amount actually paid to KPMG for the particular phase that gives rise to the liability.

b. In the event of a claim by any third party against KPMG that arises out of or relates to the services performed hereunder, Client will indemnify KPMG from all such claims, liabilities, damages, costs and expenses, including, without limitation, reasonable legal fees, except to the extent finally determined to have resulted from the intentional, deliberate or fraudulent misconduct of KPMG.

c. In no event shall KPMG be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). In any action, claim, loss or damages arising out of the engagement, Client agrees that KPMG's liability will be several and not joint and several. Client may only claim payment from KPMG of KPMG's proportionate share of the total liability based on degree of fault.

d. For purposes of this section, the term KPMG shall include its associated and affiliated entities and their respective partners, directors, officers and employees. The provisions of this section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

12. LEGAL PROCEEDINGS.

a. Client agrees to notify KPMG promptly of any request received by Client from any court or applicable regulatory authority with respect to the services hereunder, KPMG's advice or report or any related document.

b. If KPMG is required by law, pursuant to government regulation, subpoena or other legal process or requested by Client to produce documents or personnel as witnesses arising out of the engagement and KPMG is not a party to such proceedings, Client shall reimburse KPMG at standard billing rates for professional time and expenses, including, without limitation, reasonable legal fees, incurred in responding to such requests.

c. When requested or required by law, subpoena or other legal process or otherwise, that KPMG provide information and documents relating to Client's affairs, KPMG will use all reasonable efforts to refuse to provide information and documents over which Client asserts legal privilege or which has been acquired or produced in the context of the engagement of legal counsel by or on behalf of Client, except where providing such copies, access or information is required by law, by a provincial Institute/Ordre pursuant to its statutory authority, or a public oversight board in respect of reporting issuers (both in Canada and abroad) pursuant to its contractual or statutory authority. Where Client provides any document to KPMG in respect of which Client wishes to assert legal privilege, Client shall clearly mark such document "privileged" and shall otherwise clearly advise KPMG that Client wishes to maintain legal privilege in respect thereof.

13. LIMITATION PERIOD.

No action, regardless of form, arising under or relating to the engagement, may be brought by either party more than one year after the cause of action has accrued or in any event not more than five years after completion of the engagement in the case of an advisory services engagement and not more than eight years after completion of the engagement in the case of a tax services engagement, except that an action for non-payment may be brought by a party not later than one year following the date of the last payment due to such party hereunder. For purposes of this section, the term KPMG shall include its associated and affiliated entities and their respective partners, directors, officers and employees.

14. TERMINATION.

Unless terminated sooner in accordance with its terms, the engagement shall terminate on the completion of KPMG's services hereunder, which completion shall be evidenced by the delivery by KPMG to Client of the final invoice in respect of the services performed hereunder. Should Client not fulfill its obligations set out herein or in the Engagement Letter and in the absence of rectification by Client within 10 days, KPMG may, upon written notice, terminate its performance and will not be responsible for any loss, cost or expense resulting. The engagement may be terminated by either party at any time by giving written notice to the other party not less than 30 calendar days before the effective date of termination. Upon early termination of the engagement, Client shall be responsible for the payment to KPMG for KPMG's time and expenses incurred up to the termination date, as well as reasonable time and expenses to bring the engagement to a close in a prompt and orderly manner.

15. E-MAIL COMMUNICATION.

Client recognizes and accepts the risks associated with communicating by Internet e-mail, including (but without limitation) the lack of security, unreliability of delivery and possible loss of confidentiality and privilege. Unless Client requests in writing that KPMG does not communicate by Internet e-mail, Client assumes all responsibility or liability in respect of risk associated with its use.

16. POTENTIAL CONFLICTS OF INTEREST.

Except as otherwise set out herein, Client should be aware that it is not uncommon for KPMG to be auditors and/or advisors of more than one of the parties involved in a transaction. In such situations, KPMG takes appropriate measures to ensure that strict confidentiality is maintained in all respects. If these circumstances are identified, KPMG will advise Client of that fact, subject to confidentiality requirements, and will consider with Client what further measures, if any, are appropriate. Client further acknowledges that at some point KPMG may act contrary to Client's interest on unrelated matters.

17. FORCE MAJEURE.

Neither Client nor KPMG shall be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labour dispute, war or



TERMS AND CONDITIONS FOR ADVISORY AND TAX SERVICES

APPENDIX A

other violence, or any law, order or requirement of any governmental agency or authority.

