

**CITY OF HAMILTON**

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

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD(S) AFFECTED:</b> WARD 2
<b>COMMITTEE DATE:</b> April 17, 2013	
<b>SUBJECT/REPORT NO:</b> Memorandum of Understanding ("MOU") with the Hamilton Port Authority (HPA) Regarding Piers 7 and 8 (CM12015(a)) (Ward 2) (Outstanding Business List Item)	
<b>SUBMITTED BY:</b> Chris Murray City Manager	<b>PREPARED BY:</b> Chris Phillips (905) 546-2424 Ext. 5304 Tony Tollis (905) 546-2424 Ext. 4549
<b>SIGNATURE:</b>	Al Dore (905) 546-2424 Ext. 2617 Rashesh Mandani (905) 546-2424 Ext. 4716

**RECOMMENDATIONS**

- (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 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, and be allocated throughout the 2014, 2015, 2016 and 2017 Capital Budgets;
- (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;

- (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.

### **EXECUTIVE SUMMARY**

On August 13, 2012, City staff presented Report CM12015 entitled “*Proposed Letter of Understanding between the Hamilton Port Authority Regarding Piers 7 and 8*”, to the General Issues Committee (GIC). Subsequently, on August 16, 2012, Council approved the following direction:

- (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, 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.

The City Manager appointed a staff team to lead the negotiations with the Hamilton Port Authority (HPA). This team consisted of Chris Phillips, the Senior Advisor to the General Manager of Planning and Economic Development; Al Dore, the Manager of Special Projects in the Public Works Department, Tony Tollis, the City Treasurer, and supported by Rashesh Mandani, a Solicitor within the Legal Services Division. These discussions were based on the Council direction as well as the “Letter of

Understanding” dated July 24, 2012, which appears as Appendix “B” to Report CM12015(a).

Although these negotiations took longer than originally anticipated, the result of these discussions have been formalized into the document attached as 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*”, which will be referred to as the “MOU” throughout this Report.

In very general terms, the “MOU”, formalizes the original objectives and intent of the “Letter of Understanding” 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, in return for the HPA continuing to operate the marina and boat storage within the West Harbour by way of a long-term lease, with no further direct compensation;
- it addresses many of the long-term operational issues relating to the City of Hamilton’s marina and boat storage businesses 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 balances the financial investments required in a manner that is financially responsible to both parties, by assigning them based on the benefit derived; and,
- 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 Recreation Master Plan (WHRMP), with the strengths and desire of the HPA to create diverse economic opportunities for the City as a whole.

Staff wanted to ensure the “MOU” was as comprehensive as possible so that it could be used as a basis on which to draft a formal Management Agreement between the parties without the need for much further negotiation. Therefore, staff segmented the negotiations into six specific areas, some of which are directly related to the current leases, with others representing indirect relationships. The following is a brief description of the agreed to framework for each:

### **Section 3 - Termination of the Land-Lease on Piers 7 and 8**

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, at which time the Parties agree

that the termination provisions of the year 2000 settlement the leases for Piers 7 and 8 are null and void.

There will be no direct financial compensation from the City for this early termination or “partial” early termination.

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, five acres of land on Pier 22 for economic development purposes. This new lease for Pier 22 will be forthcoming as a separate agreement.

#### **Section 4. - Marina Operation – Long term Management Agreement**

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.

#### **Section 4. (a) - Slip Rentals**

In a manner consistent with the current marina operations, the HPA shall manage, on the City’s behalf, a total of approximately 300 slips. A party designated by the City (currently the Royal Hamilton Yacht Club) shall manage approximately 58 slips and related boat storage.

Relating to future marina slip expansions, the HPA will be given the opportunity to expand the number of slips it rents by approximately 550 bringing the total to approximately 850. Forty-two of the new expanded slips shall be available for City use, bringing the total up to 100. It is anticipated that these slips will be managed by a party designated by the City (currently the Royal Hamilton Yacht Club).

#### **Section 4. (b) - Boat Storage Facility**

In a manner consistent with the current marina operations, the Boat Storage Facility will be tied directly to the 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 until such time development opportunities present themselves to the City.

