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Public Works Department
Waterfront Development Office
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May 17, 2017

Mr. Werner Plessl, Executive Director
Hamilton Waterfront Trust
47 Discovery Drive
Hamilton, ON L8L 8K4

RE: Piers 5-7 Public Realm Project

In accordance with Council direction and consistent with the Hamilton Waterfront Trust (HWT)/City of Hamilton Project Management Agreement, the HWT has been approved to project manage waterfront related projects to assist the City in delivery of its Waterfront Initiative for the West Harbour. For the above-noted project (the "**Project**"), the City has identified the HWT's role as project manager to oversee: functional, preliminary, and detail design; contract tendering; and, contract administration. The Project, as defined in the Western Harbour Strategic Initiatives (WHSI) Implementation Plan is comprised of the following individual sub-projects:

1. Piers 5-7 Marina Shoreline Rehabilitation;
2. Piers 5-7 Boardwalk and Waterfront Trail;
3. a. Pier 6 Artisan Village Design Study
b. Pier 6 Artisan Village Design & Construction (includes repurposing of the former HPA maintenance shed and varnish shed); and
4. Pier 7 Commercial Village Public Space.

The Project shall be carried out in accordance with the attached terms and conditions, referred to here as the Terms of Reference ("**TOR**").

Please review the TOR at your earliest convenience and sign it back as confirmation of the HWT's acceptance of its terms. Should you have any questions or need clarification, please call me at (905) 546-2424 ext. 4812.

Gavin Norman, P.Eng.
Manager Waterfront Development
Public Works Department

c.c. G. Moore, Engineering Services, Public Works
C. Phillips, Planning and Economic Development

\attachments

Terms of Reference Piers 5-7 Public Realm Projects

This Terms of Reference (“**TOR**”), and any ancillary documents, are subject to the terms and conditions set out in the Project Management Agreement between the City of Hamilton and the Hamilton Waterfront Trust dated January 7, 2015 (the “**PMA**”). For clarity, any issues not addressed in the TOR, shall be subject to the terms of the PMA.

1. Goal

To redevelop Piers 5-7 in accordance with the West Harbour Waterfront Recreation Master Plan which includes the following sub-projects (which are collectively known as the “**Project**”) as defined in the Western Harbour Strategic Initiatives (“**WHSI**”) Implementation Plan:

1. Piers 5-7 Marina Shoreline Rehabilitation;
2. Piers 5-7 Boardwalk and Waterfront Trail;
3. a. Pier 6 Artisan Village Design Study;
b. Pier 6 Artisan Village Design & Construction (includes repurposing of the former HPA maintenance shed and varnish shed); and
4. Pier 7 Commercial Village Public Space.

2. Objective

The objective of this assignment is to provide functional planning, detailed design and contract administration oversight for the construction of the Piers 5-7 Public Realm Project.

3. Reporting: Hamilton Waterfront Trust - City Staff

As the Project Manager, the HWT shall report directly to the Waterfront Development Office (“**WDO**”) Manager, unless directed otherwise. Staff in the WDO include:

- G. Norman, Manager, WDO, Public Works Department;
- J. Pidsadny, Senior Project Manager, WDO, Public Works Department; and
- E. English, Senior Project Manager, WDO, Public Works Department.

In addition, the City also has a cross-departmental Senior Staff Team responsible for the overall direction of the City’s Waterfront Initiatives, which includes the following staff:

- C. Phillips, Senior Advisor - Planning and Economic Development (“**PED**”);
- G. Norman, Manager, WDO, Public Works Department;
- A. Dore, Manager, Special Projects, GM’s Office - Public Works Department; and
- C. Newbold, Manager, Community Planning and Design – PED.

All day-to-day Project correspondence, coordination and facilitation shall typically be conducted through the WDO, however, other aspects of the Project will be coordinated through PED for activities such as public consultation. For the Project, City/PED employee Diedre Rozema, Special Advisor Community Engagement, is available to assist in the facilitation of public consultation.