18. INDEPENDENT CONTRACTOR.

It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

19. SURVIVAL.

Sections 1 to 16 and 19, 20, 24, 25 and 29 hereof shall survive the expiration or termination of the engagement.

20. SUCCESSORS AND ASSIGNS.

The Terms and Conditions and the accompanying Proposal or Engagement Letter shall be binding upon the parties hereto and their respective associated and affiliated entities and their respective partners, directors, officers and employees and successors and permitted assigns. Except as provided below, neither party may assign, transfer or delegate any of the rights or obligations hereunder without the prior written consent of the other party. KPMG may assign its rights and obligations hereunder to any affiliate or successor in interest to all or substantially all of the assets or business of the relevant KPMG practice, without the consent of Client. In addition, KPMG may engage independent contractors and member firms of KPMG International to assist KPMG in performing the services hereunder.

21. SEVERABILITY.

The provisions of the Terms and Conditions and the accompanying Proposal or Engagement Letter shall only apply to the extent that they are not prohibited by a mandatory provision of applicable law. If any of these provisions shall be held to be invalid, void or unenforceable, then the remainder of the Terms and Conditions and the attached Proposal or Engagement Letter, as the case may be, shall not be affected, impaired or invalidated, and each such provision shall be valid and enforceable to the fullest extent permitted by law.

22. ENTIRE AGREEMENT.

The Terms and Conditions and the accompanying Proposal or Engagement Letter including, without limitation, Exhibits, constitute the entire agreement between KPMG and Client with respect to the engagement and supersede all other oral and written representation, understandings or agreements relating to the engagement.

23. GOVERNING LAW.

The Terms and Conditions and the accompanying Proposal or Engagement Letter shall be subject to and governed by the laws of the province in which KPMG's principal office performing the engagement is located (without regard to such province's rules on conflicts of law) and all disputes arising hereunder or related thereto shall be subject to the exclusive jurisdiction of the courts of such province.

24. PUBLICITY.

Upon the closing of a transaction, KPMG will have the right (but shall not be obliged), at its expense, to publicize its association with the transaction by way of public announcement in "tombstone" or similar format, subject to prior review of the wording for any such announcement with Client.

25. KPMG INTERNATIONAL MEMBER FIRMS.

In the case of multi-firm engagements, all member firms of KPMG International performing services hereunder shall be entitled to the benefits of the Terms and Conditions. Client agrees that any claims that may arise out of the engagement will be brought solely against KPMG, the contracting party, and not against any other KPMG International member firms.

26. SARBANES-OXLEY ACT.

Except as set forth in the Engagement Letter, Client acknowledges that completion of the engagement or acceptance of KPMG's reports, advice, recommendations and other deliverables resulting from the engagement will not constitute a basis for Client's assessment of internal control over financial reporting or Client's evaluation of disclosure controls and procedures, or its compliance with its principal officer certification requirements under Section 302 of the *Sarbanes-Oxley Act of 2002* (the

"Act"). The engagement shall not be construed to support Client's responsibilities under Section 404 of the Act requiring each annual report filed under Section 13(a) or 15(d) of the *Securities Exchange Act of 1934* to contain an internal control report from management.

27. NATIONAL INSTRUMENT 52-109.

Except as set forth in the Engagement Letter, Client acknowledges that completion of the engagement or acceptance of KPMG's reports, advice, recommendations and other deliverables resulting from the engagement will not constitute a basis for Client's evaluation of disclosure controls and procedures, or its compliance with its CEO/CFO certification requirements under *National Instrument 52-109, Certification of Disclosure in Issuers' Annual and Interim Filings*, including those related to the design of internal control over financial reporting.

28. SPECIFIC ACCOUNTING ADVICE.

Except as set forth in the Engagement Letter, the engagement does not contemplate the provision of specific accounting advice or opinions or the issuance of a written report on the application of accounting standards to specific transactions and facts and circumstances of Client. Such services, if requested, would be provided pursuant to a separate engagement.

