

DECLARATION OF WILLINGNESS TO SERVE

On the Board of Directors of the

HAMILTON OSHAWA PORT AUTHORITY

I do hereby declare, acknowledge and agree that:

- 1) I am willing to serve as a director on the Board of the Hamilton Oshawa Port Authority under the terms and conditions set out under the Canada Marine Act and the Hamilton Oshawa Port Authority's Letters Patent.
- 2) The information submitted within the resume attached is factual and true.
- 3) I, presently, am **not** any of those individuals who are ineligible to serve as a director of a Canadian Port Authority pursuant to Section 16 of the Canada Marine Act. I am **not** an individual who is:
 - a) a mayor, councillor, officer or employee of the City of Hamilton, City of Burlington or City of Oshawa;
 - b) a member of the legislature, or an officer or employee of the public service or of a Crown corporation of the Province of Ontario;
 - c) a Senator or a member of Parliament or an officer or employee of the federal public service or of a Crown corporation;
 - d) not a resident Canadian, as defined in subsection 2(1) of the Canada Business Corporations Act;
 - e) a director, officer or employee of a person who is a user of the port;
 - f) under eighteen years of age;
 - g) an undischarged bankrupt.

Name of Nominee: _____

(Please Print)

Signature of Nominee: _____

Date: _____

APPENDIX 'A'

GUIDELINES FOR ELIGIBILITY OF BOARD OF DIRECTORS OF THE HAMILTON OSHAWA PORT AUTHORITY

Principles of Governance

- (a) The Board is responsible for the governance of the Hamilton Oshawa Port Authority (the Authority)
- (b) The Board shall provide strategic leadership to the Authority in the establishment of and commitment to its vision, mission and core values.
- (c) Directors do not represent the specific interests of any constituency. The duty of loyalty requires the Directors to act in the best interest of the Authority and not in the interests of any other party.
- (d) The Board shall establish a culture of open debate, forthright examination of all issues, and, when considering conflicting issues, shall act at all time in the best interest of the Authority.
- (e) The Board shall provide strategic leadership to the Authority in realizing its mandate, vision and core values, focusing its energy on matter of policy rather than day-to-day operations, and maintaining at all times a clear distinction between Board and staff roles.
- (f) The Board shall carry on its duties in accordance with the Authority's Letters Patent, Supplementary Letters Patent, Canada Marine Act, Port Authorities Management Regulations, Port Authorities Operations Regulations, By-laws and all applicable legislation.

APPENDIX 'B'

RESPONSIBILITY OF THE BOARD OF DIRECTORS OF THE HAMILTON OSHAWA PORT AUTHORITY

Pursuant to the responsibilities established by Sections 4.1 – 4.8 of the Hamilton Oshawa Port Authority's Letters Patent, the Board of Directors shall:

4.12 Remuneration of Directors and Chief Executive Officer. The Board shall fix the remuneration of the directors, the chairperson of the Board and the chief executive officer of the Authority.

4.13 Chairperson of the Board. The Board shall elect a chairperson of the Board from among its number for a term not exceeding two (2) years, the term being renewable.

4.14 Appointment of Officers. The Board shall appoint a chief executive officer, who shall not be a director and such other officers as the Board considers appropriate.

4.15 Committees of the Board. The Board may appoint from among its number one or more committees of the Board, however designated, and delegate to any such committee any of the powers of the Board, except the Board shall not delegate to any committees the power to:

- (a) fill a vacancy in the office of the auditor of the Authority;
- (b) issue debt obligations except in the manner and on the term authorized by the Board;
- (c) approve the audited financial statements of the Authority;
- (d) adopt, amend or repeal by-laws; or
- (e) authorize or ratify any activity carried on or to be carried on or any power exercised or to be exercised by a Subsidiary.