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Meetings with City staff and/or consultants are expected as the Project proceeds; however, the regularity of meetings will not be determined until specific work plans and schedules have been prepared. Project meetings will be coordinated, conducted and minuted by the HWT including the advance circulation of relevant materials (agendas, etc.) unless otherwise agreed to by the City.

The HWT team is made up of two full-time staff:

- W. Plessl, Executive Director, HWT; and
- R. Martin, Senior Project Manager, HWT (on secondment from the City of Hamilton).

The HWT will be responsible for sourcing and hiring all necessary consultants as determined through the scope of work after consultation with City of Hamilton staff. On that basis, the HWT intends to retain the expertise of the following experts on a time and materials basis to assist with the implementation of the Project:

- E. Hess, Landscape Architect; and
- C. Firth Eagland, **[INSERT FUNCTION]**.

The 2017 hourly rates for these experts are outlined in Appendix 'A'. The City shall approve the rates for all consultants and experts based on scope of expertise/services provided and with consideration of market rates. The HWT shall provide proposed scope of work and rates through submission of detailed work plans.

4. Project Management Scope of Work and Timing

In order to complete the objective, the HWT is expected to provide project management services related to the following main tasks:

- Investigative Services – completion of all required pre-construction investigative services including, in particular, geotechnical and archaeological work;
- Functional and Preliminary Design – completion of design work to assure functionality, determine design parameters and other key criteria, including utility requirements, cost estimates, etc.;
- Consultation – thorough and meaningful engagement with affected departments, stakeholders, the public and the City;
- Detailed Design – completion and approval of tender ready construction drawings including shop drawings, with permits in place, and coordination and approval of utilities;
- Construction Tender and Award – following approved standards and policies satisfactory the City;
- Contract Administration – administration of the construction contract including coordination of detailed inspection activities required for acceptance and final approval; and
- Warranty Period – process warranty claims and facilitate final inspections with City staff.

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5. Funding

The following sub-projects are identified in the WHSI Implementation Plan along with base cost estimates. These estimates have been used to set the following Project Budget which includes the HWT’s project management fee and all HWT staff resources costs (the fee is calculated not to exceed 10% of total Project Budget or \$1,552,500). The Project Budget covers also covers all “soft” costs including those related to studies, planning, design, permitting, tendering, construction, contract administration and all related work/services.

	Budget	Pre 2017	2017	2018	2019
Pier 5-7 Marina Shoreline Rehab	10,170,000	6,375,000	3,795,000	-	-
Pier 5-7 Boardwalk	1,135,000	150,000	300,000	685,000	-
Artisan Village Design Study	100,000	-	100,000	-	-
Pier 6 Artisan Village	1,070,000	170,000	900,000	-	-
Pier 7 Commercial Village	3,050,000	350,000	1,700,000	1,000,000	-
Total	\$15,525,000*	7,045,000	6,795,000	1,685,000	-

* includes \$500,000 already advanced to HWT to complete pre-construction activities

For clarity, the City’s financial contribution to this Project is limited to the amounts outlined in the Project Budget and as allocated in the City’s Capital Budget. The City shall provide to the HWT the then current funds available at the beginning of each sub-project. The HWT acknowledges and agrees that any proposed expenditures that exceed this Project Budget will require a written report to, and approval by, City Council.

6. Procurement of Services

i. General

The HWT shall procure consulting services and contractors using procedures/processes that are fair, open, competitive and satisfactory to the City. Vendors contracted by the HWT shall be eligible to work on City business in accordance with the City’s Procurement Policy By-Law 17-064.

ii. Consultants

It’s expected that the HWT will require the expertise of various professionals in delivering the Piers 5-7 sub-projects including marine and coastal engineers, structural engineers and architects etc. In that regard, the City shall approve the use of all such consultants.

iii. Construction

The HWT shall enter into a **Works Agreement** (substantially in the form attached as Appendix ‘B’) satisfactory to the City which will further outline the required works (the “**Works**”) for each sub-project.

