

## APPENDIX "B"—WORKS AGREEMENT

THIS AGREEMENT is effective as of [INSERT DATE] (the "Effective Date")

BETWEEN:

THE HAMILTON WATERFRONT TRUST (the "HWT")

- and -

CITY OF HAMILTON (the "City")

Each a "Party" and collectively the "Parties"

WHEREAS the City has retained the HWT to project manage the completion of the Piers 5-7 Public Realm Project (the "Project") which includes general Project oversight as well as functional, preliminary and detail design, contract tendering/award/administration and the retention and supervision of all contractors and consultants;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the premises, and of the sum of FIVE (\$5.00) DOLLARS paid by the City to the HWT and of other good and valuable consideration (the receipt and sufficiency thereof is hereby acknowledged), the Parties covenant and agree each with the other as follows:

### DEFINITIONS

In this Agreement the following terms and phrases shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

- a) **'Acceptance'** means the date upon which the maintenance period for the Works has commenced, pending completion of all requirements, which relate to the construction of the Works;
- b) **'Agreement'** means this Agreement including each of its Schedules forming part of this Agreement, together with the required plans and specifications required by this Agreement and approved by the HWT in accordance with the provisions of this Agreement;
- c) **'HWT's Engineer'** means a qualified Professional Engineer or Engineering Firm, registered under The Professional Engineers Act of Ontario which has been hired to perform all engineering services related to the Land and required under this Agreement;
- d) **'Land'** means the land described in Schedule "A" of this Agreement;
- e) **'Maintenance of Works'** means a warranty period provided by the Contractor against defective materials, latent defects or poor workmanship for the Works constructed by the Contractor that are required to service the Lands under this Agreement;
- f) **'Others'** means all utilities and telecommunication systems, excluding the Hydro authority, including but not limited to telecommunication cables, gas mains and television co-axial

cables;

- g) **'Prime Contractor'** means a person or company retained by the HWT that undertakes a contract to provide materials or labor to perform a service or do a job.
- h) **'Works'** means all municipal or other services to be constructed by the Contractor under this Agreement.

**Engineering Services**

- 1. a) The HWT's Engineer is authorized to act as the HWT's representative to the City with respect to the submission of all engineering services and matters subject to the review and/or approval of the City, and is authorized to receive, on behalf of the HWT, all directions, approvals and requirements of the City. Further, the HWT acknowledges and confirms that the HWT's Engineer is aware of and will conform to the City's Engineering Guidelines, standards, relevant policies and by-laws with regard to design and construction of the Works.
- b) The HWT shall provide to the City the full name, address, telephone and fax numbers and e-mail address of the HWT's Engineer, which shall provide the engineering services required of the HWT by the City.

For the purpose of this Agreement, any notices, directions or approvals from the City in respect of any matters arising from this Agreement may be given by the City to the HWT or to the HWT's Engineer. The HWT shall inform the City by notice in writing of any change of the HWT's Engineer made by the HWT, together with the full name, address and telephone number of the replacement HWT's Engineer subject to approval by the City.

**Contract / Prime Contractor Approval**

- 2. a) Servicing contracts between the HWT and any contractor for Works shall be with a Prime Contractor who has been bonded and subject to approval of the City, acting reasonably.
- b) Every contract between the HWT and a Prime Contractor hired by the HWT to carry out any Work in accordance with this Agreement shall:
  - i) contain a provision binding the Prime Contractor to file performance, material and labour bonds satisfactory to the City; and
  - ii) provide that the work of the Prime Contractor shall at all times be subject to inspection and testing by the City and be performed in accordance with the terms of this Agreement; and
  - iii) provide that the Prime Contractor shall co-operate with the City's inspectors and engineers at all times, submit materials used for any tests required and comply with any directions given by the inspectors and engineers, to ensure compliance with the approved engineering design drawings and specifications; and
  - iv) provide that the Prime Contractor shall supply a work calendar for approval of the City, which work calendar shall provide for the work to be carried forward expeditiously and which work calendar shall be adhered to so far as it is reasonably possible; and
  - v) include an acknowledgement by the Prime Contractor that the Prime Contractor looks only to the HWT and not the City for payment for the Works pursuant to this Agreement.