The formal Management Agreement will include a “Boat Storage Relocation” clause that would allow the City / HPA to relocate the Boat Storage Facility, with a reasonable notice period. As well, the “MOU” contains clear parameters that would come into effect for the Boat Storage Facility at the end of the 25-year Management Agreement.

**Section 4. (c) - Capital Cost Allocation**

The City shall pay for Capital improvements and replacement for the “Shoreline Improvements / Protection” and the “Breakwater / Wavebreak”, as indicated in the WHRMP and subsequent City of Hamilton Environmental Assessments (EA), as well as the capital replacement / upgrades of the current slips in the Main Basin (as per Section 4.(a) above).

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.

The HPA shall pay 100% of the Capital and Operating cost for any expansion and increase in the number of slips within the Main Basin and 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.

**Section 4. (d) - 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 slips and storage. Although this formula is yet to be formally negotiated, the parties have agreed that the City of Hamilton will not make any capital replacements or upgrades to the marina or slips, until such time as this formula is agreed to.

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.

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.

On balance, City staff believes that the “MOU” is consistent with both the Council direction and the original “*Letter of Understanding*” dated July 24, 2012. It 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 the City’s marina and boat storage operations are sustainable for the long-term and are managed in a consistent manner. Also, by clearly clarifying the capital and operating responsibilities of each party, the “MOU” does so in a manner that is financially responsible to the City of Hamilton, while at the same time assigns the various responsibilities in a consistent rationale based on the benefit derived by each party.

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HPA staff have also formally presented the “MOU” to their Board of Directors in a similar fashion, and City staff have been notified that approval was granted at their February 25, 2013 Board of Directors meeting.

Lastly, the staff recommendations (d) and (e) also seek GIC Capital Budget approval for the proposed Capital Funding of the shoreline, wavebreak, and current boat slip replacement throughout the 2014, 2015, 2016 and 2017 Capital Budgets.

Understanding these initiatives are directly aligned to the 2012 - 2015 Strategic Plan, staff also recommends however, that they be directed to seek out a variety of 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.

***Alternatives for Consideration – See Page 10***

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

**Financial:**

Since the “MOU” prescribes a process for the parties to negotiate a forthcoming Management Agreement by July 1, 2013, Report CM12015(a) has no immediate financial impact to either the 2013 Operating or Capital Budget.

With this said however, the “MOU” 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 upon the execution of the forthcoming Management Agreement:

**Capital Cost - Shoreline Improvements / Protection / “Breakwater / Wavebreak”**

The “MOU” states that the City of Hamilton shall pay for Capital Improvements / replacement for the "Shoreline Improvements / Protection" and the “Breakwater / Wavebreak" replacement. These projects were clearly identified within both WHRMP and the subsequent City of Hamilton EA, with cost estimates approximating \$12.2 million for the shoreline improvements within the main basin and \$5.4 million for the “Breakwater / Wavebreak”. Both of these projects have been identified within the Capital Budget forecast and funding for the breakwater has been approved under 2012 and 2013 Capital Budgets for \$5.2 million under project ID 5181206222.

The “MOU” also states however, that 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. Therefore and thereafter all capital, operational and maintenance costs will be assumed by the HPA.

**Capital Cost – Replacement / Upgrades of Current Slips in the Main Basin**

The “MOU” states that the City of Hamilton shall pay for Capital Replacement / Upgrades of Current Slips in the Main Basin. Again, these projects were clearly identified within the WHRMP, with cost estimates approximating \$4.2 million, which has been identified within the Capital Budget forecast in 2016.

The “MOU” also states however, that 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. Therefore and thereafter, all capital, operational and maintenance costs will be assumed by the HPA.

**Capital Cost - Expansion of the Number of Slips within the Main Basin**

The HPA shall pay 100% capital cost for any increase in the number of slips within the Main Basin, and is responsible for the capital, operation, and maintenance costs associated. Although the HPA will require City approval prior to any expansion, the City is not responsible for any of the costs incurred.

**Boat Storage Facility**

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. Although the HPA will require City approval for this re-location, the City is not responsible for any of the costs incurred.

**Partial Revenue / Profit Sharing Formula to be Negotiated**

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, without an agreed upon revenue and / or profit calculation or formula.