Terms of Reference Piers 5-7 Public Realm Projects

7. Existing Plans, Drawings, Details and Specifications

Upon request, the WDO will ensure that all relevant background material and supporting documents and plans are provided including, but not limited to, the following:

- External servicing descriptions and mapping;
- Existing studies and reports;
- Existing engineering drawings including Pier 7 Transient Docks conceptual plan for Pier 8 Parkette; and
- City engineering design standards, specifications, and protocols.

8. Consultation

It is expected that the HWT shall consult with the City, stakeholders, and the public regularly. Consultation with the City includes regular scheduled Project meetings with staff to review progress, coordinate Works, resolve issues, and plans. Outside of the WDO, City staff expected to be involved from time to time may include: Parks and Cemeteries, Facilities, Tourism and Culture, Planning, Economic Development, and Hamilton Water. Consultation also includes attendance and representation at meetings of City committees and Council, as required. It is expected that the HWT will be required to prepare material (presentation and written) for these meetings.

Stakeholders may include, but are not limited to: marina operators and boat clubs, Hamilton Police Services, the Hamilton Fire Department, Hamilton Port Authority, Ministry of Environment and Climate Change, Environment Canada, Transport Canada, Department of Fisheries and Oceans, Hamilton Conservation Authority, and the Remedial Action Plan Coordinating Office. It is expected that the HWT shall proactively consult with stakeholders as it proceeds with planning and design of the projects in particular as it relates to obtaining any necessary permits.

The HWT shall also consult with the public in accordance with the Consultation Plan included in Appendix 'C'. Regularly scheduled meetings with the public will typically be held at 294 James Street unless directed otherwise by the City.

9. Changes to Scope of Work and Extra Work

This TOR is a summary of the scope of work to be completed and/or facilitated by the HWT on the City's behalf; however, certain details may need to be discussed further during each sub-project to determine an appropriate course of action. While the City or the HWT may propose amendments to the scope of work, the City reserves the right to reject any or all parts of the scope change proposal and prior written approval must be granted by the City prior to implementation of any amendments.

Extra work shall be subject to prior written agreement and approval from the WDO and may, in certain circumstances to be determined by the City, be subject to Council approval. Extra or additional work requiring extra fees shall not be undertaken without the prior written approval of the City. Any extra fee requests shall be made in writing. For added clarity, it is the City's expectation that funding for any newly proposed spending shall be found within the existing

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Project Budgets already approved by the City meaning that savings would have to be first found within the Project Budget before the City would approve any additional spending.

10. Deliverables

- i. Work Plans and Fee Estimates: – the HWT shall submit work plans and fee estimates for each sub-project or component of a sub-project as a requisite for obtaining City approval to proceed and obtaining a purchase order for the work.
- ii. Project Schedules: – shall be provided by the HWT in Gantt chart format notating timelines for approval and identifying major task/assignments, milestones, interdependencies, and critical path.
- iii. Construction Cost Estimates (Cost Schedules): – the HWT to include as part of and all design proposals, and once approved by the City, shall be included in the Works Agreement.
- iv. Engineering Submissions: – the HWT shall provide to the City:
 - Drawings for design approval, construction, shop drawings and as-built (refer to City of Hamilton’s Comprehensive Development Guidelines and Financial Policies Manual
- v. Financial Information for payments, budget tracking and auditing purposes—the HWT shall provide to the City:
 - Detailed tracking of staff hours and rates;
 - Detailed invoices and payment certificates; and
 - Full details and documents on all expenditures.
- vi. Consultation Documentation: – the HWT shall provide to the City all:
 - Notes/minutes of meetings as the Project progresses;
 - Relevant correspondence with the public, stakeholders, and staff at or before the end of a sub-project; and
 - Correspondence involving Project consultants, the HWT and the City.

All electronic files shall be supplied to the City by means acceptable to the City; e.g. on a flash drive, or transferred by way of a FTP site as directed by the City and shall be prepared in formats readable on a PC with Windows 7 Professional operating system.

