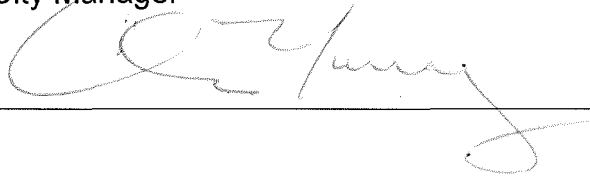




Hamilton

**CITY OF HAMILTON**  
**CITY MANAGER'S OFFICE**  
**Office of the City Manager**

7.1

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	April 2, 2014
<b>SUBJECT/REPORT NO:</b>	Formal Marina Management Agreement (MMA) with the Hamilton Port Authority (HPA) Regarding Piers 7 and 8 (CM12015(b)) (Ward 2) (Outstanding Business List Item)
<b>WARD(S) AFFECTED:</b>	Ward 2
<b>PREPARED BY:</b>	Chris Phillips (905) 546-2424 Ext. 5304 Joe Spiler (905) 546-2424 Ext. 4519 Al Dore (905) 546-2424 Ext. 2617 Rashesh Mandani (905) 546-2424 Ext. 4716
<b>SUBMITTED BY:</b>	Chris Murray City Manager
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the City of Hamilton enter into a 25 year Marina Management Agreement with the Hamilton Port Authority (HPA) for the management, operation and maintenance of the City-owned marina facility, located within the Main Basin of Piers 7 and 8, as described in Report CM12015(b);
- (b) That the Mayor and the City Clerk be authorized and directed to execute the Marina Management Agreement between the City of Hamilton and the Hamilton Port Authority, together with all necessary associated documents, in a form satisfactory to the City Solicitor and with content acceptable to the City Manager;
- (c) That the forecast capital funding in the amounts of \$3,000,000 (2015) and \$4,400,000 (2016) for the proposed marina (dock, dock finger, boat slip replacement etc.) and associated servicing and shoreline rehabilitation requirements, to be completed by the City of Hamilton, pursuant to the "Marina Management Agreement", be approved in-principle;
- (d) That staff be directed and authorized to communicate and submit the City's comprehensive "West Harbour" development plan, to provincial and federal governments and their respective funding agencies, as a priority investment project(s) for the City of Hamilton.

## **EXECUTIVE SUMMARY**

Over the course of successive terms of Council, the “Waterfront and Shoreline” have been identified in Council’s Strategic Plan and identified as key focus areas, resulting in a series of plans and projects that when implemented, will achieve the long-established redevelopment and recreational goals for the Waterfront areas that will benefit the City as a whole.

The Waterfront remains one of Hamilton’s strategic priorities and involves enhancing the City and its image by providing clean and sustainable parks, recreational spaces, trails, and amenities for all residents of the City. Building upon this legacy, the City has taken a clear focus on finding ways to draw private-sector investment into the “West Harbour”, the North-End, and the Downtown core. The lands of Piers 7 and 8 have long been seen as prime areas to attract private-sector mixed-use residential and commercial developments that will lead to increased use of the area for residents and businesses alike.

To unlock this potential however, a concrete resolution to the long-standing lease arrangement between the Hamilton Port Authority (HPA) and the City of Hamilton on the vital Piers 7 and 8 lands has needed to be found. Although owned by the City since the year 2000, these lands have remained undeveloped due to two leases, the last of which doesn’t expire until 2025.

Recognizing the vital importance of the Piers 7 and 8 lands and the multiple benefits derived from developing this area, City Council and the City’s Senior Management Team, incorporated the following specific direction as Item 1.3 (iii) to the 2012-2015 Strategic Plan:

**Negotiate the early termination of land leases for Piers 7 & 8 with the Hamilton Port Authority**

Over the course of the past three years, City staff have proceeded with a series of complex negotiations with the HPA in an effort to achieve the outcome envisioned in the Strategic Plan.

The purpose of this report is to obtain approval to enter into a “*Marina Management Agreement*” with the HPA for the operation and maintenance of the City-owned marina facility, located within the Main Basin of Piers 7 and 8, for the time period of January 1, 2015 to December 31, 2039. As a direct result of this “*Marina Management Agreement*”, the City of Hamilton will immediately achieve the formal transfer of the lands located on Piers 7 and 8. This will allow for the phased implementation of the City’s Waterfront Re-Development plans, that when fully built-out, facilitates over \$500,000,000 worth of private-sector investment and \$7,500,000 in new municipal tax revenue per year on the Pier 8 lands alone.

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On April 24, 2013, City Council approved Item 4 of the General Issues Committee Report 13-009 and passed the following resolution:

- (a) That Appendix "A" to Report CM12015(a) entitled "Memorandum of Understanding (MOU) Re: Long-Term Marina and Boat Storage Management Agreement & Piers 7-8 Lease Transfer & Partial Early Termination" between the City of Hamilton and the Hamilton Port Authority (HPA), be approved;
- (b) That the Mayor and City Manager be authorized and directed to execute the "Memorandum of Understanding (MOU) Re: Long-Term Marina and Boat Storage Management Agreement & Piers 7-8 Lease Transfer & Partial Early Termination", between the City of Hamilton and the Hamilton Port Authority (HPA), in a form satisfactory to the City Solicitor;
- (c) That the Capital Funding for the proposed shoreline, wavebreak, and current boat slip replacement be approved in principle, and be allocated throughout the 2014, 2015, 2016 and 2017 Capital Budgets, with staff reporting back in 2013 on a financing strategy;
- (d) That staff be directed to seek out all funding options available including: direct and indirect City of Hamilton sources, public-private partnerships, as well as assessing other provincial or federal funding sources, and report back with options; and,
- (e) That the City Manager be directed to prepare a formal "Management Agreement", for presentation to the General Issues Committee (GIC), between the City of Hamilton and the Hamilton Port Authority (HPA), respecting the Long-term Marina and Boat Storage Operations and the Piers 7 and 8 Lease Transfer and Partial Early Termination, based upon the terms, conditions and intent of the "Memorandum of Understanding" (MOU) (Appendix "A"), in a form satisfactory to the City Solicitor.

Based on the April 24, 2013 City Council approval of subsection (e) above, the City Manager appointed a staff team to lead the negotiations with the HPA. This team consisted of staff from the Planning and Economic Development Department; the Public Works Department, and the Corporate Services Department, with support from the Legal Services Division. These negotiations were based on the Council direction, including the "MOU" approved by Council on April 24, 2013, which appears as Appendix "A" to Report CM12015(b).