**Staffing:**

Report CM12015(a) has no immediate staffing impact; however any staffing impacts regarding the implementation of the approved “MOU” will be identified as part of the forthcoming Management Agreement, to be presented to GIC no later than July 1, 2013.

**Legal:**

The “MOU” has been drafted by and with the advice of Legal Services staff. Legal Services staff will continue to be a member of the staff team throughout the negotiation of the forthcoming Management Agreement.

**HISTORICAL BACKGROUND** (Chronology of events)

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. Although the “Agreement” covered a wide-ranging set of issues, a key element was that it established that the ownership of the lands known as Piers 7 and 8 would rest with the City of Hamilton. In exchange for this ownership status, the City of Hamilton would agree to allow the HPA continued use of these lands through two leases; the first of which would expire in 2015 (indicated as Areas “E” and “G” in Appendix “A”), the second in 2025 (indicated by Areas “A”, “B”, “C” and “D” in Appendix “A”). 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 2014 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 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 11, 2011, GIC approved the following motion 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;
- (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,



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- (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 13, 2012, City staff presented to GIC, Report CM12015 entitled “*Proposed Letter of Understanding between with the Hamilton Port Authority Regarding Piers 7 and 8*”, and approved the following direction:

- (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 C.E.O. 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.

The City Manager appointed a staff team to lead the negotiations with the HPA. This team consisted of Chris Phillips, the Senior Advisor to the General Manager of Planning and Economic Development; Al Dore, the Manager of Special Projects in the Public Works Department, Tony Tollis, the City Treasurer, and supported by Rashesh Mandani, a Solicitor within the Legal Services Division.

These discussions were based on the Council direction as well as the “Letter of Understanding” dated July 24, 2012, (Appendix “B”).

HPA staff have also formally presented the “MOU” to their Board of Directors in a similar fashion, and City staff have been notified that approval was granted at their February 25, 2013 Board of Directors meeting.

#### **POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS**

The Setting Sail Secondary Plan was approved by Council in March 2005 and 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

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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.

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.

**RELEVANT CONSULTATION**

- City Manager’s Office
- Office of the General Manager, Planning and Economic Development Department
- Office of the General Manager, Public Works Department
- Corporate Services Department, Financial Planning and Policy Division
- Hamilton Port Authority
- Royal Hamilton Yacht Club

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The Executive Summary section of this Report contains a general analysis of the overall recommendations, and Appendix “A” contains the general rationale.

**ALTERNATIVES FOR CONSIDERATION**

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

The staff recommendations seek GIC approval of 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*” and authorizes the City Manager to execute the “MOU”. Also, the City Manager would be directed to prepare a formal “*Management Agreement*” between the City of Hamilton and the HPA, which will also be presented to the GIC for their consideration.

Alternatively, GIC can decide to revise, amend, add, or delete any or all of the proposed items contained within the “MOU”, or refer it back to staff. As Appendix “A” has been negotiated between senior staff of the City of Hamilton and the HPA, and has been subsequently approved on February 25, 2013 by the HPA Board of Directors, City staff cannot guarantee that alterations to the “MOU” would be acceptable to the Hamilton Port Authority.

## **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 / SCHEDULES**

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

Appendix “B” - Letter of Understanding Re: Long-term Marina and Boat Storage Operating Agreement & Piers 7-8 Lease Transfer and 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 58 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 550 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
    - with the City's mutual consent, renew the Management Agreement, or
    - sell the subject land on which the Storage Facility resides on to the City at the fair market value of the vacant land, or
    - lease the subject land on which the Storage Facility resides on to the City at the fair market value of the vacant land, or
    - 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:
    - with the City's mutual consent, renew the Management Agreement, or
    - 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



Hamilton

**-CONFIDENTIAL-**

Chris Murray, City Manager  
71 Main St. W., Hamilton, ON L8P 4Y5  
Phone: 905.540-5420 Fax: 905.540.5141  
E-mail: Chris.Murray@hamilton.ca

July 24, 2012

Mr. Bruce Wood, President and C.E.O  
Hamilton Port Authority  
605 James Street North, 6<sup>th</sup> Floor  
Hamilton, Ontario  
L8L 1K1

**- Letter of Understanding -**

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

Dear Bruce:

As we are well aware, the City of Hamilton and the Hamilton Port Authority (HPA) have been engaged in numerous discussions over the past few years in an effort to bring a mutually beneficial agreement forward to our respective decision makers, to forge a new partnership between our organizations for the long-term.