11. Approvals

- a. Requirements
 - i. Drawing Preparation - the HWT shall use the following City documents as it relates to design, construction and material specifications, and submission requirements:
 - Comprehensive Development Guidelines and Financial Policies Manual;
 - Site Plan Guidelines;
 - Construction and Material Specifications;
 - Park and Open Space Development Guide;

Terms of Reference Piers 5-7 Public Realm Projects

- Sewer and Water Permit Process and Design Requirements;
- City of Hamilton Barrier-Free Design Guidelines and AODA Guidelines; and
- Ontario Building Code (O.B.C. 1997).

The HWT should also refer to the City's website for a full list of guidelines and policy documents: <https://www.hamilton.ca/develop-property/policies-guidelines>

It is the HWT's responsibility to determine and fulfill necessary requirements to get approval to proceed with any aspect of this Project.

- ii. Retaining Consultants – the HWT shall retain external consultants for any work considered outside of the scope of its expertise (e.g. structural engineers for sheet pile wall design). For clarity, for each sub-project the HWT shall identify design team members and provide, in writing, their requisite qualifications for the task being assigned. Prior to the start of any sub-project, or part thereof, the City shall approve the proposed resources and reserves the right to refuse the use of any third party consultant at its discretion.
- iii. Value Analysis – the HWT in consultation with the City shall include and formally document the following consideration of options in making decisions throughout the design process:
 - Cost reduction: consideration of less expensive alternatives to specified materials, systems, or construction methods;
 - Value added: consideration of higher quality products that will increase value of the Project and overall satisfaction;
 - Life-Cycle Analysis: consideration of options that work to create a balance between initial construction costs and the long-term operational budget of the Project; and
 - Maintainability: recommendations of systems and products that will minimize maintenance costs over the lifespan of the Project.

b. Process

Civil Works related to the shoreline including the shoreline rehabilitation and the new boardwalk are subject to approval through submission to the WDO. Submissions will be vetted through other divisions as required (e.g. Landscape Architectural Services; Hamilton Water) for specific conformance and permitting. The WDO, at its discretion, may retain a third party reviewer to assist in the review and approval of drawings.

The HWT is responsible to secure all necessary regulatory permits prior to receiving final approval from the City.

Works off the shoreline and boardwalk may be subject to Site Plan Control and the requirements of the City's Planning and Economic Development Department. Site Plan approval is provincially legislated and processed through the City's Planning Division and includes requirements for satisfying general conditions of approval and special conditions such as servicing (water, sewer, stormwater management) and archaeological requirements.

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c. Engineering Submissions

Engineering submissions are subject to Section A.8 Engineering Submissions and Section A.9 Plans and Drawings of the City of Hamilton Comprehensive Development Guidelines and Financial Policies Manual. For quick reference, the first engineering submission of any sub-project not subject to Site Plan Control shall consist of:

- a schedule in Gantt chart format outlining expected timelines for approval and servicing including the expected number of submissions and turnaround times for the City's review;
- two (2) copies of the final survey plan (minimum);
- three (3) sets of detailed engineering drawings (minimum);
- two (2) copies of any other relevant reports or drawings (e.g. archaeological assessment, tree preservation, EIS, hydro-G, etc.);
- two (2) sets of utility plans (minimum);
- a draft copy of the engineering cost estimates (cost schedule);
- a list of requisite permits required for final approval; and
- other plans that may be required through the process such as Storm Water Management report, landscape and streetscape plans - three (3) sets (minimum).

The City shall be responsible to distribute drawings for review to other City divisions. The HWT shall be responsible to distribute drawings to all external agencies, as required.

For any elements of the Project subject to Site Plan Control, the HWT shall follow the City's Site Plan process for submission requirements.

d. Tendering and Awarding Construction Contracts

Prior to tendering any portion of the Project, the HWT shall have completed costs estimates that demonstrate the work is affordable (i.e. within what has been approved by Council for each sub-project and what is identified as available for construction by the City). The City shall approve cost estimates prior to tendering.