In addition to the responsibilities outlined above, the Board will:

- (a) Develop and review on a regular basis the mission, goals, objective and strategic plan of the Authority;
- (b) Establish procedures for monitoring compliance with the requirements of the Canada Marine Act, Letters Patent, Port Authorities Management Regulations, and Port Authorities Operations Regulations and all applicable legislation;
- (c) Establish policies and procedures to provide the framework for the management and operation of the Authority;
- (d) Establish the selection process for the appointment of the President/Chief Executive Officer and appoint the President/Chief Executive Officer in accordance with the process and ensure the ongoing annual evaluation of the President/Chief Executive Officer;

RESPONSIBILITY OF THE BOARD CONTINUED:

- (e)* Delegate responsibility and concomitant authority to the President/Chief Executive Officer for the management and operation of the Authority and require accountability to the Board;
- (f)* Review regularly the functioning of the Authority in relation to the objects of the Authority as stated in the letters patent, supplementary letters patent and the By-laws and demonstrate accountability for its responsibility to the annual meeting of the Authority.
- (g)* Approve all annual operating and capital budgets for the Authority;
- (h)* Be committed to an effective Board orientation program and the continuing education of the members of the Board.
- (i)* Ensure an environment within the Board which encourages open and frank discussion and respect for the expression of different viewpoints; and
- (j)* Evaluate its own performance in relation to its responsibilities and periodically review and revise governance policies, processes and structures as appropriate.

APPENDIX 'C'

SCHEDULE 'E' – CODE OF CONDUCT

HAMILTON OSHAWA PORT AUTHORITY CODE OF CONDUCT

ARTICLE 1 OBJECTS AND INTERPRETATION

1.1 Object of Code. The object of this Code is to enhance public confidence in the integrity and impartiality of directors and officers of the Authority and the business activities and transactions carried on by the Authority by establishing clear conflict of interest rules for directors and officers of the Authority.

1.2 Principles. This Code shall be interpreted in accordance with the following general principles:

- (a) every director and officer shall discharge their official duties and arrange their private affairs in such a manner as to preserve and promote public confidence and trust in the integrity and impartiality of the Authority;
- (b) the obligations of a director or officer described in subsection 1.2(a) may not always be discharged merely by acting in accordance with the technical requirements of the Act, the Regulations, the Letters Patent, the by-laws and the policies and resolutions of the Board; and
- (c) public confidence and trust in the integrity and impartiality of the Authority may be as equally compromised by the appearance of a conflict as by the existence of an actual conflict.

1.3 Definitions. In this Code, terms used herein shall have the meanings ascribed to them in the Act and the Letters Patent, and, in addition, the following terms shall have the following meanings:

- (a) **“Gift”** includes any good, service, benefit, hospitality, promise or favour; and
- (b) **“Related Party”** means with respect to a director or officer of the Authority:
 - (i) a spouse, child, brother, sister or parent of such director or officer;
 - (ii) a relative of such director or officer (other than a spouse, child, brother, sister or parent of such director or officer) or a relative of the spouse of such director or officer if the relative has the same residence as the director or officer;
 - (iii) a corporation, partnership, trust or other entity which is directly or indirectly controlled by such director or officer or by a spouse, child, brother, sister or parent of such director or officer or any combination of such persons; and

- (iv) a partner of such director or officer acting on behalf of a partnership of which the director or officer and the partner are partners.

1.4 Application of Code. This Code applies to all directors and officers of the Authority.

1.5 Scope of Obligations. Conforming to the specific requirements of this Code shall not absolve a director or officer of responsibility for taking such additional action as may be necessary to conform with any standard of conduct or comply with any duty imposed by the Act, the Regulations, the Letters Patent, the bylaws and the policies and resolutions of the Board, or otherwise by law.

1.6 Acknowledgement by Directors and Officers. Each director and officer shall acknowledge in writing to the Board that:

- (a) they have read and understood this Code;
- (b) to the best of their knowledge they are in compliance with this Code, and neither they nor any Related Party has a conflict or a potential conflict within the meaning of article 2 of this Code; and
- (c) in the case of each officer, compliance with this Code is a condition of their employment.