The results of these negotiations are being formalized into a "*Marina Management Agreement*" and will be referred to as the MMA throughout this Report.

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In general terms, the MMA, formalizes and elaborates the original objectives and intent of the MOU, approved by City Council on April 24, 2013 as follows:

- It allows the City of Hamilton to immediately achieve the formal transfer of the lands located on Piers 7 and 8 from the HPA to the City of Hamilton, with no further direct compensation being paid by the City;
- It addresses many of the long-term operational issues relating to the City of Hamilton's marina and boat storage businesses currently located on Piers 7 and 8, by clearly identifying a transition process, as well as assigning clear lines of responsibility for the capital and operational requirements;
- It addresses long-standing shoreline and public-space infrastructure deficiencies within the City-owned Piers 7 and 8 area, that were identified and scoped at the time of the Settlement Agreement with the HPA in the year 2000;
- It balances the financial investments required in a manner that is financially responsible to both parties, by assigning them based on the benefit derived;
- It balances the City of Hamilton's long-term vision of re-developing the "West Harbour" by creating a greater sense of place and community; as envisioned in both the "Setting Sail" Secondary Plan and the West Harbour Waterfront Recreation Master Plan (WHWRMP), with the strengths and desire of the HPA to create diverse economic opportunities for the City as a whole; and,
- It directly facilitates an estimated \$500,000,000 in private-sector investment that will generate an estimated \$7,500,000 in direct municipal taxes per year, at full build-out.

The MMA was designed and negotiated as a complete and comprehensive document that will guide the long-term relationship between the City of Hamilton and the HPA.

The "Analysis" section of this Report (beginning on Page 15 of 21) outlines the specific details of the main elements of the MMA itself.

On balance, City staff believe that the MMA is consistent with both the Council direction and the intent of the original "Memorandum of Understanding" approved by Council on April 24, 2013.

The MMA represents a true balance among varying interests. It clearly allows for the implementation of key Waterfront Re-Development opportunities, which have been adopted as part of the Strategic Plan. It also represents an opportunity to ensure that

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the City's marina and boat storage operations are sustainable for the long-term and are managed in a consistent manner.

By clarifying the capital and operating responsibilities of each party, the MMA does so in a manner that is financially responsible to the City of Hamilton, while at the same time assigns the various financial responsibilities and obligations in a consistent rationale based on the benefit derived by each Party.

HPA staff have confirmed that the main elements of the MMA have been presented to the Hamilton Port Authority Board of Directors on December 4<sup>th</sup>, 2013 and the following direction was approved:

“The board approves, in principle, the terms and conditions of the Marina Management Agreement, subject to review and recommendation of the draft agreement by legal counsel, and a memorandum of agreement with The City respecting the lands to be leased on Pier 22.”

Formal approval of the MMA is required by the HPA Board of Directors once the final version is completed.

Although outlined in greater detail within the “Financial Implications” section of this Report (beginning on Page 5 of 23 of this Report), staff recommendation (c) seeks GIC Capital Budget approval in-principle for the proposed Capital Funding of the current boat slip replacement and shoreline rehabilitation as part of the 2015-2017 Capital Budgets, as previously detailed in the 2014-2024 Capital Budget Forecast, as adopted by Council as part 6 of the 2014 Capital Budget process. These costs are estimated to be in the amount of \$7,400,000.

Lastly, staff recognizes that to date, the funding options explored have concentrated heavily upon direct investment by the City and the HPA. Building upon the April 24, 2013 Council resolution, staff continue to recommend exploring all potential funding options including public-private partnerships and assessing other provincial or federal funding sources.

***Alternatives for Consideration – See Page 21***

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

### **Financial:**

The MMA identifies and assigns clear areas of financial responsibility that will have a financial impact to the City of Hamilton in future years. The following represents some of the key financial implications that will take effect upon the execution of the MMA:

**1. City of Hamilton Capital Cost Commitments**

Through the MMA, the City and the HPA formalize the commitments made in the MOU which clearly stated that the City of Hamilton would be responsible to repair, replace, and/or refurbish the current City-owned infrastructure and make capital improvements to the existing marina.

Specifically, these improvements fall into the following general categories:

**i. Replacement of the Existing City-owned “Breakwater” Structure**

As part of the WHWRMP process, it was determined that the existing “Breakwater” structure protecting the City-owned shoreline and marina within the Main Basin was at the end of its useful lifespan, and therefore the replacement of this structure was included as part of the Council adopted WHWRMP. Following this direction, City staff proceeded with an Environmental Assessment (EA) for the “Breakwater” structure, and has subsequently received final approval.

This project was identified and approved for \$5,200,000 as project ID 5181206222 within the 2012 and 2013 Capital Budgets and staff do not anticipate any further Capital Budget pressure for this structure.

**ii. Restoration and Replacement of the existing City-owned Shoreline within the Pier 5-8 Main Basin Area**

Within the WHWRMP, the Main Basin is the anticipated heart of the harbour, with the majority of commercial uses and programmable plaza space as the focal point and gateway to the waterfront. This Master Plan was designed to provide for a balance between recreational and boating activities on the waterfront, and specialty commercial development that will promote season-long and year-round enjoyment and appreciation of the waterfront.

As part of the WHWRMP process, it was determined that many portions of the existing City-owned shoreline are beyond their useful lifespan and are in need of major repair and/or rehabilitation. Years of weather related and wave-action “wear-and-tear” and minimal capital re-investment have played a factor in its current state of varying degrees of critical infrastructure failure.

These projects were included as part of the Council adopted WHWRMP and subsequently have been planned and phased within the 2014–2018 Capital Budget Forecasts, with a total cost estimate of \$13,100,000 for the total shoreline improvements within the Main Basin.

The MMA between the City and the HPA identifies that any and all repair and/or rehabilitation of the shoreline is the financial responsibility of the City. However, although the MMA outlines the City's intention to implement these shoreline improvements in the coming years, the MMA does not contain any obligation on the City's part to the degree or the timing at which these plans are to be implemented.

The MMA is focussed solely on the assets directly related to the marina and its operations, meaning that there is only minimal investment required for the City to meet its obligations under the MMA. Staff estimate that the financial obligation of the MMA is estimated at approximately \$2,800,000, all of which has been identified within the 2014-2018 Council approved Capital Budget Forecast.

**iii. Replacement and Upgrades to the Current and Existing "City-owned" Marina Assets**

As part of the WHWRMP process, it was determined that the existing City-owned marina assets (e.g. docks, dock fingers, boat slips, and servicing) within the Main Basin were also at the end of their useful lifespan, and therefore the replacement of these structures was included as part of the Council adopted WHWRMP. These projects have a total cost estimate of \$6,000,000.

\$1,388,000 of this total was approved as part of the 2014 Capital Budget, with the remaining \$4,600,000 identified within the Council approved 2015-2018 Capital Budget Forecast.

In summary, all costs associated under the terms of the MMA were identified in the 2014-2024 Capital Budget Forecast (Report FCS13096). Staff are recommending that these specified projects be approved in-principle and continue to be reflected in future Capital Budget Forecasts.

**2. HPA Maintenance and Capital Cost Commitments**

The MMA also commits and obligates the HPA to several key financial responsibilities both in the short-term, long-term, and throughout the entire term of the Agreement, including but not limited to:

**i. Cost of Maintenance of the Marina Assets in the Main Basin**

The HPA will be responsible to manage and maintain the marina facility, which includes all the facilities, buildings, equipment, breakwater structures, slips, land and any other structure, feature or aspect of the marina.

Maintenance obligations include all seasonal and day-to-day maintenance and repairs required to maintain the marina in keeping with best marina practices. For the purposes of clarity, the MMA specifies that all such costs up to and including the threshold amount of \$75,000 per item, is the responsibility of the HPA.

**ii. Capital Cost - Expansion of the Number of Slips Within the Main Basin**

A key element of the WHWRP was to provide for the opportunity to increase the recreational and boating activities within the Main Basin through a considerable expansion over time. The plan calls for an expansion of the marina over time. At the time, the capital cost of this future expansion was calculated as part of the approved WHWRMP.

As part of this MMA however, the HPA will now be responsible to pay 100 percent of the capital cost for any increase in the number of slips within the Main Basin, which includes but not limited to the capital, operation, and maintenance costs associated with the development and construction of this expansion. Although the HPA will require City approval prior to any expansion, the City is not responsible for any of the costs incurred. This represents significant capital cost avoidance as part of the WHWRMP.

**iii. Boat Storage Facility**

Again, a key element of the WHWRP was to ensure the future viability of the boating clubs and marina within the Main Basin, and therefore the City would be responsible for finding a solution for a new boat storage facility for the marina. At the time, the capital and land costs for this future relocation and expansion of the boat storage facility was calculated as part of the approved WHWRMP.

As part of this MMA however, in the event that the boat storage facility is re-located, the HPA agrees to pay for 100 percent of the capital costs for the new boat storage facility. As well, the HPA will be responsible for all maintenance and capital improvement costs for this re-located boat storage facility. Although the HPA will require City approval for this re-location, the City is not responsible for any of the costs incurred. This represents significant capital cost avoidance as part of the WHRMP.

**3. City to participate in Profit Sharing on any Expanded Marina Boat Slips**

As part of the original MOU, the HPA collects 100 percent of the revenue of the existing boat storage and slip revenue generated from the approximately 300 existing slips, and the retains any and all net profit or loss.



But as part of the MMA, the parties agree to share equally (50 percent/50 percent), the annual Net Operating Profit obtained through the expansion of the marina. Both parties believe that the formula established is equitable and that it satisfies the intent of the MOU.

#### **4. MMA Facilitates the Re-Development of the Pier 8 Lands**

Aside from the specific details of the marina and the marina operations, the MMA is the key to facilitating the future land development and re-development of the Piers 7-8 area. Since the year 2000, these lands have been owned by the City of Hamilton, but the lands have been unavailable for development opportunities due to the long term leases to the HPA. The MMA provides for the early termination of these leases and for upfront municipal investment in City-owned infrastructure in the short-term, that will add value to the existing City-owned lands. This will facilitate an estimated \$500,000,000 in private-sector investment that will generate an estimated \$7,500,000 in direct municipal taxes per year, at full build-out. Indirectly, this will also result in thousands of construction jobs, permanent jobs, and an increase in assessment values within the entire "West Harbour" area.

#### **5. Implications for the Royal Hamilton Yacht Club**

It should be noted that although the MMA alters the RHYC's historical operational structure within the Main Basin, the MMA was sensitive to ensure financial sustainability and revenue growth opportunities to the RHYC were available for the long-term.

With respect to the RHYC, this new operational structure does not affect their annual operating revenues. As part of the MMA, the RHYC have been guaranteed the right to solely manage 58 existing boat slips on behalf of the City. Moreover, they have also been provided the opportunity to expand their managed slips by an additional 42 sometime in the future at their Capital costs, which will bring their total managed slips to approximately 100.

#### **Staffing:**

Report CM12015(b) has no immediate staffing impacts.

#### **Legal:**

The MMA has been drafted by and with the advice of Legal Services staff. Recommendation (a) and (b) of Report CM12015(b) states:

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- (a) That the City of Hamilton enter into a 25 year Marina Management Agreement with the Hamilton Port Authority (HPA) for the management, operation and maintenance of the City-owned marina facility, located within the Main Basin of Piers 7 and 8, as described in Report CM12015(b);
- (b) That the Mayor and the City Clerk be authorized and directed to execute the Marina Management Agreement between the City of Hamilton and the Hamilton Port Authority, together with all necessary associated documents, in a form satisfactory to the City Solicitor and with content acceptable to the City Manager;

### **HISTORICAL BACKGROUND**

On October 26, 2000, a series of negotiations resulted in the City of Hamilton and the HPA (formerly known as the Hamilton Harbour Commissioners), signing a historic Agreement, settling several long-standing issues of disagreement between the two parties. The "Agreement" covered a wide-ranging set of issues, including a key element that established that the ownership of the lands known as Piers 7 and 8 would be transferred to the City of Hamilton. In exchange for this ownership status, the City of Hamilton agreed to allow the HPA to continue to use Piers 7 and 8 through two ground leases. The first expires in 2015, and the second lease expires in 2025. These two leases included the lands themselves, as well as the day-to-day operation of the marina and boat storage businesses located on these lands, which is commonly known as "Harbour West". Since the time of the "Agreement", the HPA has continued to operate both of these businesses, as well as a variety of other uses within the lands.

As the 2015 end-date for the first lease approached, the City Manager, along with several members of senior City of Hamilton staff, began discussions late in 2009, with senior HPA staff, regarding the future of the leases for Piers 6, 7 and 8, as well as the future of both the marina and boat storage business units. Over the course of these early discussions, staff from both sides started to develop a "framework" for future discussions, which could be used as terms and conditions for a potential agreement moving forward.

On October 12, 2011, City Council passed the following resolution entitled "Hamilton Waterfront Priorities":

- (a) That staff be directed and authorized to begin discussions with the Hamilton Port Authority (HPA), with the objective of a formal agreement transferring the lands consisting of Piers 7 and 8, to the City of Hamilton immediately;
- (b) That staff report back to Council in the 4th quarter of 2011 with a recommended "framework" for these discussions;

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- (c) That staff be directed and authorized to commence key studies that will accelerate the public and private sector development of Piers 5, 6, 7 and 8, including but not limited to issues of site servicing, geo-technical, soils, remediation, as well as development phasing, marketability, and valuation;
- (d) That staff be authorized to fund these studies from the "Waterfront Development Corporation" Capital Budget; and,
- (e) That staff report back by the 4th quarter of 2011 with a comprehensive 2012 Work Plan for the development of the waterfront precinct.

On August 16, 2012, City Council approved Item 20 of the GIC Report 12-021 "Letter of Understanding between the Hamilton Port Authority Regarding Piers 7 and 8", and passed the following resolution:

- (a) That Report CM12015, respecting the Letter of Understanding with the Hamilton Port Authority (HPA) regarding Piers 7 and 8, be received;
- (b) That the City Manager be directed to provide a copy of Report CM12015, as amended, respecting the Letter of Understanding with the Hamilton Port Authority (HPA) regarding Long-term Marina and Boat Storage Operating Agreement and the Piers 7 and 8 Lease Transfer and Partial Early Termination to the President and Chief Executive Officer of the Hamilton Port Authority (HPA); and,
- (c) That the City Manager be directed to prepare a formal Memorandum of Understanding MOU, between the City of Hamilton and the Hamilton Port Authority (HPA), respecting the Long-term Marina and Boat Storage Operating Agreement and the Piers 7 and 8 Lease Transfer and Partial Early Termination, based upon the terms, conditions and intent of the July 24, 2012 letter to the Hamilton Port Authority (HPA), in a form satisfactory to the City Solicitor, and report back to the General Issues Committee (GIC) by October 2012.

On April 24, 2013, City Council approved of Item 4 of GIC Report 13-009 and passed the following resolution:

- (a) That Appendix "A" to Report CM12015(a) entitled "Memorandum of Understanding (MOU) Re: Long-Term Marina and Boat Storage Management Agreement & Piers 7-8 Lease Transfer & Partial Early Termination" between the City of Hamilton and the Hamilton Port Authority (HPA), be approved;
- (b) That the Mayor and City Manager be authorized and directed to execute the "Memorandum of Understanding (MOU) Re: Long-Term Marina and Boat Storage Management Agreement & Piers 7-8 Lease Transfer & Partial Early Termination", between the City of Hamilton and the Hamilton Port Authority (HPA), in a form satisfactory to the City Solicitor;
- (c) That the Capital Funding for the proposed shoreline, wavebreak, and current boat slip replacement be approved in principle, and be allocated throughout the

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- 2014, 2015, 2016 and 2017 Capital Budgets, with staff reporting back in 2013 on a financing strategy;
- (d) That staff be directed to seek out all funding options available including: direct and indirect City of Hamilton sources, public-private partnerships, as well as assessing other provincial or federal funding sources, and report back with options; and,
  - (e) That the City Manager be directed to prepare a formal "Management Agreement", for presentation to the General Issues Committee (GIC), between the City of Hamilton and the Hamilton Port Authority (HPA), respecting the Long-term Marina and Boat Storage Operations and the Piers 7 and 8 Lease Transfer and Partial Early Termination, based upon the terms, conditions and intent of the "Memorandum of Understanding" (MOU) (Appendix "A"), in a form satisfactory to the City Solicitor.

The City Manager appointed a staff team to lead the negotiations with the Hamilton Port Authority (HPA). This team consisted of staff from the Planning and Economic Development; the Public Works Department, and the Corporate Services Department, with support from the Legal Services Division.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### **"Setting Sail" Secondary Plan:**

The Setting Sail Secondary Plan (the Secondary Plan) was approved by Council in March 2005 and was subsequently appealed to the Ontario Municipal Board. A decision (By-law 12-163 and By-law 12-164) on the CN Rail Appeal was issued by the Ontario Municipal Board on June 26, 2012. The final decision on the Secondary Plan was issued by the Ontario Municipal Board on December 27, 2012. The Secondary Plan establishes the framework for future development, public improvements and private investment in the West Harbour.

One of the goals of the Secondary Plan is to create a diverse, balanced and animated waterfront and therefore the policies encourage a broad mix of uses for the waterfront, including cultural, commercial and recreational with the purpose of providing a greater range of attractions year-round.

Under the current Secondary Plan designations for Piers 7 and 8 lands, a range of uses including retail, residential, open space and institutional are permitted. Some of these lands are designated Medium Density Residential 2. This designation permits a density of 150-300 units per gross hectare and includes multiple dwellings, apartment buildings and street townhouses.

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By its nature, "Setting Sail" establishes the general land use for the area, and would not be affected by the ownership structure of the lands themselves, or by the operational structure of the marina and boat storage business.

**West Harbour Waterfront Recreation Master Plan ("WHWRMP" or the "Master Plan"):**

The WHWRMP aims to define and clarify planning design guidelines that will guide and shape development of the buildings and landscapes of the West Harbour for the foreseeable future. The recreational Master Plan establishes a waterfront vision which builds upon the City of Hamilton's "Setting Sail" policies. The Master Plan contains policies and principles relating to design guidelines, architecture, waterfront precincts and implementation.

The study area encompassed approximately 30 hectares (73 acres) over a 4.7 kilometer stretch of waterfront. The study area included the waterfront lands along Hamilton's West Harbour from Bayfront Park to Pier 7, as well as two major waterfront open space areas: Bayfront Park and Pier 4 Park. The Master Plan's waterfront precincts include Bayfront Park, Macassa Bay, Pier 4 Park, the Main Basin, and Bayview Park, and provide direction for the development of the waterfront based on the following key ideas; public access along the water's edge, waterfront trail, vibrant and active spaces and coherence, consistency, and space.

The Main Basin is the anticipated heart of the harbour with the majority of commercial uses and programmable plaza space. The Main Basin is to be the focal point and gateway to the waterfront. A continuous boardwalk will provide connections to the other more recreationally focused precincts. The Master Plan provides for a balance between recreational and boating activities on the waterfront, and specialty commercial that will promote season-long and year-round enjoyment and appreciation of the waterfront.

The Master Plan was born from principles that relate to the recreational and environmental functions of the West Harbour waterfront. These principles include providing a range of boating facilities, balancing public access with marine activities, minimizing paved areas, encouraging sharing of boating facilities, and ensuring the safety of all waterfront users.

At the May 10, 2010, Committee of the Whole meeting, staff presented the "Hamilton West Harbour Waterfront Recreation Master Plan" to Council (Report PW09004a) and passed the following resolution:

- (a) That the Hamilton West Harbour Waterfront Recreation Master Plan, April 14, 2010, be received;

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- (b) That the Hamilton West Harbour Waterfront Recreation Master Plan be referred to the General Manager, Planning and Economic Development Department for review and development of an appropriate OPA and implementing Zoning By-Law; and,
- (c) That the consideration of an architectural review board for West Harbour waterfront development be referred to the City Manager's office for contemplation in conjunction with the Waterfront Development Corporation.

**RELEVANT CONSULTATION**

- City Manager's Office;
- Community Services, Office of the General Manager;
- Corporate Services Department, Financial Planning and Policy;
- Corporate Services Department, Office of the General Manager;
- Planning and Economic Development Department, Planning;
- Public Works Department, Corporate Assets and Strategic Planning;
- Hamilton Port Authority;
- Royal Hamilton Yacht Club; and,
- Hamilton Waterfront Trust.

**ANALYSIS AND RATIONAL FOR RECOMMENDATION**

Staff wanted to ensure the MMA was as comprehensive as possible; and therefore the negotiations were segmented into several specific areas. The Executive Summary section of this Report contains a general analysis of the overall recommendations, and the following is a brief description of the agreed to framework for each:

**Term**

The Term of the Agreement runs from the January 1, 2015 to December 31, 2039, with an option to renew for an additional 25 year term, subject to terms and conditions acceptable to both the City and the HPA.

Based on the seasonality of the marina business, the Parties agreed to a defined "Transition Period" that will take effect from the date of execution until December 31, 2014. The purpose of the Transition Period is to provide time for both of the parties to transition operations smoothly.

**Surrender and Termination of Existing Ground Leases for Piers 7 and 8**

Upon the execution of the MMA, the HPA agrees to an immediate early termination of all existing land-leases on Piers 7 and 8 between the City and the HPA, which were part

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of the year 2000 Settlement Agreement. The MMA clearly provides that there will be no direct financial compensation from the City for this early termination.

### **Pier 22 Lease**

The original MOU stated that in consideration of the early termination of the existing year 2000 Settlement Agreement Ground Leases for Piers 7 and 8, the City agrees to lease, approximately five acres of City-owned land on Pier 22 to the HPA, for economic development purposes, for a nominal amount per year, for a period of 25 years. This lease will increase revenues to the City by way of business permit fees and new property taxes.

Since the lands on Pier 22 are still in the process of being remediated and the Parties have not established the final location and arrangement of the lands to be leased, the MMA states that the lease for Pier 22 will be forthcoming as a separate lease agreement within one year's time of the execution of the MMA.

### **Grant of Licences and Rights of Subleases to the HPA**

Over the years, the HPA has sublet various parts of the Piers 7 and 8 lands to third parties through formal subleases. As part of the original MOU, it was agreed that the Ontario Sailing School (OSA) and Brewer's Marine (Brewer's) Subleases would continue to be managed by the HPA. The MMA therefore assigns the rights and management of these two leases to the HPA, where they will continue to collect and retain all rents, and shall manage the OSA and Brewer's Subleases on behalf of the City.

Regardless, the HPA shall not vary or modify the terms of these Subleases or offer any renewals to them, without the express written approval of the City. This also outlines the right of the City to terminate the leases. Upon the execution of the MMA all of the other subleases at Piers 7 and 8 (excluding the OSA and Brewer's Subleases) will be assigned to the City, and that the City will retain all revenue attributed to the existing sub-leases remaining on the Piers 7 and 8 lands. The City will also control any of the renewal terms of the other existing subleases.

As part of the negotiation process, City staff were given copies of all subleases, have reviewed the terms of the subleases, and are working towards having the subleases assigned to the City. In addition, the MMA also identifies the process whereby the City may require the relocation or termination of the OSA and Brewer's Subleases to permit development opportunities.

### **Management Agreement Oversight - Contract Administrator**

The MMA sets out a clear structure that provides direct City oversight on the operations of the City-owned marina and the Agreement itself. A Contract Administrator, will be appointed by the City's General Manager, Public Works Department, and will closely administer the MMA to ensure the terms and conditions are carried out as intended, as well as report on various matters, including but not limited to marina planning, operating, and development.

The Contract Administrator will have access to and may inspect the Marina, including the premises, buildings, facilities, equipment and vehicles being used for the services. The MMA also allows for the City to have access for the purpose of construction or installing collateral works within the marina area. The HPA shall designate a senior level employee as the HPA Contract Representative who will be responsible for overall contract management and who will work regularly with the City's Contract Administrator.

This section was critical to the negotiation process as it ensures clarification of the roles and responsibilities of each Party, thereby addressing a point of contention that has existed between the Parties in the years after the year 2000 Settlement. These oversight provisions along with other key sections that provide additional clarity on roles and responsibilities, combined with an extensive dispute resolution provision have been designed to limit on-going disputes of interpretation throughout the Agreement.

### **Operation, Maintenance and Management of Marina**

Although the MMA is clear that the HPA operates and manages the marina throughout the term, the Agreement also spells out the responsibility of the HPA to maintain the assets throughout the term as well. The HPA shall be responsible for continuously and diligently maintaining the Marina and Boat Storage Facility to meet or exceed comparable industry standards. In an effort to further define a maintenance protocol, the City will develop within the first year of operation and provide to the HPA, a detailed maintenance and operating manual that will establish objective standards and procedures.

### **Slip Rentals**

As per the original MOU, the MMA identifies that the HPA will manage approximately 300 existing boat slips, and will be given the opportunity to expand by constructing additional slips within the Main Basin. As part of the overall Servicing Studies for the Piers 5-8 lands, the City has already commenced a functional marina design plan to be developed that will set the final slip capacity and configuration.



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The HPA agrees that any additional slips, as part of the marina expansion, will be constructed at the HPA's sole cost, including all design, capital and maintenance costs throughout the term of the Agreement.

The MMA also clearly recognizes the fact that the HPA currently operates alongside the RHYC, which at present, manages and operates approximately 58 existing slips on behalf of the City of Hamilton. The Agreement specifies that this relationship between the City and the RHYC will continue, and that the RHYC will also be given the opportunity to develop up to 42 new slips with the "Main Basin", the capital and maintenance cost of which will be the responsibility of the City and/or the RHYC (to be negotiated at a future date), and will be formalized through a future lease between the City and the RHYC.

Understanding there is a current and future demand within the Main Basin for slips to be used by transient boat visitors, the MMA also provides for the availability of temporary boat slips for these purposes.

### **Triggers for Expansion**

As part of the overarching principles of the MMA, both parties agree that the improvement and expansion of the marina is an integral goal and as such, it was important to ensure the Agreement provided an objective framework that would guide the decision making process and the timing with respect to future expansion.

The parties have agreed to cost-share a market study, conducted by a reputable third party consulting firm, within the first three years to determine the need for possible expansion of the marina.

If in the opinion of such consulting firm, there is a supportive business case, the HPA agrees to proceed with such expansion within one year of receiving the market study. The Parties further agree that future studies will be conducted approximately every three years, until expansion of the marina is complete.

It is important to note that the HPA shall pay 100 percent of the costs for any expansion to the marina, including the increase in the number of slips within the Main Basin.

### **Revenue Sharing of Expansion Slips**

As stated in the MOU and now incorporated into the MMA, the HPA shall collect 100 percent of the revenue of the existing boat storage and slip revenue generated from the approximately 300 existing slips, and the HPA shall retain any net profit or net loss.

But the MOU also established the principle that there would be some element of profit sharing as a result of any expansion that takes place to the marina. The MMA states that the City and the HPA will share the expanded slips Net Operating Profit equally.

Both parties believe that the calculation of revenues and expansion slip expenses are equitable and that it satisfies the intent of the MOU.

### **Boat Storage Facility**

The MMA states that the Boat Storage Facility is an integral component of the overall marina business. Both Parties recognize that the business operations of a marina include business that is conducted on the water (via Slip rentals and other services) and a boat storage facility to store boats during the off-season. An integral component of this Agreement is to promote the viability of the overall marina business.

In a manner consistent with the current marina operations, the boat storage facility will be tied directly to the operations of the marina facilities, so that the two operations go “hand-in-hand”.

The Agreement calls for the current boat storage facility to remain intact and in-place on Piers 7 and 8, as currently configured for the short-term, but it also includes a “Boat Storage Relocation” clause that would allow the City and the HPA to relocate it with a reasonable two year notice period.

Relating to the costs of such relocation, the MMA clearly states that all costs of this relocation (including land acquisition, legal, and real estate costs) and/or development of a new boat storage facility shall be the sole responsibility of the HPA.

Also the HPA will be solely responsible for all future maintenance and capital improvements of the relocated boat storage facility (including its fixtures, chattels and buildings). For clarity, this means that the City shall not have any capital improvement responsibilities to the HPA with respect to the relocated boat storage facility.

The Agreement also includes the clear parameters, as established in the original MOU, regarding the options available for the boat storage facility that protects the City, at the end of the 25-year Management Agreement.

### **Replacement, Refurbishment and Repair of Existing Infrastructure**

The MMA outlines the capital cost responsibilities for each party. As part of this Agreement, the City is responsible to make a one-time repair, replacement, and/or refurbishment to the existing infrastructure, as it stands today and make Capital Improvements to the existing Marina (except for the Boat Storage Facility) as required.

Such one-time repair, replacement and/or refurbishment shall be limited to the areas of the construction of a new Breakwater structure, the existing Slips in the Main Basin, the required servicing components, and the Shoreline in the Main Basin. Such repairs, replacements, and/or refurbishments, shall be made as reasonably required and shall be in accordance with the WHWRMP, environmental assessments, and other City of Hamilton assessments and shall be made with reasonable efforts on or around 2018.

### **City's Capital and Maintenance Expenditures**

From the outset, the parties tried to identify solutions to items that have historically caused friction since the time of the year 2000 Settlement Agreement.

One such issue was to clearly identify and define the difference between costs associated with maintenance, which is the responsibility of the HPA, and those associated with capital, which is the responsibility of the City. After looking at several different models, the parties agreed that the easiest way to clarify the difference was to define the items based on an absolute dollar figure.

Therefore, as the City is the owner of the marina, the MMA establishes that the City will continue to be responsible for all capital improvement expenses for the marina and the current boat storage facility. For the purposes of this MMA, a capital improvement is defined by an expense that exceeds the amount of \$75,000.00 per item.

Notwithstanding the responsibility, the Agreement ensures that the HPA must discuss and regularly work with the City on any expected capital improvements, and that the City is under no obligation to make any capital improvements proposed by the HPA, except for those required for emergency health and safety concerns.

### **HPA's Capital and Maintenance Expenditure Responsibilities**

Likewise, the MMA states that the HPA shall be responsible for all repair or replacement maintenance and capital improvement expenses of the marina and the current boat storage facility (as currently configured), up to and including the threshold amount of \$75,000.00 per item exclusive of internal HPA labour costs. The HPA's maintenance responsibilities will be capped at \$375,000 per calendar year. However, the \$375,000 cap is intended solely to permit the HPA certain flexibility in its cash flow and shall not in any way derogate or limit the HPA's responsibilities or liabilities under this Agreement, including their capital improvement responsibilities.

However, as stated in Section 20 above, the HPA shall also be responsible for all costs for any relocated boat storage facility operations (where the Boat Storage Facility is relocated to lands not owned by the City).

The HPA shall be responsible for any maintenance and Capital Improvements above \$75,000.00 CAD caused by its negligence in observing or failing to observe its Maintenance and Capital Improvement Obligations set out by this Agreement and the forthcoming Operating and Maintenance Manual.

Both Parties have agreed that when taken together the Agreement clarifies the roles and responsibilities regarding maintenance and capital expenses, and by defining the difference based on an absolute dollar figure it allows the Agreement to be easily interpreted.

### **Insurance and Indemnification**

Legal Services and Risk Management staff were engaged throughout the negotiation process and as such, both ensured that the Insurance requirements of the MMA were negotiated through established City standards and policies. The HPA will indemnify the City for its negligent acts and omissions.

### **Termination of the Agreement without Cause**

The original MOU never contemplated language foreseeing a termination of the Agreement during the term rather it always assumed that both parties were tied to the terms of the Agreement throughout the term. As negotiations progressed, both parties agreed that inserting termination clauses into the Agreement would be prudent, so to ensure clear terms should the termination be an option for either party.

It was agreed that the termination clauses needed to strike a proper and fair balance between the general intent of the MMA; that being to establish a continued long-term relationship between the City and the HPA, with the foresight of ensuring flexibility if needed. The MMA therefore contains specific language designed to capture all relevant elements that would need to be addressed if either party seeks to terminate the Agreement prior to expiry. The MMA outlined two such scenarios:

- a) Termination by the City without cause
- b) Termination by the HPA without cause

In general, the following are the key elements of compensation that may be applicable within the two scenarios:

- a) Termination by the City without cause**
  - loss of remaining annual net profit of the marina operations, of the 25 year Agreement Term
  - no loss of profit on the relocated Boat Storage Facility

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- compensation for the acquisition of any assets purchased by the HPA in its own name, for the relocated Boat Storage Facility, within and up to 10 years of the termination
- compensation for any equipment and chattels purchased for Marina operations
- compensation for a proportionate payment for employee termination costs in lieu

Notwithstanding this, the total compensation to be paid by the City to the HPA, as per the terms and conditions set out in the MMA, shall be limited to a maximum pay-out by the City of \$12,500,000.

**b) Termination by the HPA without cause**

- Compensation to the City to move the Boat Storage Facility, in the event that the Boat Storage Facility has not been relocated to HPA lands
- all equipment and chattels purchased for Marina operations are transferred to the City at no cost
- the HPA shall compensate the City for the capital costs of development and construction for the shortfall in expansion slips not built at the time of termination

Notwithstanding this, the total compensation to be paid by the HPA to the City, as per the terms and conditions set out in the Agreement, shall be limited to a maximum pay-out by the HPA of \$9,850,000.

The clauses have been designed in such a way as to only compensate for losses based on the remaining term left in the Agreement, meaning that the potential compensation owed to either party reduces significantly over the term of the Agreement.

Despite the Termination clauses built within the MMA, both parties agreed that the clear intent of the MMA is for the parties to work together in good-faith throughout the established term. The termination clauses establish clear, transparent, and objective measures for compensation, and cover all aspects of the marina business.

## **ALTERNATIVES FOR CONSIDERATION**

The staff recommendations (a) and (b) are as follows:

- (a) That the City of Hamilton enter into a 25 year Marina Management Agreement with the Hamilton Port Authority (HPA) for the management, operation and maintenance of the City-owned marina facility, located within the Main Basin of Piers 7 and 8, as described in Report CM12015(b);

- (b) That the Mayor and the City Clerk be authorized and directed to execute the Marina Management Agreement between the City of Hamilton and the Hamilton Port Authority, together with all necessary associated documents, in a form satisfactory to the City Solicitor and with content acceptable to the City Manager;

Alternatively, the staff recommendations can be revised, amended, or referred back to staff. As the proposed MMA has been negotiated between senior staff of the City of Hamilton and the HPA, and has been subsequently approved "in-principle" by the HPA Board of Directors on December 4, 2013, City staff cannot guarantee that alterations to the MMA would be acceptable to the HPA.

## **ALIGNMENT TO THE 2012 - 2015 STRATEGIC PLAN**

### **Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

### **Strategic Objective**

- 1.1 Continue to grow the non-residential tax base.
- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" - Memorandum of Understanding (MOU) Re: Long-Term Marina and Boat Storage Management Agreement & Piers 7-8 Lease Transfer & Partial Early Termination.

CP/dt

**MEMORANDUM OF UNDERSTANDING ("MOU")**

**Re: Long-Term Marina and Boat Storage Management Agreement & Piers 7-8  
Lease Transfer & Partial Early Termination**

1. With regards the City Of Hamilton ("City") Report CM12015 of August 13, 2012, this MOU is to confirm that, subject to the terms of this MOU, the Hamilton Port Authority ("HPA") and City have agreed to terminate existing land leases for Piers 7 and 8 as depicted and further described in Appendix "A" and Appendix "C". Furthermore, the parties have agreed to enter into a new forthcoming Management Agreement in which the HPA shall manage the operations of the Marina, Boat Storage and Slip Rentals as described in further detail below and as set out in the forthcoming Management Agreement. The forthcoming Management Agreement shall supersede and replace this MOU.
2. This MOU and forthcoming Management Agreement shall be effective and in-force only upon meeting the following conditions:
  - a. the HPA gives written approval to the City to expand the use of the harbour waters by allowing the construction of the new proposed breakwater structures as indicated in the diagram attached in Appendix "A";
  - b. the City is given ample time to review all sub-leases and any related mortgages the HPA has entered into on Piers 7 and 8; and
  - c. subject to the City's review of all subleases as set out in paragraph 2 b. above, the City accept the transfer and assignment of any sub-leases, as attached and further described in Appendix "B", to the City.
    - i. All accepted sub-leases shall be transferred and assigned from the HPA to the City, upon the execution of the forthcoming Management Agreement.
    - ii. If the City has any concerns about any sub-lease, the Parties agree to work together to find a mutual solution.
    - iii. The Brewer's Marine Supply and Ontario Sailing Association leases shall remain with the HPA and continue to be the responsibility of the HPA.
    - iv. If the Brewer's Marine Supply and Ontario Sailing Association sub-leases are terminated by the HPA, at the City's written request, then the City shall pay any cash payouts required to give effect to the terminations.
3. Upon the execution of the forthcoming Management Agreement, the parties agree to terminate the Land-Lease on Piers 7 and 8 on July 1, 2013
  - a. Upon the execution of the Management Agreement, the HPA agrees to an immediate early termination of the existing land-leases on Piers 7 and 8 between the City Of Hamilton and the HPA from the year 2000 settlement, leases attached and further described in Appendix "C", and as indicated by Areas "A", "B", "D", "E" and "G" in the attached diagram in Appendix "A".
  - b. Upon the termination of the year 2000 settlement leases for Piers 7 and 8 and upon the execution of the Management Agreement, the Parties agree that the termination provisions of the year 2000 settlement leases for Piers 7 and 8 are null and void.
  - c. There will be no direct financial compensation from the City for this early termination or "partial" early termination.
  - d. In consideration for the early termination of the existing land-leases on Piers 7 and 8, the City agrees to lease, to the HPA, for a nominal amount per year, for a period of 25 years, 5 acres of land on Pier 22 for economic development purposes. This new lease for Pier 22 will be forthcoming as a separate agreement.

**4. HPA to Operate and Manage Marina - Long-Term Management Agreement**

The Parties agree that the HPA shall operate the Marina (slip rentals and boat storage, formerly known as Harbour West) for 25 years, with an option to extend the formal agreement for another 25 years, subject to terms acceptable to the City and the HPA. The forthcoming Management Agreement discusses this in further detail. For clarity, a summary of some of the larger points of the Agreement is included below:

**a. Slip Rentals**

- The HPA shall manage, on the City's behalf, a total of approximately 300 slips, as depicted and further described in the attached diagram in Appendix "A".
- A party designated by the City shall manage, on the City's behalf, a total of approximately 68 slips and related boat storage, which is consistent with the current operations.
- Subject to City approval, the HPA will be given the opportunity to expand the number of slips it rents by approximately 660 bringing the total to approximately 850. Forty-two of the new slips shall be available for City use, at the City's expense.

**b. Boat Storage Facility**

- Boat storage capacity (current size or greater) will be tied to the forthcoming long-term Management Agreement of the Marina, so that the two operations go "hand-in-hand".
- The current Boat Storage Facility remains intact and in-place on Piers 7 and 8, as currently configured (indicated by areas "E" and "G" on map attached) until such time development opportunities present themselves to the City.
- Final formal Management Agreement shall include a "Boat Storage Relocation" clause that would allow the City/HPA to relocate the Storage Facility, with a reasonable notice period, of at least 2 years or otherwise as expressly agreed by the Parties, during the term of this agreement. Notices given between the beginning of March to the end of October of each year shall be deemed to have been given on the following November 1<sup>st</sup> of the same year.
- Should the Boat Storage Facility reside on HPA owned lands at the end of the 25 year contract, the parties agree that:
  1. With regards to the land the Boat Storage Facility resides on, the HPA shall
    - o with the City's mutual consent, renew the Management Agreement, or
    - o sell the subject land on which the Storage Facility resides on to the City at the fair market value of the vacant land, or
    - o lease the subject land on which the Storage Facility resides on to the City at the fair market value of the vacant land, or
    - o as an alternative, the HPA may continue to operate the boat storage operation with the City's mutual consent.
  2. With regards to the Boat Storage buildings, assets, chattels, fixtures and equipment, the HPA shall:
    - o with the City's mutual consent, renew the Management Agreement, or
    - o lease them to the City for \$1 per year.

**d. Capital Cost Allocation**

- The City shall pay for Capital Improvements for the "Shoreline Improvements / Protection" and the "Breakwater/wavebreak", as indicated in the West Harbour Recreation Master Plan (WHRMP) and subsequent City of Hamilton Environmental Assessments.
- Subject to paragraph 4 e. below, the City shall pay for the capital replacement/upgrades of the current slips in the Main Basin (slips to be identified on a map in the agreement).
- The Capital Improvements to be made by the City to the Shoreline, Breakwater and existing slips shall, with best efforts, be made by 2017.
- At all times as prescribed and detailed by the forthcoming Management Agreement, the HPA shall manage and maintain the Marina Facility which includes all the facilities, buildings, equipment, breakwater structures, slips, land and any other structure, feature or aspect of the Marina.
- The HPA shall pay 100% cost for any increase in the number of slips within the Main Basin, and therefore the HPA, through its operating lease for the Marina, in consultation with the City, would develop the phasing and timing of any slip expansion.
- In the event of the boat storage facility being re-located, the HPA shall pay for 100% of the Capital Cost for the new boat storage facility.

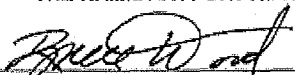



**e. Revenue Allocation**

- The HPA shall continue to collect 100% of the existing boat storage and slip rental revenue, based on the current lands and capacity.
  - The parties agree to share a portion of the revenues and/or profits from any expansion of the marina and slips. The parties agree that no capital replacements, or upgrades shall be made to the marina or slips, as described in paragraph 4 d., without an agreed upon revenue and/or profit calculation or formula.
  - The revenue and/or profit sharing calculation or formula may be negotiated and agreed upon, by the parties, at a later time than the date of execution of this MOU and forthcoming Management Agreement. Any such calculation or formula may:
    - (i) be included in and become a part of the Management Agreement by amendment; or
    - (ii) it shall form part of and be detailed in a new revenue/profit sharing agreement.
  - The HPA agrees to transfer any and all sub-leases to the City of Hamilton upon termination of the current existing Pier 8 Lease agreement, and the City of Hamilton will retain all revenue attributed to the existing sub-leases remaining on the Pier 8 lands as described in section 6.
  - The City of Hamilton agrees to provide reasonable "Notice of Termination" to the existing sub tenancies/occupants located on the Pier 8 lands, in the event the City requires all or any part of the said lands prior to the expiration of the current leases.
5. This MOU and forthcoming Management Agreement shall supersede and replace any previous oral and/or written agreement and/or understanding of the parties (including, without limiting the foregoing, any previously executed agreement or other document) with respect to the specific subject matter of this MOU.
6. This MOU and/or forthcoming Management Agreement may be terminated with the mutual written consent of both parties.
7. This MOU shall be executed in sextuplicate.
8. This MOU shall automatically terminate if no Management Agreement is agreed upon and executed by July 1, 2013.

Executed by Hamilton Port Authority this 28 day of February, 2013.

**THE HAMILTON PORT AUTHORITY**

Per:   
Mr. Bruce Wood, President and C.E.O

Per:   
Mr. Bob Hart, C.A.O. / Corporate Secretary

Executed by The City of Hamilton this \_\_\_ day of \_\_\_\_\_, 2013.

**THE CITY OF HAMILTON**

Per: \_\_\_\_\_  
Chris Murray, City Manager

Per: \_\_\_\_\_  
Robert Bratina, Mayor