Tendering of any construction work cannot proceed until drawings are approved by the City (including approved cost schedules), the requisite permits have been obtained, approved funding is available, and an executed Works Agreement is in place. The award of a contract to any third party contractor, supplier, or vendor shall not proceed without the City's express written authorization.

Prior to the start of any construction, the HWT shall undertake pre-construction requirements in accordance with City policies and practices (e.g. obtaining contractor insurance, utility disconnects and relocates, construction traffic plans, signage, preconstruction meetings).

e. Fair Wage Policy

The HWT shall ensure that every consultant, contractor and sub-contractor compensates its employees in accordance with the City of Hamilton's Fair Wage Policy and Fair Wage Schedule

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on all construction contracts. The compensation requirements as set out in the Fair Wage Policy and Fair Wage Schedule are minimum requirements.

f. Labour Trade Obligations

The Carpenters and Joiners Union Local 18 (the "Union") has bargaining rights with the City of Hamilton, whereby the City is bound by the terms and conditions of certain arrangements applicable to Ontario's Industrial, Commercial and Institutional ("ICI") construction sector. The HWT shall ensure that work involving any of the five trades of Carpentry, Acoustic and Drywall, Resilient Flooring, Caulking and Pile Driving complies with the City's agreement with the Union.

12. Inspection

The HWT shall designate a lead engineer satisfactory to the City (the "HWT's Engineer") who shall also act as the HWT's Contract Administrator as defined in the PMA. The HWT's Engineer has full responsibility for the actions of all consultants, contractors and sub-contractors retained by or on behalf of the HWT including the quality of the work provided. The HWT's Engineer is also responsible for providing full-time inspection services during the construction of all aspects of the Project.

City staff shall only provide a part-time monitoring of the construction activities to ensure general conformance to the Works Agreement and the City's policies and standards.

a. Substantial Completion of Works

The HWT's Engineer shall certify Substantial Completion of the Works and shall supply all contractors with the necessary information for publication in accordance with the *Construction Lien Act, 1983* as amended from time to time. Satisfactory evidence shall be provided to the City that the necessary information has been published, before the City will reduce the hold-backs it holds for performance of the Works.

b. Acceptance of Works - Start of Maintenance Periods

The City shall establish the "Start of Maintenance" date and the specific elements of the project(s) to be placed on the maintenance period providing the following conditions have been satisfied:

- the construction of all work has been certified as substantially complete;
- geotechnical reports confirming acceptable compaction testing;
- the HWT's Engineer has submitted as-constructed certification in a satisfactory form stamped by a professional engineer; and
- the required inspections reveal that there are no major deficiencies in any sewer and watermain systems constructed.

Maintenance periods will be established for the following phases of construction:

- completion of all below ground services (sewer, watermain, utilities); and
- completion of all above ground Works (after placement of the surface course pavements)

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The HWT shall maintain all Works (below and above ground) for a period of not less than two (2) years from the date of "Acceptance of Works" as issued by the City.

c. Assumption of Works - End of Maintenance

Prior to the "End of the Maintenance" period for the below ground Works, the HWT shall submit a request for a final visual inspection of the sewers and watermains with the City. In addition, a mandrel test shall be performed by the Contractor on all PVC sewers (sanitary and storm) in accordance with OPSS 410.07.15.05. When all identified deficiencies have been completed to the satisfaction of the City, a certificate of completion and final acceptance will be established. Prior to the End of the Maintenance period for the above ground Works, the HWT shall request a final visual inspection with the City. When all deficiencies have been corrected to the City's satisfaction, a final assumption date will be established. Prior to the City assuming any work, the HWT shall:

- submit a declaration that the HWT has paid all accounts in connection with the installation and maintenance of the Works and that there are no outstanding claims; and
- ensure that all repairs have been corrected to the satisfaction of the City.

The HWT shall make repairs in a manner satisfactory to the City, to any and all damage to the Works during construction and during the maintenance period.