- Storm & Sanitary Sewers, Watermains & Road Works**
3. a) The HWT shall proceed diligently with construction and installation of all storm and sanitary drainage, watermain and road works to the satisfaction of the City and in accordance with the approved construction drawings and specifications, Engineering Guidelines, relevant policies and by-laws, good engineering practices and all other relevant provisions of this Agreement and in accordance with the Ministry of the Environment and Climate Change's approval (if required).
- b) The City agrees that, at the request of the HWT, it will join with the HWT to make the necessary applications to the Ministry of the Environment for approval of the plans for sewers, private drains, watermains, water service connections and all other applications required by any authority for other City services and improvements.
- Service Connection Restrictions**
4. All service connections to be installed as a result of the development of the Land shall be subject to the City's standards and by-laws.
- Soil Stabilization**
5. Where structural fill has been placed in areas intended for installation of municipal infrastructure the HWT shall submit to the City a certificate prepared by a qualified geotechnical engineer verifying that areas which contain structural fill are stable and have achieved sufficient bearing capacity for installation of municipal infrastructure within and/or on the area of structural fill.
- Commencement of Works**
6. a) The HWT shall not proceed with construction of any Works under this Agreement until the City has provided written authorization to the HWT to proceed with the Works. Upon receipt of such authorization, the HWT shall give to the City, a minimum of two (2) clear business days written notice prior to the commencement of construction of any of the Works provided for under this Agreement. Should any significant work stoppage occur in the prosecution of Works, the HWT shall give to the City, prompt notice of the stoppage of such Works, and shall give two (2) clear business days written notice prior to the re-commencement of construction of such Works.
- b) The HWT is required to obtain all necessary road cut permits from the appropriate road authority. Access shall be maintained at all times to properties abutting such roads and the traveling public shall be protected. All Works and services shall be carried out to the satisfaction of the City.
- Placement of Final Layer of Asphalt**
7. The HWT agrees that no surface course asphalt pavement shall be laid in any year before the first day of May or later than the first day of November, unless otherwise directed by the City.
- Relocation of Services**
8. Where the abandonment, relocation and/or reconstruction of any existing storm sewers, sanitary sewers, sewer private drains, watermains, private water services, roadways, sidewalks and/or utility installations is necessary by reason of development of the Land, the HWT shall carry out such abandonment, relocation and/or reconstruction in accordance with the engineering drawings and cost estimate schedules approved by the City.
- Additional Work**
9. The HWT shall be responsible for, and perform, any and all additional work found to be necessary due to site conditions. Where additional drawings or specifications are necessary, the HWT's Engineer shall prepare same and the HWT and its Prime Contractor will conform thereto.
- As-Constructed Drawings**
10. The HWT's Engineer shall incorporate any construction changes on the plans for the Works in accordance with the City's requirements as set out in the engineering guidelines and deliver one (1) complete set of such revised "as constructed" drawings to the City, within six (6) months after acceptance of the sewer and watermain works.

**Street  
Cleaning**

11. a) The HWT shall prevent earth and debris arising as a result of the installation of the Works under this Agreement from being tracked onto streets outside the Land.
- b) Where earth, debris and building materials are allowed by the HWT to accumulate on any of the aforementioned streets, either inside or adjacent to the land, the HWT shall forthwith clean the said streets and remove the debris and materials.
- c) In the event the HWT fails to fulfill the requirements of this section, the City is authorized to have such work done at the HWT's expense. The City shall notify the HWT in advance of the City cleaning and removal of debris and materials from the streets. The cost of any work done pursuant to this subsection may be charged by the City to the HWT.