29. TAX SERVICES.

a. If tax work is specifically requested by Client, KPMG will perform the procedures in accordance with this section. KPMG will base its findings exclusively on the facts and assumptions provided to KPMG by Client and Client's personnel and advisors. KPMG will consider the applicable provisions of the relevant taxing statutes, the regulations thereunder, applicable tax treaties and judicial and administrative interpretations thereof. KPMG will also take into account all specific proposals to amend such statutes, regulations and treaties publicly announced prior to the date of KPMG's reports, based on the assumption that these amendments will be enacted substantially as proposed. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of KPMG's findings and may result in incremental taxes, interest or penalties. KPMG's findings will not otherwise take into account or anticipate any changes in law or practice, by way of judicial, governmental or legislative action or interpretation. Unless Client specifically requests otherwise, KPMG will not update tax work to take any such changes into account.

b. KPMG will use professional judgment in providing advice, and will, unless Client instructs otherwise, take the position most favourable to Client whenever reasonable. All returns are subject to examination by tax authorities, and KPMG's advice may be audited and challenged by a tax authority. Client understands that KPMG's conclusions are not binding on tax authorities or the courts and should not be construed as a representation, warranty or guarantee that the tax authorities or courts will agree with KPMG's conclusion.

c. Client should consult with and/or engage legal counsel for the purpose of advising on legal aspects of matters on which KPMG provides its tax advice and drafting any legal documents and/or agreements that may be required. To the extent legal counsel or other professional service providers are required, Client is exclusively responsible for engaging and paying such service providers.

d. Client is also responsible for ensuring that KPMG's advice is implemented strictly in accordance with KPMG's recommendations. KPMG is not responsible for any penalties or interest assessed against Client as a result of a failure by Client to provide KPMG with accurate and complete information.

e. Unless expressly provided for, KPMG's services do not include representing Client in the event of a challenge by the CRA or other tax or revenue authorities.

30. LLP.

KPMG LLP is a registered limited liability partnership ("LLP") established under the laws of the Province of Ontario and, where applicable, has been registered extra-provincially under provincial LLP legislation. KPMG is a partnership, but its partners have a degree of limited liability. A partner is not personally liable for any debts, obligations or liabilities of the LLP that arise from a negligent act or omission by another partner or any person under that other partner's direct supervision or control. The legislation relating to limited liability partnerships does not, however, reduce or limit the liability of the firm. The firm's insurance exceeds the mandatory professional indemnity insurance requirements established by the various



Institutes/Ordre of Chartered Accountants. Subject to the other provisions hereof, all partners of the LLP remain personally liable for their own actions and/or actions of those they directly supervise or control.

APPENDIX B
HECFI PROJECT - PHASE II
WORK PLAN AND PROPOSED TIMELINES

Step No.	Work Plan Step / Sub-Steps	August 29-Sept 2	Sept 6-9	Sept 12-16	Sept 19-23	Sept 26-30	October	November	December	Early 2012
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A. PRE-MARKETING STAGE

1	Establish clear terms of reference / HECFI mandates by facility from City Meetings / correspondence with City Steering Committee / City Manager Meetings with HECFI Board of Directors, as required	x	x	x	x	x	x			
	Discussion of Key Issues - property taxes, level of support for local arts and culture; level of subsidization (\$'s, utilities, capital expenditures); parking, union; HECFI management	x	x	x	x	x				
2	Document various market research relating to the revitalization of Hamilton and its downtown core	x	x	x	x	x	x			
	Documentation of GTAH demographic changes	x	x	x	x	x	x			
	Documentation of GTAH transportation plans	x	x	x	x	x	x			
	Documentation of Hamilton land use plans	x	x	x	x	x	x			
	Documentation of City's goals and objectives	x	x	x	x	x	x			
3	Facility Condition Assessment of HECFI Facilities									
	Interview and select subcontractor from a short list of candidates			x						
	Perform condition assessment - Potential candidates - NORR			x	x	x	x			
	Review condition assessment report						x			
4	Supporting Documentation									
	Create data room of key documents as required for privatization process		x	x	x	x	x			
	Obtain additional information from HECFI management		x	x	x	x	x			
5	Preliminary Discussions with Interested Parties									
	Contact logical parties for privatization ideas, level of interest, deal stoppers	x	x	x	x	x	x			
	Understand past transactions - City discussions			x	x					
	Contact local / other parties approaching City of Hamilton	x	x	x	x	x	x			
	Compile list of interested buyers by facility		x	x	x	x	x			
	Industry research - other venues, cities		x	x	x	x				
6	Create Request For Expressions of Interest ("RFI") and Evaluation Framework									
	Liaise with HECFI management / City staff	x	x	x	x	x	x			
	Draft / review RFI document			x	x	x	x			
	Cold review of RFI					x	x			
	Feedback from City and revisions to RFI					x	x			
	Create evaluation framework				x	x	x			
	Finalize list of proponents						x			
	Issue RFI to proponents						x			
7	Report to City Manager and City Council - September 12th									
	Report to GIC (in camera)			x						