1.7 Timing of Acknowledgement. Each director and officer shall deliver the acknowledgement described in section 1.6 of this Code to the Board:

- (a) with respect to the directors serving and officers employed on the date the Letters Patent take effect, forthwith upon the Letters Patent taking effect; and
- (b) with respect of all other directors, at the time of their appointment and, with respect to all other officers, at the time of the commencement of their employment.

1.8 Annual Review. Each director and officer shall regularly review their obligations under this Code and shall on the 15th day of May of each year provide the Board with a written acknowledgement confirming such review and that, to the best of the knowledge of the director or officer:

- (a) they are in compliance with this Code; and
- (b) neither they nor any Related Party has a conflict within the meaning of article 2 of this Code.

ARTICLE 2 CONFLICTS OF INTEREST

2.1 Conflicts Generally. A director or officer shall not allow his or her personal interests or the personal interests of a Related Party to conflict with or to give rise to the appearance of a conflict with the duties and responsibilities of the director or officer or the interests of the Authority.

2.2 Specific Types of Conflicts. Without restricting the generality of section 2.1, the following represent examples of specific matters which give rise to a conflict or an appearance of a conflict on the part of a director or officer:

(a) Competition with the Authority: A director or officer or a Related Party engages in any activity, or has a material interest in any person which engages in an activity, which is or could be in competition with the present or proposed interests of the Authority;

(b) Transactions with the Authority or a User; Material Interests: A director or officer or a Related Party:

- (i) has a material interest in a user;
- (ii) owes material obligations to the Authority or a user, other than in connection with the duties of the director or officer arising from their position with the Authority;
- (iii) conducts business with the Authority or a user; or
- (iv) holds a material interest in a corporation, partnership or other entity which conducts business with, or acts as a consultant or advisor to, the Authority or a user;

(c) Interest in Material Contract: A director or officer:

- (i) is a party to a material contract or proposed material contract with the Authority; or
- (ii) is a director or officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the Authority; and

(d) Acceptance of Offices with Conflicted Entities: A director or officer accepts an appointment or a nomination for election to an office of, or employment with, any corporation, partnership, foundation, institute, organization, association or other entity, the business or activities of which are or could be in conflict with the interests of the Authority.

2.3 Conflicts For Which Approval Satisfactory. Engaging in the following activities shall be deemed not to give rise to a conflict or the appearance of a conflict on the part of a director or officer within the meaning of article 2 of this Code provided that the director or officer obtains the written approval of the Board prior to engaging in such activities:

(a) Acceptance of Offices With Entities Benefiting From Authority: A director or officer accepts an appointment or a nomination for election to an office of, or employment with, any corporation, partnership, foundation, institute, organization, association or entity, the business or activities of which benefit or could reasonably be expected to benefit from the business of the Authority or decisions made by the Authority; and

(b) Use of Authority Property: A director or officer uses property held or managed by the Authority for the personal benefit of the director or officer or a Related Party.

If a director or officer fails to obtain the written approval of the Board prior to engaging in any activity described in subsections *(a)* or *(b)* of this section, the engagement of the director or officer in such activity shall be deemed to give rise to a conflict of interest within the meaning of article 2 of this Code.

ARTICLE 3 DISCLOSURE OF CONFLICTS

3.1 Timing of Disclosure. Written disclosure of a conflict or an appearance of a conflict shall be made by a director or officer forthwith after the director or officer becomes aware of the conflict or the appearance of a conflict within the meaning of article 2 of this Code.

3.2 Declaration of Interest. For the purposes of this Code, a notice in writing to the Board by a director or officer providing reasonable particulars of the interest, asset, activity or position giving rise to a conflict or the appearance of a conflict together with such other material information relating to the conflict or the appearance of a conflict as shall be reasonably requested by the Board shall be deemed to be disclosure of the conflict or the appearance of a conflict.