Based on our mutual understanding of the issues, the HPA has a desire to have the City of Hamilton articulate our specific position on several of the outstanding issues related to this matter, in a manner that can constitute an "Offer", to be presented to you and your team.

At the same time, City Council has directed staff to complete a series of land-use, engineering, and commercial market studies, that when completed, will form the basis for any staging plan of future development and programming that would be recommended for the areas of Piers 5, 6, 7, and 8.

Therefore, in an effort to focus discussions, we have prepared the following "Letter of Understanding". The details contained here are designed to outline the general parameters that could form the framework for a formal agreement. We have tried to keep the high level issues in the same format as previous discussions; as well we have tried to keep the language simple with the understanding that the details will be drawn in the formal agreement once we generally agree on the framework presented as follows:

**1) Marina Operation - Long-Term Operating Agreement**

- Effective immediately, HPA operates the Marina (slip rentals and boat storage, formerly known as Harbour West) for 25 years, with an option to extend the formal agreement another 25 years subject to terms acceptable to the City.

**2) Slip Rentals**

- HPA will manage, on the City's behalf, a total of approximately 300 slips.
- Royal Hamilton Yacht Club (RHYC) will manage and retain the associated annual revenues, on the city's behalf, a total of approximately 58 slips.



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- Subject to City approval, HPA will be given the opportunity to expand and maintain the number of slips it rents by 550 bringing its total to 850.
  - Subject to City approval, RHYC will be given the opportunity to expand and maintain the number of slips it rents by 42 bringing its total to 100.
- 3) Boat Storage Facility**
- Boat storage capacity (current size or greater) will be tied to the long-term operating 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 agreement to include a "Boat Storage Relocation" clause that would allow for the City/HPA to relocate the storage facility, with a reasonable notice period (i.e. one year) during the term of this agreement.
  - Should the Boat Storage Facility reside on HPA own lands at the end of the 25 year contract, HPA will exercise its option under section 1 for another 25 year term or lease the subject lands to the City at fair market value.
- 4) Capital Cost Allocation**
- City of Hamilton pays 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.
  - City pays for the capital replacement/upgrades of the current slips in the Main Basin (slips to be identified on a map).
  - HPA would pay 100% cost for any increase in the number of slips within the Main Basin, and therefore the HPA, through its operating lease, in consultation with the City of Hamilton, would develop the phasing and timing of any slip expansion. The expansion be determined by a cost-shared market study every three years.
  - In the event of the boat storage facility being re-located, the HPA would pay for 100% of the Capital Cost for the new boat storage facility.
- 5) Revenue Allocation**
- Existing boat storage and slip rental revenue continues to be attributed 100% to the HPA, based on the lands and capacity as indicated on sections 2 and 3 above (current HPA profit on 212 rental slips and boat storage, is estimated at \$500,000/year).
  - The City and HPA will review opportunities for profit sharing as part of the slip expansion program.
  - 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 (see section 6), in the event the



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City of Hamilton requires all or any part of the said lands prior to the expiration of the current leases.

6) Immediate Termination or "partial" Termination of the Land-Lease on Piers 7-8

- HPA agrees to an immediate early termination of the existing land-leases on Piers 7-8, as indicated by a map (Areas "A", "B", "D", "E" and "G" on the map included).
- There will be no direct financial compensation from the City for this early termination or "partial" early termination.
- The City agrees to lease for a period of 25 years with an option for another 25 year term, 5 acres of land on Pier 22 to the HPA for economic development purposes.

In closing Bruce, assuming that through this "*Letter of Understanding*" we can find common ground, I would suggest that the next steps in the process should involve a presentation of this framework to our respective Council / Board of Directors.

Sincerely,



Chris Murray, MCIP, RPP  
City Manager

Attach.