13. Fees and Invoices

Fees to be paid to the HWT for project management services described herein shall be not exceed 10% of the total Project Budget of \$15.525M (or \$1,552,500). This fee represents an upset limit on the project management fees paid by the City of Hamilton to the HWT regardless of the change in cost of the Project.

The project management fee covers all services the HWT is obliged to provide under this TOR including those related to design, consultation, reporting, tendering, construction, contract administration, and all related work/services to project close-out. The HWT explicitly acknowledges that it received a \$500,000 advance on its fees in February 2017 from the City to permit it to complete necessary pre-construction work on the Project.

Invoices shall include a detailed breakdown of the fees and disbursements for individual sub-projects including all fees for HWT project management, consultants, sub-consultants, approval agencies and contractors coinciding generally with the phases noted above. The HWT shall stop billing project management fees at the Project's end or once the upset limit fee has been reached for individual projects, whichever comes first.

Payment Certificates for construction shall be prepared by the HWT for processing by the City. The HWT shall pay all consultants and contractors directly under a separate purchase order issued for the appropriate construction contract.

The HWT is permitted to make one billing per month for both work completed and management fees. Alternative billing arrangements may be made with the City's approval. The sub-project name, invoice number, and purchase order number shall be referenced on all invoices. The City reviews all invoices and makes payment within 45 days.

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Draft invoices should be submitted electronically first to the WDO for review. Upon direction from City staff, the HWT shall submit final invoices to the Engineering Services Webcentre: engineer_invoices@hamilton.ca

14. Term and Termination

- a. This TOR is effective as of December 1, 2016 and shall expire on a date to be designated by the City unless terminated beforehand in accordance with the terms of this TOR. This TOR may be terminated in accordance with the provisions of the PMA except that the City may terminate this TOR without cause in its absolute discretion on 90 days written notice to the HWT.
- b. On termination or expiry of this TOR, the HWT shall provide a brief written report to the City accounting for all funds provided by the City and promptly return any unspent funds to the City.

15. Insurance and Indemnity

In addition to its insurance and indemnity obligations as outlined in the PMA, the HWT shall also ensure that each consultant, contractor and vendor (collectively “**Vendors**”) it retains for this Project:

- a. obtains the requisite insurance coverage and names each of the HWT and the City as an ‘additional insured’ under those policies and provides, on request by the HWT or the City, written confirmation of that coverage; and
- b. indemnifies, and hold harmless, both the HWT and the City, their respective officials, officers and employees from and against any claims, proceedings, fines, penalties, expenses and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, either the HWT or the City or to either of the HWT or the City may be liable by reason of the Vendor's performance or its failure or omission to perform any obligation or part thereof to which the Vendor is subject to under law or its agreement with the HWT except to the extent that the same are caused by the negligence of the City or the HWT.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF the Parties have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

HAMILTON WATERFRONT TRUST

Signed for and on behalf of the Hamilton Waterfront Trust by:

Signed _____	Signed _____
Name: Bob Charters c/s	Name: Werner Plessl c/s
Title: Chairman	Title: Executive Director

Date _____	Date _____
"I have the authority to bind the Corporation"	"I have the authority to bind the Corporation"

CITY OF HAMILTON

Signed for and on behalf of the City of Hamilton by:

Signed _____	Signed _____
Name: _____	Name: _____
Title: _____	Title: _____

Date _____	Date _____
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**Terms of Reference
Piers 5-7 Public Realm Projects**

APPENDIX 'A'—APPROVED 2017 HOURLY RATES

Erik Hess - \$65/hour
Chris Firth-Eagland - \$75/hour

For 2017, it is estimated that Erik will work approximately 600 hours and Chris will work approximately 110 hours.

**Terms of Reference
Piers 5-7 Public Realm Projects**

APPENDIX 'B'—WORKS AGREEMENT TEMPLATE

**Terms of Reference
Piers 5-7 Public Realm Projects**

APPENDIX 'C'— CONSULTATION PLAN