**Deficiencies in  
Work**

12. a) Where the City determines that the HWT is not proceeding with due diligence to carry out the Works or any of them:
- i) in accordance with any timetable specified under this Agreement; or
- ii) in a proper workmanlike and expeditious manner in accordance with the engineering drawings approved by the City; or
- iii) in accordance with other provisions of this Agreement or applicable City or other standards; then

the City may cause a notice in writing to the HWT specifying such default and requiring that the default be remedied forthwith in accordance with this section 15 which provisions take precedence over the default of the PMA.

- b) In the event that no action is taken by the HWT satisfactory to the City to remedy such default within seven (7) clear business days after the service or mailing of such notice (or within such greater period as may otherwise expressly be permitted in the said notice or in this Agreement) or in the event of emergency, in addition to any other remedies hereunder, the City may do and perform any and all actions, matters and things that may be required to remedy the default(s) as aforesaid, and in pursuance thereof, may hire labour and equipment and purchase such materials as the City considers necessary. All expenses incurred by the City pursuant to this subsection, shall be paid by the HWT to the City within seven (7) days from the date of an account therefore being rendered to the HWT by the City.
- c) Where, in the opinion of the City, any damage to any property has been caused directly or indirectly, or by reason of any default of the HWT under the provisions of this Agreement, the City has and is hereby given the right by the HWT to remedy such default at the expense of the HWT.
- d) The expense of all remedial work done by the City pursuant to this section shall:
- i) be calculated by the City whose decision on such expense is final; and,
- ii) include a management fee and a liquidated damages payment equal to fifty percent (50%) of the cost of labour, materials and equipment to perform such work, payable to the City as a consequence of such default; and
- iii) include such further sums as may be reasonably determined by the City.

- e) No work, act, matter or thing done by the City, its officers, employees, consultants or contractors pursuant to the provisions of this section or any other sections of this Agreement shall:
  - i) give rise to any action, claim, counterclaim or demand by the HWT or its respective executors, administrators, successors, trustees, sub-contractors or assigns for damages, costs or compensation of any kind, except where such action, claim, counterclaim or damage arises from the gross negligence of the City or those for whom it is responsible; and
  - ii) constitute an acceptance of any Work, service or improvement by the City.

**Stop Work** 13. The City may cause work to be stopped, when in their opinion, acting reasonably, the HWT is in default under this Agreement or the Prime Contractor is in default under its agreement with the HWT subject to a period of notice that is reasonable considering the circumstances giving rise to the default. When work has been stopped it shall not be resumed until conditions are satisfactory or safe or any necessary remedial work has been done, as the circumstances require.

- Maintenance of Works** 14. a) The HWT shall maintain to the satisfaction of the City:
- i) the asphalt base for such roadways in a well-graded and dust and muck free condition, fit for normal traffic at all times; and
  - ii) all curbs and gutters until placement of the final layer of asphalt pavement on roads and or trails ways described under this Agreement.
- b) The HWT shall maintain, against any defective materials, latent defects or poor workmanship, to the satisfaction of the City:
- i) all sewer and watermain works and appurtenances installed by it under the provisions of this Agreement from the time of installation and continuing for a period of two (2) years after the date sewer and watermain works have been accepted as complete by the City; and
  - ii) all base and surface course materials including asphalt, curb and sidewalks installed by it under the provisions of this Agreement from the time of installation and continuing for a period of one (1) year after the date all base and surface course asphalt, curb and sidewalks works have been accepted as complete by the City.
- c) The City agrees that acceptance of the Works as complete and commencement of the maintenance periods described in this Agreement shall take place upon fulfillment of the following conditions by the HWT:
- i) the Works, which the HWT is required to construct pursuant to this Agreement, are substantially complete, in the reasonable opinion of the City; and
  - ii) the Works, which the HWT is required to construct pursuant to this Agreement, have been inspected to the reasonable satisfaction of the City; and
  - iii) the City has not identified any major deficiencies in the Works constructed pursuant to this Agreement.
- f) Before the end of maintenance for the Works is declared by the City, the HWT shall:

- i) have complied with all of the terms and conditions of this Agreement in respect of the Works; and
  - ii) have corrected all deficiencies in the Works identified under the maintenance periods described in this Agreement, to the reasonable satisfaction of the City; and
  - iii) have provided to the City a duly sworn statutory declaration of the HWT that it has paid all accounts in connection with the supply, installation of and maintenance of the Works and, that there are no outstanding debts, claims or liens in respect of the installation of, or maintenance of, the Works; and
  - iv) have provided to the City a Certificate of Substantial Completion signed by the HWT's Engineer prepared and advertised as prescribed by the *Construction Lien Act* and any regulation thereto; and
  - v) at the City's request, have provided to the City a Certificate by a qualified Ontario Land Surveyor stating that he has made visible all standard iron bars on all corners and at all points where there occurs a horizontal change of direction in every street, easement and/or other lands dedicated to the City and along the outside perimeter of the land; and
  - vi) have provided to the City such additional assurances (such as a solicitor's opinion) as may be reasonably required by the City; and
- g) where the HWT has fulfilled the requirements for end of maintenance of the Works by the City, the HWT's Engineer shall submit his Certificate confirming that all of the Works have been installed and maintained as required by the City. The City shall acknowledge in writing the end of maintenance of the Works. The end of maintenance date shall be the date of the writing, unless otherwise specified therein.

***Inspection,  
Testing and  
Emergency  
Repairs***

15. Employees, contractors or agents of the City may without notice to the HWT, at any time and from time to time prior to the end of maintenance of the Works:
- a) inspect any of the Works. Such inspection by the City shall in no way relieve or replace the City's requirement for the HWT's Engineer to provide full time inspection of the Works under this Agreement;
  - b) conduct any tests that in the opinion of the City are necessary to confirm or verify quality of materials and construction; and
  - c) make emergency repairs in the event the Works do not function or do not function properly, or, in the reasonable opinion of the City, require necessary immediate repairs to prevent damage or hardship to any persons or to any property. The undertaking of repairs by the City shall in no way be deemed as acceptance of the Works by the City and is not a release the of HWT's maintenance responsibility for the Works under this Agreement.

The cost of all such emergency repairs and testing as determined by the City shall be recovered by the HWT as liquidated damages in accordance with terms of its contract with its Prime Contractor.

***Snow Removal  
and Use of  
Works by City  
or Authorized  
Persons***

16. a) The HWT agrees that pending completion of the said Works and/or acceptance thereof by the City, the Works, or any of them, may be used by the City or by any persons authorized by the City for the purposes for which such Works are designed.

- b) The use of the Works or the snow plowing or removal of snow or the performance of such other work as the City considers necessary does not relieve or discharge the HWT of its obligations in respect of the construction and maintenance of the said Works or any of them, or of any other obligation of the HWT pursuant to the provisions of this Agreement.

***Liability of  
HWT and  
Indemnification  
of the City***

- 17. a) The City shall not be responsible for or liable for:
  - i) any loss or damage that may happen to the Works, or to any part or parts thereof installed by the HWT pursuant to this Agreement where the end of maintenance for the Works has not yet been declared by the City;
  - ii) any of the materials or other things used and employed in finishing and completing the Works by the HWT or any part or parts thereof where such materials or other things have not been specified or specifically approved by the City;
  - iii) any injury to any person or persons, including workers and the public, during the construction of the said Works or the maintenance thereof by the HWT pursuant to the provisions of this Agreement;
  - v) the unapproved disposal of surface water from the Land;
  - vi) damage by the HWT to the property of any person while the HWT is carrying out any of its Works in respect of the development;
  - vii) damage caused by the construction or operation of the Works under this Agreement prior to the end of maintenance of the Works as declared by the City; or
  - viii) any loss or damage caused by the disposal or escape of surface water from the Land prior to end of maintenance of the streets as declared by the City.
- b) Notwithstanding any provision of this Agreement, the City shall not be liable for, and no provision of this Agreement shall be construed as imposing upon the City any liability arising directly or indirectly out of the provisions of this Agreement for any loss, damage or damages suffered by the HWT, or any employee, servant, sub-contractor or agent of the HWT, or to any property of the HWT or any other person by reason of:
  - i) any inspection carried out by the City or by a duly authorized employee, servant, consultant, sub-contractor or agent of the City; or
  - ii) the failure of the City or of any of its employees, consultants, sub-contractors or agents to carry out any inspection under this Agreement or otherwise; or
  - iii) the approval or failure to approve of any matter or thing, arising directly or indirectly out of the provisions of this Agreement, by the City its employees, consultants, sub-contractors or agents.