3.3 Voting and Participation. A director or officer who is in conflict within the meaning of article 2 of this Code shall not participate in discussions or vote on any decision of, or provide recommendations to, the Board on any matter related to the conflict. Notwithstanding the foregoing, a director or officer may participate in, vote on and provide recommendations to the Board respecting any matter related to:

- (a) an arrangement by way of security for money lent to, or obligations undertaken by the director or officer for the benefit of, the Authority;
- (b) a contract that relates primarily to his or her remuneration as a director, officer, employee or agent of the Authority; and
- (c) a contract for indemnity, in favour of the director or officer or directors' or officers' liability insurance.

3.4 Quorum of Directors' Meetings. Nothing contained in section 3.3 shall preclude a director or officer who is in conflict within the meaning of article 2 of this Code from being counted to determine the presence of a quorum at a meeting of the directors or committee of directors of the Authority where all or a portion of the business conducted at such meeting is consideration of the transaction or matter giving rise to the conflict, the interpretation of this Code or a determination or recommendation made pursuant to article 4 of this Code. Notwithstanding the foregoing, a director or officer who is in conflict shall absent himself or herself from the meeting for the portion of the meeting during which the transaction or matter giving rise to the conflict is considered.

3.5 Similar Transactions. In the case of similar transactions that are, or are likely to be, of a recurring nature and which are made or will be made in the ordinary course of the operations of the Authority, a director or officer who is in conflict as a result of such transactions shall be deemed to have complied with the disclosure requirements of this article 3 if:

- (a) in the case of the directors serving or officers employed on the date the Letters Patent take effect, forthwith upon the Letters Patent taking effect; and

(b) in the case of all directors or officers, including the directors and officers described in subsection 3.5(a), on or before the 15th day of May of each year for which such disclosure relates,

the director or officer makes a single annual written disclosure to the Board setting out the nature and extent of the conflict arising as a result of the transactions together with such other information as shall reasonably be requested by the Board.

ARTICLE 4 COMPLIANCE

4.1 Voluntary Activities. When a conflict arises within the meaning of article 2 of this Code, in addition to the disclosure required under article 3 of this Code, a director or officer may voluntarily undertake one or more of the following actions to address the conflict:

- (a) *Divestment*: selling or causing the sale of the asset or interest giving rise to the conflict to a party which is not a Related Party;
- (b) *Withdrawal*: resigning the position or withdrawing from the activity or causing the resignation or withdrawal; or
- (c) *Resignation*: resigning where the director or officer is unwilling or unable to divest the asset or interest, withdraw from the activity or resign from the position giving rise to the conflict.

4.2 Voluntary Compliance Not Determinative. Voluntary compliance by a director or officer with one or more of the measures described in section 4.1:

- (a) in the case of a director, shall not relieve the director from complying with such other measures as may be determined by the entity appointing the director to be appropriate in connection with a conflict or an appearance of conflict; and
- (b) in the case of an officer, shall not relieve the officer from complying with such other measures as may be determined by the Board to be appropriate in connection with a conflict or an appearance of conflict.

4.3 Determination by Board. Where a disclosure is made to the Board by a director or officer pursuant to article 3 of this Code or facts are brought to the attention of the Board which indicate a conflict or appearance of conflict or failure to comply with this Code by a director or officer, the Board shall forthwith determine:

- (a) whether the director or officer is in a conflict within the meaning of article 2 of this Code;
- (b) whether the director or officer has failed to comply with this Code;
- (c) whether the conflict has been or will be satisfactorily addressed through:
 - (i) disclosure by the director or officer;
 - (ii) the director or officer's undertaking one or more of the actions described in section 4.1; or
 - (iii) the director or officer undertaking actions other than as described in paragraphs 4.3(c)(i) and (ii);

(d) in the case of an officer, the measures to be taken by the officer to address the conflict and any sanctions to be imposed upon the officer in connection with a failure by the officer to comply with this Code; and

(e) in the case of a director, whether to request the director to resign.

4.4 Opportunity to be Heard. The Board shall provide a director or officer with an opportunity to be heard in connection with a determination made pursuant to section 4.3.

4.5 Notification of Determination Respecting Officer. Upon the Board's making a determination pursuant to section 4.3 in respect of an officer, the Board shall forthwith provide the officer with written notification of the determination, including the reasons therefore, together with any direction of the Board to be complied with by the officer.

4.6 Notification of Determination Respecting Director. Where the Board has determined that a director has failed to comply with this Code, the Board shall forthwith provide the entity which has appointed such director to the Board with written notification of the failure to comply along with full particulars of the circumstances giving rise thereto.

ARTICLE 5 ACCEPTANCE OR OFFERING OF GIFTS

5.1 Acceptance or Offering of Gifts. No director or officer shall offer Gifts to, or accept Gifts from, users or potential users without the prior written consent of the Board. Notwithstanding the foregoing, Gifts may be accepted or offered provided that:

(a) the Gift is not in the form of cash or cash equivalent;

(b) the Gift is neither in such form nor of sufficient value such that it could reasonably be construed to be a bribe or other improper payment; and

(c) the Gift is of modest value and the acceptance of the Gift is in accordance with customary business practice.

ARTICLE 6 INSIDE INFORMATION

6.1 Use of Information. A director or officer shall not use any information obtained in connection with his or her position with the Authority for personal benefit or for the benefit of any other person unless such information has been disclosed to the public or made available to the public. Without limiting the generality of the foregoing, a director or officer who has knowledge of a proposed action or decision by the Authority shall not purchase or sell assets, or advise any other party to purchase or sell assets, the value of which could be expected to be materially affected by the proposed action or decision until such time as the proposed action or decision has been announced or has been made available to the public.

6.2 Disclosure of Confidential Information. Subject to section 6.3, no director or officer shall disclose any information concerning the business and affairs or proposed business and affairs

of the Authority acquired in connection with his or her position with the Authority (“Confidential Information”) which has not been disclosed to the public or been made available to the public without the prior written consent of the Board.

6.3 Permitted Disclosures. A director or officer may disclose Confidential Information:

- (a) to the extent that the disclosure is reasonably necessary in connection with the performance of the duties and responsibilities of the director or officer, including disclosures necessary in connection with a financing transaction or proposed financing transaction involving the Authority;
- (b) to the extent disclosure is required by law (including *Access to Information Act* (Canada) and *Privacy Act* (Canada) requirements) or by a court or tribunal of competent jurisdiction; and
- (c) to professional advisors of the Authority.

ARTICLE 7 OUTSIDE EMPLOYMENT

7.1 Offers of Employment or Appointment. In discharging his or her duties and responsibilities to the Authority, a director or officer shall not allow the performance of such duties and

responsibilities to be affected by offers or potential offers of outside employment or appointment.

7.2 Disclosure of Offer. A director or officer who receives a firm offer of employment or appointment which may affect the performance of the director’s or officer’s duties or responsibilities shall forthwith disclose the offer to the Board in writing.

ARTICLE 8 RECORDS OF PRIVACY

8.1 Confidentiality Obligation. Information concerning the interests or activities or proposed interests or activities of a director or officer provided to the Board in connection with the disclosure obligations of this Code or otherwise obtained by the Board shall be placed in separate personal files and kept in secure safekeeping.

8.2 Privacy. Subject to disclosure of personal information in accordance with law (including disclosure under the *Access to Information Act* (Canada) and *Privacy Act* (Canada)), in addition to the confidentiality obligations set forth in section 8.1, the Board shall make all reasonable efforts to ensure that the privacy of the director or officer disclosing personal information to the Board is fully respected.

I hereby confirm that I understand and meet the eligibility requirements of the Directors of the Hamilton Oshawa Port Authority and agree to respect the confidentiality of the nomination process. If elected, I am willing to serve as a Director of the Hamilton Oshawa Port Authority in accordance with the Legislation and Responsibilities of Individual Directors, including Board confidentiality.

Print Name

Signature

Date