***Interpretation  
of Agreement***

- 18. The Parties hereby agree that:
  - a) each shall do everything within their power to carry out this Agreement to secure project implementation of good quality without adversely affecting surrounding development;

- b) every term, covenant, obligation and condition in this Agreement inures to the benefit of and is binding upon the Parties hereto and their respective heirs, executors, administrators, successors, trustees and assigns;
- c) when the context so requires or permits, the singular number is to be read as if the plural were expressed, and the masculine gender as if the feminine, as the case may be, were expressed;
- d) the headings to the paragraphs in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or of any provision hereof;
- e) any notice required or contemplated by any provision of this Agreement shall be given in writing to the following addresses:

in the case of the HWT to:

Mr. Werner Plessl, Executive Director  
Hamilton Waterfront Trust  
47 Discovery Drive  
Hamilton, ON L8L 8K4  
Email: [wplessl@hamiltonwaterfront.com](mailto:wplessl@hamiltonwaterfront.com)  
Fax: 905-540-4498

and in the case of the City to:

Gavin Norman  
Manager, Waterfront Development Office  
77 James Street North, Suite 400  
Hamilton, ON L8R 2K3  
Email: [Gavin.Norman@hamilton.ca](mailto:Gavin.Norman@hamilton.ca)  
Fax: 905-546-4435

and shall be delivered or sent by email, facsimile or by prepaid courier or by registered mail, postage prepaid, return receipt requested. The time of giving of such notice, if mailed, shall be conclusively deemed to be the fifth (5th) business day after the day of such mailing, unless regular mail service is interrupted by strikes or other irregularities. Such notice, if delivered or sent by email or facsimile, it shall be conclusively deemed to have been given and received at the time of such delivery or the time of sending by email or facsimile. If, in this Lease, two or more persons are named as Tenant, such notice shall be delivered personally to any one of such persons. Each Party shall promptly advise the other of any change in its contact information for notice purposes.

- f) subject to the provisions of this Agreement regarding changes to the approved construction drawings that may be subsequently approved by the City and regarding the plans and drawings to be prepared and submitted to the City for approval, this Agreement contains the entire agreement between the HWT and the City. There is no condition precedent or warranty of any nature; no warranty or covenant exists collateral to this Agreement; and this Agreement supersedes all prior agreements, arrangements, promises, representations or other understandings;
- g) notice is hereby given that unregistered amendments, revisions and adjustments may subsequently be authorized by the City to:
  - i) the approved schedules and construction drawings either required and/or referred to by this Agreement; and
  - ii) the Schedules listed in this Agreement;



- h) if any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable at law, the remainder of this Agreement shall be construed as if such illegal, invalid or unenforceable provision were not part of the Agreement;
- i) this Agreement may not be modified or amended except by instrument in writing signed by the HWT and the City;
- j) time shall be of the essence of this Agreement; and
- k) the waiver or acquiescence by the City of any default by the HWT under any obligation to comply with this Agreement shall not be deemed to be a waiver of that obligation or any subsequent or other default under this Agreement.

**Applicable  
Law**

19. a) In constructing, installing or providing the Works required under this Agreement, the HWT shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction at any time and from time to time in force. Without limiting the foregoing, the HWT agrees to comply with and cause to be complied with the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act* and the *Ontario Water Resources Act* and any regulations, policies and guidelines relating thereto, including all obligations of the constructor and employer under the *Occupational Health and Safety Act*, and regulations as applicable, and any obligation to obtain any approval or permit required under the *Environmental Protection Act* or the *Ontario Water Resources Act* or any regulations, policies and guidelines relating thereto. The HWT further agrees to handle and dispose all materials in accordance with the foregoing legislation.
- b) The HWT shall do, cause to be done or refrain from doing any act or thing as directed by the City if at any time the City considers that any situation or condition is unsafe damaging to the environment or contrary to the provisions of any applicable laws above. If the HWT fails to comply with such direction, the City may take action to remedy the situation at the expense of the HWT and in this regard the City shall also be entitled to draw upon any security filed by the HWT under this Agreement.
- c) Nothing in this Agreement shall relieve the HWT from compliance with all applicable by-laws, laws and/or established by any government body which may be applicable to the Land.

**List of  
Schedules to  
this  
Agreement**

20. It is understood and agreed that the following Schedules are included in and form part of this Agreement and shall consist of:
- Schedule "A" - Specific Provisions
  - Schedule "B" - List of Approved Construction Drawings for the Works
  - Schedule "C" - Estimates of Costs and Description of Works to be Carried out by the HWT

[SIGNATURE PAGE FOLLOWS]

\*\*\*\*\*

**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/We have the authority to bind the Corporation"

**City of Hamilton**

Signed for and on behalf of the City

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

Date \_\_\_\_\_ Date \_\_\_\_\_  
"I/We have the authority to bind the Corporation"

**SCHEDULE "A"**  
**Specific Provisions**

(Related to the Works, that are not addressed in the general text of this Agreement, including timing)

In the event of a conflict between this Schedule and the provisions of the Agreement, including the other Schedules, the specific provisions of this Schedule "A" set out below, shall prevail.

**SCHEDULE "B"**

**List of Approved Construction Drawings for the Works**

The following drawings as approved by the City, including any current revisions, are to be read in conjunction with and form part of the Agreement.

Construction drawings prepared by **[Insert the Name of the Consulting Engineering Firm whose name appears on the engineering drawings]** numbered **[Page: 12 Insert the drawing number for the first drawing to [Insert the drawing number for the last drawing]** inclusive, under project number **[Page: 12 Insert the Consultant's project number for the engineering drawings]**.

**SCHEDULE "C"**

**Estimates of Costs and Description of Works to be Carried out by the HWT**

Submitted By:

[Enter Name of HWT's Consultant]

[signature of Consultant]

Date: \_\_\_\_\_

Approved By:

City of Hamilton

\_\_\_\_\_  
Gavin Norman, P. Eng.  
Manager, Waterfront Development Office

Date: \_\_\_\_\_

## SCHEDULE "C"

Continued

## ESTIMATE OF COST OF WORKS TO BE CARRIED OUT BY THE HWT

<u>DESCRIPTION OF WORKS [SAMPLE]</u>		<u>Total Cost Of Works</u>
A.	1. Sewers including Private Drains	\$0.00
	2. Catchbasins and Connections	\$0.00
	3. Watermains including Waterservice Connections	\$0.00
	4. Curbs and Gutters	\$0.00
	5. Final Roads	\$0.00
	6. Sidewalks including Driveway Approaches	\$0.00
	7. Dead-End Barricade & Sign	\$0.00
	8. Fencing	\$0.00
	9. Streetlighting	\$0.00
	10. Sodding (Road Allowance)	\$0.00
	<b>Net Construction Cost (A) -</b>	<b>\$0.00</b>
	13% H.S.T. on Net Construction Cost -	\$0.00
	<b>Sub-Total (B) -</b>	<b>\$0.00</b>
	Maintenance - (10% Sub-Total (B) from Total Cost of Works)	\$10,000.00
	HWT Fee - (10% Net Construction Cost (A))	\$0.00
	<b>Total Cost of Works -</b>	<b>\$10,000.00</b>

Note: