CITY OF HAMILTON

REQUEST FOR PROPOSALS DOCUMENT

Contract Number: C11-66-17

PIER 8 DEVELOPMENT OPPORTUNITY
(for Prequalified Proponents)

Closing Time:
3:00 p.m., Hamilton time
Monday, March 5, 2018

Procurement Section
Corporate Services Department
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Bid Forms (download separately at [hamilton.bidsandtenders.ca](http://hamilton.bidsandtenders.ca)):

- Bid Form 1: Development Plan Technical Specifications
- Bid Form 2: Financial Proposal
SUBMISSION LABEL
Step 2 – Financial Proposal

IMPORTANT:
THIS SUBMISSION LABEL
IS TO BE USED FOR RETURNING
PROPOSAL

PROPOSAL SUBMITTED BY:

Legal Name
of Proponent: ______________________________________

Address: ____________________________________________

____________________________________________________

PROCUREMENT SECTION
City of Hamilton
120 King Street West, 9th Floor
Hamilton, ON L8P 4V2
COMMUNICATIONS NOTICE

All requests for information, instructions or clarifications must be set out in writing and directed to the City’s Contact Person:

Donna Drozdz  
Senior Procurement Specialist  
Procurement Section  
Corporate Services Department  
City of Hamilton  
120 King Street West, 9th Floor  
Hamilton, ON L8P 4V2  
Email: donna.drozdz@hamilton.ca

All questions related to this Request for Proposals (RFP) or any clarification with respect to this RFP must be made no later than five (5) Business Days prior to the Closing Time of this RFP in order that City staff may have sufficient time to respond. The City reserves the right to extend the deadline for questions if required regarding this RFP.

Written answers or clarifications to issues of substance shall be shared with all Proponents and issued as part of the RFP in the form of an Addendum. All Proponents are advised that any Addenda issued will only be posted on the following website(s):

hamilton.bidsandtenders.ca  
and  
www.hamilton.ca/westharbour

It is the sole responsibility of each Proponent to check the websites for any and all Addenda that have been issued for this Request for Proposals.
REQUEST FOR PROPOSALS NOTICE

Contract Number:  C11-66-17

Pier 8 Development Opportunity
(for Prequalified Proponents)

Closing Time: 3:00 pm, Hamilton time
Monday, March 5, 2018

Sealed Proposals for the above noted Request for Proposals, addressed to the Procurement Manager, City of Hamilton, Procurement Section, 120 King Street West, 9th Floor, Hamilton, ON, L8P 4V2 will be received at only the Procurement Section on or before the date and time stated above.

Proposals shall be publicly opened at the Procurement Section Office following the Closing Time of the Request for Proposals. Only the names of Proponents submitting a Proposal shall be made public. No other information pertaining to Proposals will be publicly available during the evaluation phase.

Proponents eligible to submit Proposals for this Request for Proposals have been previously selected through the process of a Request for Qualifications, issued under RFQ C14-02-17, which closed on July 10, 2017.

The following Proponents have been prequalified:

- Daniels Corporation;
- Gulftream (Pier 8) Limited Partnership;
- The Waterfront Shores Corporation;
- Tridel Builders Inc.;
- Urban Capital-Core Urban-Milborne; and
- West Harbour Development Limited Partnership (Reserve Proponent).
Only Proposals received from the prequalified Proponents, whose team compositions are detailed in Appendix B, will be accepted in response to this RFP.

1.0 SCOPE OF RFP

The City of Hamilton is seeking Proposals regarding the development of the Subject Lands known as Pier 8.
The City expects Proposals to address four key components:
1) Development Plan;
2) Urban Innovation Proposals;
3) Project Implementation Plan; and
4) Financial Proposal.

Following the evaluation of Proposals, the Proponent with the highest scoring Proposal will become the Preferred Proponent and invited to enter into Negotiations with the City to conclude Contract Documents for the purchase and sale, and the development, of the Subject Lands. Upon entering into Contract Documents, the Preferred Proponent will be the Successful Proponent of this RFP.

2.0 SECURITY REQUIREMENTS

There is no proposal security, performance security or labour and material payment security required for this Request for Proposals.

3.0 TO OBTAIN DOCUMENTS

3.1 Free Preview of Request for Proposals Document
The Request for Proposals document may be viewed, free of charge, on the City of Hamilton’s bid opportunities website:

  hamilton.bidsandtenders.ca
and at: www.hamilton.ca/westharbour

3.2 Purchase of Request for Proposals Document and Bid Forms
A complete copy of this Request for Proposals and associated Bid Forms are available for online purchase only.

Online: hamilton.bidsandtenders.ca

Fee: $33.95 non-refundable, tax included + applicable bids&tenders fees.
3.3 Accommodations for Persons with Disabilities

In accordance with the Ontario Human Rights Code, Ontarians with Disabilities Act, 2001 ("ODA") and Accessibility for Ontarians with Disabilities Act, 2005 ("AODA"), the City of Hamilton will accommodate for a disability, ensuring full and equitable participation throughout the bid process.

If a Proponent requires this Request for Proposals in a different format to accommodate a disability, the Proponent must contact the City’s Contact Person as soon as possible and in any event prior to the Closing Time. On payment of the requisite fee, the Request for Proposals, and any requested Addenda, will be issued only to the requesting party in a different format appropriate to the requesting party.

Procurement Manager
City of Hamilton
DEFINITIONS

(1) In this RFP and in the Contract Documents, unless expressly provided otherwise, the following definitions shall apply:

(a) “Addendum” and “Addenda” means a written addendum or addenda issued with respect to this RFP;

(b) “Additional Payments” means liquidated damages owing to the City as a result of the Successful Proponent’s inability to meet a commitment related to the acquisition or permitting of a Development Block;

(c) “Adjunct Team Member” means a member of, or consultant to, a Proponent’s team that is not exclusively committed to the Proponent and its Proposal;

(d) “Architectural Design Lead” means a Proponent’s lead (or co-lead) firm for architectural design services that shall be exclusively committed to the Proponent and its Proposal;

(e) “Business Day” means any day other than a Saturday, Sunday, public holiday in Ontario or any other day on which the administrative offices of the City are closed;

(f) “City” means the City of Hamilton and includes any of its designated employees, officials or agents who are engaged to represent the City and also includes an employee designated to exercise a discretion on behalf of the City;

(g) “Closing Time” means the deadline (date and time) for submitting a Proposal in response to this RFP;

(h) “Commercially Confidential Meeting” or “CCM” has the meaning outlined in section 7 of the Special Provisions;

(i) “Commencement Date” means, for the purposes of making a Financial Proposal per section 2.2 of the Evaluation Process, the first day of the first calendar month that follows the date that the Development Agreement is duly executed;

(j) “Commitment Date” means the deadline for Proponents to confirm their intention to submit a Proposal by the Closing Time and is further defined in section 3 of the Special Provisions;

(k) “Contract Documents” means those documents as set out in Section G of the Terms of Reference;

(l) “Core Team Member” means a business entity that is a member of a Proponent’s team, and is exclusively committed to the Proponent and its Proposal;
(m) “Development Agreement” means the agreement in the form attached as Appendix “C” arising from the successful Negotiation with a Preferred Proponent wherein the City agrees to sell the Subject Lands to the Successful Proponent;

(n) “Development Block” (or “Block”) means one of nine (9) individual parcels of land to be created by the Plan of Subdivision arising out of Application 25T-201605 (as approved by City Council) which together comprise the Subject Lands;

(o) “Development Plan” means a Proponent’s conceptual plan to develop and build the Project on the Subject Lands, in accordance with its Proposal, and specifically in response to section 2.1 of the Evaluation Process.

(p) “Evaluation Team” means a team consisting of members of City, or where considered appropriate by the City in its absolute discretion, independent consultants, who will perform the evaluation of each of the Proposals and make such reports and recommendations as they consider appropriate;

(q) “Fairness Monitor” means P1 Consulting Inc. which has been engaged by the City to act as an independent party to monitor all proceedings of the selection process and will issue a report on the fairness, openness, and transparency of the process;

(r) “Ineligible Party” means a business entity that is not entitled to be named as a Proponent’s Team Member, and as further detailed in section 1 of the Special Provisions;

(s) “Key Personnel” means a person who is an employee or principal of a Core Team Member, Architectural Design Lead, or of the Proponent itself, who has been identified and named by the Proponent as an individual who plays a critical role on, and/or brings specialized experience or expertise to, the Proponent’s team. Key Personnel are exclusively committed to the Proponent and its Proposal, and may not be named as a member of a competing Proponent’s team;

(t) "Law" means all statutes, Laws, by-laws, regulations, requirements, ordinances, notices, rulings, orders, directives, policies and controls of the municipal, provincial, and federal governments and any other Lawful authority and all court orders, judgments and declarations of a court of competent jurisdiction;

(u) “Material Change” has the meaning ascribed in Section 4 of the Special Provisions;

(v) “Negotiation(s)” means the discussions between the City and a Proponent with the objective of completing and executing a Development Agreement;

(w) “Preferred Proponent” means the Proponent whose Proposal is awarded the
highest score by the Evaluation Team and will be the first Proponent to be asked to enter into the Negotiations with the City;

(x) “Project” means the contemplated land development activities and construction of improvements on the Subject Lands;

(y) “Proponent” means a party eligible to submit Proposals in response to this Request for Proposals as a result of being selected through the Request for Qualifications, issued under RFQ C14-02-17;

(z) “Proposal” means a submission made by a Proponent in response to this RFP;

(aa) “Registry Date” has the meaning ascribed in Section 2.2.1(3) of the Evaluation Process;

(bb) “Reserve Proponent” means any party listed under the table heading “Reserve Proponent Team Name” in Appendix B;

(cc) “RFP” means this Request for Proposals including the Definitions, Instructions to Proponents, Evaluation Process, Terms of Reference and Information Requested, and any other Appendices or Bid Forms and all Addenda to the RFP together with all other documents expressly forming part of the RFP for this Project (also collectively referred to as “RFP Documents”);

(dd) “Subject Lands” means the approximately 5.24 hectares of developable land that is created by the subdivision of Pier 8, that is being solicited for sale through this RFP and which are more specifically described in Appendix A of this RFP;

(ee) “Substitution” has the meaning as described in section 5 of the Special Provisions;

(ff) “Successful Proponent” means the Proponent which, after entering into Negotiations with the City, enters into a Development Agreement with the City;

(gg) “Taxes” or “Value Added Taxes” means such sums as may be levied by the Federal or Provincial or Municipal Government upon a real property transaction and is computed as a percentage of the purchase price and includes the Goods and Services Tax, the Ontario Retail Sales Tax, the Harmonized Sales Tax, and any similar tax; and

(hh) “Team Member” means an individual Core Team Member, Adjunct Team Member or Architectural Design Lead of a Proponent;

(2) Where in this RFP a reference is made to the express written agreement of the City, the City shall not be deemed or construed to have agreed to any stipulation, specification, exclusion, limitation or other term or condition set out in a Proposal that deviates from a provision set out in any of the RFP Documents, unless that deviation is expressly confirmed in a written and express amendment to that agreement.
For the purposes of this RFP, in the event of a conflict or inconsistency between, or an omission or ambiguity with respect to, any term(s), condition(s) or provision(s) contained in any of the following documents, the term(s), condition(s) or provision(s) contained in the following documents shall apply and prevail in the following successive order of priority to the extent of such conflict, inconsistency, omission or ambiguity or incongruity:

(a) any Addenda to this RFP;
(b) Terms of Reference and Information Requested;
(c) Instructions to Proponents;
(d) Special Provisions;
(e) Evaluation Process;
(f) any Appendix to this RFP; and
(g) any other text, wording and documents that form a part of the RFP.

Notwithstanding subsection 1(3) above, in the event of conflict between any of the provisions of the Contract Documents, the provision most favourable to the City, in the City’s determination, shall prevail and apply.

In these Instructions to Proponents and in all of the documents itemized in subsection 1(3) above, unless the context otherwise necessitates:

(a) a word importing the masculine, feminine or neuter gender only includes members of the other genders; and a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
(b) a reference to any Law or to a provision thereof shall be deemed to include a reference to any Law enacted in substitution thereof or amendment thereof;
(c) the headings to each section are inserted for convenience of reference only and do not form part of the Contract Documents;
(d) all accounting terms have the meaning recognized by, or ascribed to those terms by, the Canadian Institute of Chartered Accountants;
(e) all amounts are expressed in Canadian dollars and to be secured and payable in Canadian dollars;
(f) all references to time shall be deemed to be references to current time in the City of Hamilton, Ontario;
(g) any reference to an officer of the City shall be construed to mean the person holding that office from time to time, and the designate, delegate or deputy of that person, and shall be deemed to include a reference to any person holding a successor office or the designate, delegate or deputy of that person; and
(h) any words and abbreviations, which have well-known professional, technical or
trade meanings, are used in the documents in accordance with such recognized meanings.
## INSTRUCTIONS TO PROPOSENENTS

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INSTRUCTIONS TO PROONENTS

1. Communication

(1) All communication between a Proponent and the City (including requests for additional information or clarification) shall be set down in writing and directed to the City’s Contact Person:

Donna Drozdz
Senior Procurement Specialist
Procurement Section
Corporate Services Department
City of Hamilton
120 King Street West, 9th Floor
Hamilton, ON L8P 4V2

Email: donna.drozdz@hamilton.ca

(2) All questions related to this RFP or any clarification with respect to this RFP must be made no later than (5) five Business Days prior to the Closing Time of this RFP in order that City staff may have sufficient time to respond. The City reserves the right to extend the deadline for questions if required regarding this RFP.

(3) The City shall not be bound by any oral:

(a) instruction;
(b) amendment or clarification of the RFP or Contract Documents;
(c) information; or
(d) advice or suggestion,

provided by any City representative and the Proponent bears any and all risk in relying on any such representation.

2. Non-Binding Contract

(1) This RFP shall not be considered as “Contract A” as defined by the Supreme Court of Canada and shall not obligate or commit the City to award a contract or enter into a Development Agreement with any person.

(2) No binding contract shall exist between:

(a) the City and any Proponent; or
(b) the City and the Preferred Proponent,

until a Development Agreement has been executed between the City and the Successful Proponent.
(3) The City will notify the Preferred Proponent, in writing, that it has been selected as the Preferred Proponent.

(4) Prior to commencing Negotiations, the Preferred Proponent shall be required to confirm that its Proposal has not changed.

(5) The City reserves the right to obtain Council approval of the Preferred Proponent and its Proposal prior to commencing Negotiations.

(6) Once a Development Agreement has been executed, the Proponent that is party to the Development Agreement shall be the Successful Proponent.

(7) The City reserves the right to obtain Council approval of the Contract Document(s) prior to its execution of the Contract Document(s).

3. **Nature of the RFP**

(1) This RFP constitutes an invitation to Proponents to respond to the intent, purpose, requirements and concerns of the City as outlined in this RFP.

(2) The Proposals will be evaluated based the criteria outlined in this RFP and/or any Addenda thereto. The City may give such weighting to each of the identified criteria as the City considers appropriate; and

   (a) it is within the absolute discretion of the City to determine which of the features specified by a Proponent and any other features specified in the RFP or any Addenda thereto offers the City the best benefits and financial outcomes; and

   (b) subject to the foregoing, the criteria for the evaluation of Proposals shall be as specified by the City from time to time, and the City shall be the sole authority to determine how those criteria are to be interpreted and applied, and the weighting to be given to each criterion, if any.

(3) The City shall not be obliged to disclose the evaluation scores of any individual member of the Evaluation Team, nor to justify any score awarded by that team or any member thereof. In the absence of evidence of manifest bad faith, any evaluation carried out by the Evaluation Team shall be considered to be fair and accurate for all purposes and shall not be subject to review by any court or other tribunal.

4. **Proposal Submissions**

(1) Every Proposal shall:

   (a) bear the original signature of the Proponent (or, in the case of a Proposal submitted by a corporation, an authorized signing officer of the corporation), inscribed in the space provided;
(b) be delivered to:
City of Hamilton Procurement Section Office
Suite 900, 120 King Street West,
Hamilton, ON, L8P 4V2; and

(c) submitted to the City’s Procurement office by 3:00 pm on Friday, March 5, 2018.

(2) The Technical Proposal and Form of Proposal shall be submitted in a sealed package and labeled with the “Step 1 – Technical Proposal” submission label provided. The Financial Proposal shall be submitted in a separate sealed package and labeled with the “Step 2 – Financial Proposal” submission label provided.

(3) Proponents are to submit:

(a) in the Technical Proposal package:

(i) one (1) original hardcopy (marked as original) of the Technical Proposal and signed Form of Proposal only;

(ii) one (1) electronic copy (provided on USB flash drive) of the Technical Proposal only, including digital versions of the presentation panels (minimum 300 dpi resolution and reduced to print to 11” x 17” format) as well as the digital video presentation required in section 2.1.1.6 of the Evaluation Process;

(iii) ten (10) identical, non-original copies of their Technical Proposal, including printouts of the presentation panels reduced to 11” x 17” format; and

(iv) Original presentation panel display boards (up to 6) should be included in a separate package, mounted on ¼ inch foam core, and include the name or logo of the Proponent and/or the Architectural Design Lead; and

(b) in the Financial Proposal package:

(i) one (1) original hard copy each of a completed Bid Form 1 and Bid Form 2 bearing the original, ink signature(s) and printed name(s) of authorized signatories of each Core Team Member;

(ii) ten (10) identical photocopies each of the completed and signed Bid Form 1 and Bid Form 2; and

(iii) One (1) electronic copy (provided on USB flash drive) of the completed Bid Form 1 and Bid Form 2 in MS Excel format.

(4) If there is any discrepancy between information contained in an electronic copy and the original of any Proposal or Bid Form, the information contained in the original shall prevail.

(5) A Proposal submitted by fax, e-mail or other electronic means will not be accepted.
(6) All documents prepared and work carried out by a Proponent in preparing a Proposal, and all oral presentations to the City in connection with an Proposal, shall be without cost to the City, and neither the City’s publication of a RFP nor the submission of a Proposal shall be construed to oblige the City to award a contract or enter into a Contract Documents.

(7) All prices shall be quoted in Canadian funds exclusive of Value Added Taxes and the City may adjust any price quoted contrary to this requirement.

(8) Proposals in their entirety shall remain valid and in effect for 180 days following the Closing Time.

5. Confidentiality

(1) In accordance with the Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”) and the Personal Health Information Protection Act (“PHIPA”), all Proponents are notified that all information provided by Proponents is collected under authority of the Municipal Act, 2001, SO. 2001, c. 25, as amended, and will be used for the purposes of processing this RFP. All correspondence, documentation and information provided to the City and/or the City’s representatives by any Proponent in connection with, or arising out of this RFP, and any Proposal submitted to the City will become the property of the City and a record of the City. The foregoing records and the Contract Documents are subject to the provisions of the MFIPPA and PHIPA and the City’s obligations thereunder and may be released pursuant to such Acts. The Proponent’s name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to Council and accordingly may become part of the public record. All correspondence, documentation and information provided to the Evaluation Team may be reproduced for the purposes of evaluating the Proponent’s submission to this RFP.

(2) Each Proponent may mark as confidential any scientific, technical, commercial, proprietary or similar confidential information contained in its Proposal, the disclosure of which the Proponent reasonably believes could cause it injury. Complete Proposals are not to be identified as confidential. A watermark or rubber stamp imprint is suitable for this purpose. Subject to subsection 5(1), the City will use its best efforts not to disclose any information so marked but shall not be liable in any manner to a Proponent or any other person where information is disclosed by virtue of an order of the Privacy Commissioner, a adjudicator of competent jurisdiction or otherwise as required by Law. The City further makes no representations or warranties that the identification of information or a document as confidential will prevent its release under the provisions of MFIPPA, PHIPA or otherwise under Law. Any information in the Proponent’s submission that is not specifically identified as confidential may be treated as public information.

(3) Further information regarding the application of MFIPPA and PHIPA is available from the Access to Information and Privacy Section of the City Clerk’s office at City Hall.
Confidentiality of City records and information relating to this Project must be maintained at all times. All correspondence, documentation and information provided by City and/or the City’s representatives to any Proponent in connection with, or arising out of this RFP or the acceptance of any Proposal remains the property of the City; must be treated as confidential; and must not be used for any purpose other than for replying to this RFP and for fulfillment of any related or subsequent contract. Where any proprietary or confidential information belonging to or in the custody or control of the City is disclosed to any Proponent in connection with the RFP, the Proponent shall:

(a) safeguard all information provided by the City and the City’s representatives, or any other person at the request of the City;

(b) maintain in strict confidence and not reproduce or disclose any such information to any person except as required by Law or as expressly permitted in advance by the City in writing;

(c) return forthwith and without demand all such information as may be in documentary form or recorded electronically by the closing time; and

(d) not use any such information for any purpose other than the purpose for which it was provided by the City.

6. Conflict of Interest (Proponents)

(1) The City may, in its absolute discretion, reject any Proposal should the City conclude that a Proponent has failed to meet the Conflict of Interest requirements outlined in this RFP.

(2) A Conflict of Interest shall exist if any member, officer, employee or agent of the City has or will have an interest indirectly or directly in: the Proponent as a contracting party, partner, shareholder, surety or otherwise; or the performance of the agreements or contracts contemplated by this RFP; or the supplies, works or businesses arising from this RFP; or any portion of the revenues, profits or monies to be derived from this RFP.

(3) In submitting a Proposal, each Proponent shall be deemed to have warranted that no conflict of interest exists between it (or any of its directors, officers, employees or subcontractors) and the City. Without prejudice to any of its other rights, the City reserves the right to annul any contract or other arrangement entered into with any Proponent where the City concludes that a Proponent has breached this warranty.

(4) Each Proponent shall notify the City, in writing, immediately of any potential conflict of interest that may arise prior to the entering of Contract Documents and fully disclose any details thereof, regardless of whether or not it is engaged in Negotiations with the City.
(5) Prior to the entering of Contract Documents, no Proponent shall contact any elected official, staff, consultant or representative of the City (other than the City’s Contact Person) with respect to its Proposal, the RFP or any proposed Contract Document.

(6) Before submitting any Proposal, the Proponent shall exercise reasonable due diligence to confirm that there is no conflict of interest within the contemplation of this entire section 6.

7. Addenda and Clarification of the Request for Proposal

(1) The City reserves the right at any time prior to executing the Contract Document(s) to:

   (a) withdraw or cancel the RFP;
   (b) extend any timeline or deadline including the Closing Time;
   (c) modify, in any manner, any part of this RFP, including any Appendix or Addendum; or
   (d) alter or amend, reduce or expand the Project,

by the publication of an Addendum, which shall become part of the RFP, and the City shall not be liable for any claim, expense, cost, loss or damage advanced, incurred or suffered by any Proponent (or any other person) as a result of so doing.

(2) Any Addendum shall be posted on the following website and is sufficiently served upon any prospective Proponent if so posted at:

    hamilton.bidsandtenders.ca

    and

    www.hamilton.ca/westharbour

In addition to the above method of posting, the City may also notify prospective Proponents of any Addendum by any other method it deems appropriate, including email, telephone, fax, courier, hand-delivery or by personal delivery. The need for additional notification and the method(s) to be used shall be in the absolute discretion of the City and notification shall be to the last known address provided by the Proponent to the City.

It is the sole responsibility of each Proponent to check the website and ensure that it has received any and all Addenda issued by the City. Each Proponent shall confirm in its Form of Proposal that it has received, examined and provided for all Addenda issued under the RFP. Proponents may in writing, seek confirmation of the number of Addenda issued under the RFP from the City’s Contact Person.

(3) Where a Proposal has been received by the City prior to the publication of an Addendum, the City shall allow that Proponent to submit a revised Proposal prior to
the Closing Time. Any replacement sheets or other obligations otherwise required by
the Addenda in order for a Proposal to be compliant shall be submitted by a
Proponent with its Proposal by the Closing Time. Where a Proposal is not revised
following the publication of an Addendum, the Proponent will be deemed to have acknowledged all Addenda issued.

(4) All communication between a Proponent and the City (including requests for
information or clarification) shall be set down in writing and directed to the City's
Contact Person.

(5) A written response or clarification of substance shall be shared with each Proponent
and issued in the form of an Addendum.

(6) The City shall have no obligation to respond to any questions after the deadline for
questions or other queries and the failure of the City to respond to same by the
Closing Time shall not be deemed to cause the deadline for the submission of
Proposals to be extended nor shall the issuance of an Addendum be deemed to
extend any time for the submission of Proposals unless expressly stated otherwise in
the Addendum.

8. Reserved Privileges of the City

(1) Without limiting or restricting any other right or privilege of the City, the City shall have
the following reserved rights and privileges, which may be exercised or waived in its
absolute discretion:

(a) the City may reject any Proposal, the highest scoring Proposal or all Proposals,
or may cancel the RFP and require the submission of new Proposals for any
reason within its absolute discretion;

(b) the City may in its discretion and where it considers it to be in its best interest
require the submission of a final and best offer where one or more Proponents
submits a substantially similar Proposal;

(c) at any time following the Closing Time, the City may request clarifications
regarding a Proposal; and

(d) the City may, in accepting any Proposal, impose conditions on such
acceptance.

9. Guidelines Regarding Proposal Irregularities

As a guide to the Proponent, but without qualifying any rights and privileges reserved
to the City, the Proponents Guidelines set out below is indicative of the manner in
which discretion reserved by the City is to be exercised with respect to non-compliant
Proposals. However, the City shall not be liable to any Proponent or other person
where it elects to exercise a discretion, reserved privilege or right in a manner different
from that indicated below.
## PROPONENTS GUIDELINES

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<th>RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Late submission</td>
<td>May consider accepting a late Proposal where:</td>
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<td></td>
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<tr>
<td></td>
<td>• the Proponent has indicated to the City, prior to the Closing Time, that the Proposal is going to be received after the Closing Time but before 4:30 p.m. City of Hamilton Time on the date of closing; and</td>
</tr>
<tr>
<td></td>
<td>• provided no other Proposals have been opened.</td>
</tr>
<tr>
<td></td>
<td>Once Proposals have been opened and acknowledged, no other Proposal will be considered for this RFP.</td>
</tr>
<tr>
<td>2. The original signed Proposal submission not received. i.e. Proposal has only a photocopy of the Proponent's signature, not the original.</td>
<td>May provide original copy of requirements within two Business Days of notification by the City, but no change in Proposal permitted.</td>
</tr>
<tr>
<td>3. All required items not included in Proposal submission, including but not limited to:</td>
<td>May correct error within two Business Days from the time that notification of the error was given by the City.</td>
</tr>
<tr>
<td>• missing signature on the Form of Proposal</td>
<td></td>
</tr>
<tr>
<td>• missing Form of Proposal pages</td>
<td></td>
</tr>
<tr>
<td>• missing form or other document where the RFP deems that information to be a mandatory requirement .</td>
<td></td>
</tr>
<tr>
<td>4. Proposal contains obvious clerical or mathematical errors.</td>
<td>May correct error within two Business Days from the time that notification of the error was given by the City. However, changes to prices or payments in the Financial Proposal will not be accepted.</td>
</tr>
<tr>
<td>5. Other irregularities.</td>
<td>An irregularity that goes beyond the scope of the Proponents Guidelines set out above shall be considered by the Procurement Manager.</td>
</tr>
</tbody>
</table>
10. No Lobbying and Single Point of Contact

(1) Proponents or their representatives must not make any or engage in any form of lobbying, or carry out any activities to publicly promote or advertise their Proposals or interest in this competitive procurement process.

(2) Any attempt on the part of any Proponent or any of its employees, servants, agents, contractors or representatives to contact any of the following persons, directly or indirectly, with respect to this RFP, except for the City’s Contact Person, may lead to disqualification:
   (a) any member of the Evaluation Team or other consultant assisting the City or the Evaluation Team;
   (b) any elected or appointed officer;
   (c) any staff of the City of Hamilton; or
   (d) any other persons connected in any way with the procurement.

For greater certainty, Proponents may not communicate with the City regarding this procurement except through the City’s Contact Person.

(3) A Proponent, its agents and representatives shall not discuss or communicate, directly or indirectly, with any other Proponent or its agents or representatives the preparation of the Proposals. Each Proponent attests that its participation in the RFP process is conducted without any collusion or fraud. If the City discovers there has been a breach of this requirement at any time, the City reserves the right to disqualify the Proposal(s) or terminate any ensuing contract.

11. Accommodations for Proponents with Disabilities

(1) In accordance with the Ontario Human Rights Code, Ontarians with Disabilities Act, 2001 (ODA) and Accessibility for Ontarians with Disabilities Act, 2005 (AODA), the City of Hamilton will accommodate for a disability, ensuring full and equitable participation throughout the bid process.

(2) If a Proponent requires this RFP in a different format to accommodate a disability, the Proponent must contact City Contact Person as soon as possible and in any event prior to the Closing Time. The RFP in the different format will be issued only to the requesting Proponent and all Addenda will be issued in such different format only to the requesting Proponent.
SPECIAL PROVISIONS

1. Ineligible Parties

(1) In conducting this RFP and its predecessor RFQ C14-02-17, the City has relied on the expertise of certain external consultants. As such, the following companies and their employees are Ineligible Parties and shall not be permitted to participate in this RFP as a Team Member of a Proponent:

- Deloitte LLP (including sub-consultant, Renovo Advisory Services Ltd., John Campbell);
- Brook McIlroy Inc.;
- Dillon Consulting Limited;
- Altus Group Limited;
- IBI Group Inc.;
- Pinchin Ltd.;
- WEBB Planning Consultants Inc.;
- RWDI AIR Inc.;
- Golder Associates Ltd.; and
- P1 Consulting Inc.

(2) Proponents who name an Ineligible Party to its team may be disqualified from this RFP, subject to the City’s exercise of any right or privilege contained in this RFP.

(3) Notwithstanding, Proponents may contact the City to obtain a ruling on the prospective inclusion of an affiliate of an Ineligible Party to its team. Such inclusion may require the implementation of appropriate conduct control measures to the satisfaction of the City. The City reserves the right in its absolute discretion to disallow the inclusion of any affiliate of an Ineligible Party to a Proponent team.

(4) For clarity, an Ineligible Party may not be named as a Team Member in any Proposal without the prior written consent of the City, which consent shall be entirely in the City’s absolute discretion.

2. Reserve Proponent Participation

(1) As a result of Request for Qualifications C14-02-17, one Reserve Proponent is eligible to become a Proponent if at least one Proponent no longer participates in the RFP.

(2) Appendix E: Reserve Proponent Protocol (the “Protocol”) outlines the conditions under which the Reserve Proponent:

(a) may be named as a Proponent;
(b) participates in the RFP process; and
(c) may withdraw from, or be made ineligible for, the RFP process.

(3) In the interest of fairness and transparency, the City has communicated this Protocol to the Reserve Proponent as well as to all Proponents prior to issuing this RFP. Concurrently, the identity of the Reserve Proponent, including its composite Core Team Members, was shared with all Proponents.

3. **Commitment Date**

(1) The Reserve Proponent Protocol stipulates a Commitment Date as the latest date that the Reserve Proponent may be eligible to be named a Proponent which is coincident with the deadline by which all Proponents must confirm their intention to submit a Proposal by the Closing Time. The timing of this Commitment Date is further detailed in section 8: RFP Schedule.

4. **Material Changes**

(1) At any time following the Closing Time, Proponents must provide written notice to the City within five (5) business days after becoming aware of a Material Change. For clarity, a “Material Change” is any change in the Proponent’s circumstances including, but not limited to, a change in:

   (a) its corporate structure or profile;
   (b) its financial standing or status; or
   (c) the unanticipated departure of a Core Team Member, Architectural Design Lead, or Key Personnel,

   that could reasonably affect:

   (i) the value of its Proposal;
   (ii) its financial strength, stated financing track record, or current financing capacity;
   (iii) its ability to meet the proposed insurance or security requirements;
   (iv) its vision for the Project; or
   (v) its development or design expertise.

(2) A Material Change may, in the City’s absolute discretion, result in a request for further or clarifying information, a re-assessment of the Proponent’s Proposal, a change in the score awarded to that Proposal, the rejection of that Proposal and/or the removal of the Proponent from the list of Proponents.

5. **Substitutions**

(1) At any time following the Closing Time, Proponents may substitute Adjunct Team Members without first obtaining the City’s approval but must so advise the City in
writing within five (5) business days of effecting the substitution.

(2) If a Material Change necessitates the naming of a replacement Core Team Member, Architectural Design Lead, or any Key Personnel, Proponents must request prior written approval of the City, which approval shall be entirely in the City’s absolute discretion.

(3) Determining the validity of a Proponent’s notice of a Material Change shall also be in the City’s absolute discretion.

(4) A Substitution may, in the City’s absolute discretion, result in a request for further or clarifying information, a re-assessment of the Proponent’s Proposal, a change in the score awarded to that Proposal, the rejection of that Proposal and/or the removal of the Proponent from the list of eligible Proponents.

6. Requests for Information

(1) Proponents shall submit all requests for information, clarification or questions with respect to the RFP, the RFP process, or the Project ("Requests for Information" or "RFIs") to the City’s Contact Person, by e-mail, no later than the date and time set out in section 8: RFP Schedule. Subject to subsection 6(4) below, the City intends to provide all RFIs and the associated responses (without identifying the Proponent that submitted the RFI) to all Proponents by posting RFIs and associated responses within Addenda to the RFP. The City will not answer any RFI, or any other type of inquiry in respect of the RFP, RFP process or Project, that is not submitted in accordance with this subsection 6(1).

(2) Any Proponent that has questions or concerns as to the meaning of any part of this RFP or who believes that the RFP contains any error, inconsistency or omission, must submit its question or concern, in writing as an RFI, to the City’s Contact Person in accordance with subsection 6(1).

(3) Any oral or written response provided by the City or its representatives in connection with this RFP will neither be binding on the City nor will it change, modify, amend or waive the requirements of this RFP in any way unless it is confirmed by way of a written Addendum to this RFP.

(4) Proponents may also submit RFIs on matters they consider to be commercially sensitive or confidential. Proponents must designate such RFIs as "commercially confidential" and must submit them in accordance with subsection 6(1). If the City agrees with the Proponent’s designation of the RFI as commercially confidential, the City will provide a response to only the Proponent that submitted the commercially confidential RFI or by other private and confidential means.

(5) If the City determines, acting reasonably and after consultation with the Proponent, that a Proponent’s commercially confidential RFI raises an issue of general interest or would provide a useful clarification to all Proponents, the City may issue a response to
that RFI to all Proponents. In such a case, the City will consult with the relevant Proponent with respect to the identification and removal of proprietary or confidential information in the original commercially confidential RFI prior to issuing the associated general response.

7. Commercially Confidential Meetings

(1) The City will convene one or more commercially confidential meetings with Proponents (each a "Commercially Confidential Meeting" or "CCM"). CCMs are bilateral meetings between the City (and its representatives and advisors) and individual Proponents to discuss the contents of the RFP Documents, the prospective Contract Documents and other matters related to the Project.

(2) The approximate date ranges for the CCMs is set out in section 8: RFP Schedule, and the location(s) and precise dates and times of available meetings shall be communicated to Proponents in writing.

(3) No statement, consent, waiver, acceptance, approval or anything else said or done in any of these CCMs by the City or any of its advisors, employees or representatives shall amend or waive any provision of the RFP, or be binding on the City or be relied upon in any way by Proponents, their Team Members or their advisors except when and only to the extent expressly confirmed in a written Addendum to the RFP.

(4) This section 7 may also apply to the Reserve Proponent, subject to the provisions and protocols outlined in section 2 of these Special Provisions and within Appendix E.

(5) Additional CCM protocols are set out in Appendix D.

8. RFP Schedule

The present schedule for this RFP is as follows:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>ACTION</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Issue RFP</td>
<td>December 14, 2017</td>
</tr>
<tr>
<td>2.</td>
<td>Deadline to submit Commercially Confidential Meeting Registration Form for Round 1 CCMs (see Appendix D)</td>
<td>January 8, 2018</td>
</tr>
<tr>
<td>3.</td>
<td>Commercially Confidential Meetings (Round 1)</td>
<td>January 15 – January 22, 2018</td>
</tr>
<tr>
<td>4.</td>
<td>Commitment Date</td>
<td>To be confirmed, but not earlier than three (3) Business Days following the date of the last conducted Round 1 CCM</td>
</tr>
<tr>
<td>ITEM</td>
<td>ACTION</td>
<td>DATE</td>
</tr>
<tr>
<td>------</td>
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</tr>
<tr>
<td>5.</td>
<td>Deadline to submit Commercially Confidential Meeting Registration Form for Round 2 CCMs (see Appendix D)</td>
<td>February 5, 2018</td>
</tr>
<tr>
<td>6.</td>
<td>Commercially Confidential Meetings (Round 2, at City’s absolute discretion)</td>
<td>February 12 – February 16, 2018</td>
</tr>
<tr>
<td>7.</td>
<td>Final date to submit Requests for Information</td>
<td>February 23, 2018</td>
</tr>
<tr>
<td>8.</td>
<td>Final date for City to issue Addenda or responses to Requests for Information</td>
<td>February 27, 2018</td>
</tr>
<tr>
<td>9.</td>
<td>RFP Closing Time</td>
<td>March 5, 2018 (3:00 p.m. Hamilton time)</td>
</tr>
<tr>
<td>10.</td>
<td>Proposal compliance review and irregularity cure period</td>
<td>March 6 – March 16, 2018</td>
</tr>
<tr>
<td>11.</td>
<td>Presentation of Public Proposal Materials</td>
<td>March 16 – March 26, 2018</td>
</tr>
<tr>
<td>12.</td>
<td>Review and Evaluation of Proposals</td>
<td>March 13 – May 18, 2018</td>
</tr>
<tr>
<td>13.</td>
<td>Recommendation from Evaluation Committee of the Preferred Proponent to General Issues Committee of Council</td>
<td>June 6, 2018</td>
</tr>
<tr>
<td>14.</td>
<td>Written notification to Preferred Proponent</td>
<td>Late-June 2018, subject to Council’s decision</td>
</tr>
</tbody>
</table>

The City reserves the right to amend this schedule at any time.

9. **Authority to Enter**

   (1) In the event a Proponent desires to enter upon the Subject Lands prior to the Closing Time it must first:

   (a) request and receive written consent from the City to do so; and
   (b) fulfill any conditions imposed by the City.
EVALUATION PROCESS

1. General

(1) Proponents shall prepare their Proposals responding to each section and in the order outlined in subsections 2.1 and 2.2 of this Evaluation Process. The failure to follow this order creates the risk to the Proponent that, even if the information has been provided, it may be overlooked and consequently not considered in evaluation of the Proponent’s Proposal.

(2) Proposals shall be structured into two portions: technical and financial—both of which shall be evaluated. Submission requirements for the technical portion are outlined in subsection 2.1. Submission requirements for the financial portion are outlined in subsection 2.2.

(3) Each Proponent’s Financial proposal score will be added to its Technical proposal score to produce its final, total Proposal score.

(4) The Proponent with the highest total Proposal score will be identified as the Preferred Proponent, with which the City will engage in Negotiations with the objective of concluding a Development Agreement.

(5) All costs and expenses related to the preparation, submission and presentation of a Proposal, including any in-person meetings, and the provision of additional information necessary for the evaluation of a Proposal shall be at the sole expense of the Proponent.

(6) In submitting the Proposal, Proponents agree that the decision of the Evaluation Team is final and binding, and will not be subject to review by any court or adjudicator and any Proponent breaching this provision shall indemnify the City for all of its costs as a result of same.

(7) The RFP shall not obligate or commit the City to award a contract or enter into Negotiations, or enter into a Development Agreement.
2. Proposal Submission Requirements

Each Proponent is advised to review the Terms of Reference prior to developing its Proposal. In particular, please take into consideration Terms of Reference Section F: Base Assumptions, which provides specific parameters to be incorporated into Technical and Financial Proposals.

2.1 Technical Proposal Submission Requirements

Each Proponent is directed to submit in accordance with this section 2.1, the following elements within its Technical Proposal:

### 2.1.1 Development Plan

<table>
<thead>
<tr>
<th>Sub-Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2.1.1.1 Plan Overview – Technical Specifications</strong></td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>Complete Bid Form 1 (cell array D8 to L32) reflecting the details of the proposed Development Plan concept at full build-out including:</td>
</tr>
<tr>
<td></td>
<td>a. Gross Built Area;</td>
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<tr>
<td></td>
<td>b. Coverage;</td>
</tr>
<tr>
<td></td>
<td>c. Land Uses by Gross Floor Area;</td>
</tr>
<tr>
<td></td>
<td>d. Residential Unit Counts;</td>
</tr>
<tr>
<td></td>
<td>e. Parking Counts and allocations to Land Uses; and</td>
</tr>
<tr>
<td></td>
<td>f. Identification of Affordable Housing.</td>
</tr>
<tr>
<td>(2)</td>
<td>Identify any known conditions that would require a <em>minor variance</em> in order for your proposed Development Plan to be consistent with the Zoning By-law. Note that any Proposals that would require either a zoning or a Secondary Plan amendment would not be acceptable, and any such submission may result in the disqualification of your Proposal.</td>
</tr>
<tr>
<td>(3)</td>
<td>Provide a confirmation statement that providing for all elements and performance targets within the Minimum Green Building and Design Guidelines (Appendix F) are reflected in the Development Plan and Proposal</td>
</tr>
</tbody>
</table>
2.1.1.2 Plan Overview and Design Excellence

(1) Provide a descriptive overview of the Development Plan at full build-out. Be sure to address topics such as:
   a. City-building philosophy applied at Pier 8;
   b. Linkages to the City’s Secondary Plan and vision principles;
   c. Linkages to the Pier 7+8 Urban Design Study principles and guidelines;
   d. Design philosophy, themes, and language;
   e. Integration with surrounding areas (recreational, residential, industrial);
   f. Approach to the community’s aesthetic character through building styles, building typologies, and materiality; and
   g. Promotion of complete communities.

(2) Of particular interest to the City is the Proponent’s strategy to meet the parking requirements of the site under the applicable zoning. Please provide the following details of your approach:
   a. Allocations relative to grade (i.e., below-, at-, above-grade)
   b. Mix of residential vs. non-residential stalls;
   c. Concentrations of stalls by Block; and
   d. Estimated phasing (i.e., number of stalls delivered by time period).
2.1.1.3 Residential Program

(1) Provide an overview of the Development Plan’s residential program, addressing the following topics:
   a. Market Rationale:
      i. Supply dynamics;
      ii. Demand dynamics;
      iii. Absorption assumptions;
      iv. Specific strategies to achieve diversity of target market segments; and
      v. Indication of pre-sales strategy;
   b. Product Mix Overview by:
      i. Tenure;
      ii. Unit sizes;
      iii. Amenities;
      iv. Price-points; and
      v. Specialty housing (e.g. seniors residences, live-work, etc.);
   c. Target Market Segmenting by:
      i. Income;
      ii. Household configuration;
      iii. Work/life style;
      iv. Ability; and
      v. Stage-of-life; and
   d. Affordable Housing Mandate:
      i. Phase-in schedule for affordable units;
      ii. Identify if City’s minimum policy guideline will be exceeded, and if so, by how much;
      iii. Affiliations with affordable housing providers, if applicable; and
      iv. Proposed administration model to ensure the continuity of affordability within the development over time.
2.1.1.4 Place-making

(1) Provide an overview of the Development Plan’s place-making strategy addressing the following topics:

a. Marketing Program for all Non-residential Uses:
   i. Supporting market research context;
   ii. Types of uses, target tenant mix, anchors;
   iii. Cultural / civic uses;
   iv. Target commercial terms; and
   v. Ownership/tenure;

b. Institutional Use Strategy;

c. Retail Strategy;

d. Ground Floor Animation and Activation Strategy:
   i. Interim and at full build out;
   ii. Year-round;
   iii. Via tenancy strategy; and
   iv. Via experiential programing;

e. Long-term Operation and Stewardship Strategy (including strategies to keep the experience fresh over time);

f. Integration with Public Open Spaces including Promenade Park; and

g. Semi-public or other Project Amenities that benefit the public.
2.1.1.5  Environmental Sustainability

(1) Proponents are required to identify:
   a. A minimum targeted level of LEED accreditation standard (using Canadian Green Building Council’s LEED Version 4 rating system for either BD+C New Construction or BD+C Multifamily Midrise) for all buildings; and
   b. Low-energy performance targets relative to the Model National Energy Code Building (“MNECB”) benchmark

(2) Include an explanation of approach to achieving various LEED credits under the following headings (aligned with Canadian Green Building Council’s LEED Version 4 credit categories):
   a. Sustainable Sites;
   b. Energy and Atmosphere;
   c. Indoor Environmental Quality;
   d. Water Efficiency;
   e. Materials and Resources; and
   f. Innovation (including credits for pilot programs).

(3) Describe specific techniques that will promote low impact development with respect to on-site stormwater management;

(4) Describe specific techniques that will promote low-energy usage and/or near net-zero energy impact;

(5) Propose a progress reporting protocol (i.e., method, frequency) that will keep the City apprised of your ongoing activities to meet or exceed the committed performance targets and/or will provide an early indication that the performance targets may not be met;

(6) Describe instances where your Proposal will materially exceed the Minimum Green Building and Design Guidelines (Appendix F). In such cases, indicate an order of magnitude by which your proposal will seek to exceed the guideline; and

(7) Provide an assessment of how the Pier 8 development plan and site conditions challenge or enhance the implementation of the above sustainability measures.
2.1.1.6 Public Presentation Materials

(1) Submit all of the following elements that will be used to communicate your Development Plan in a non-technical manner for a general public audience:
   a. Video / animation / self-running digital presentation that presents the salient points of the Development Plan;
   b. Presentation Panels that give the audience a visual sense of the Development Plan; and
   c. User stories that help a reader understand how different segments of the population might interact with the development;

(2) General Guidelines:
   a. All elements should describe the project at full build-out; and
   b. If any instructed limits are exceeded, your submission may be considered non-compliant and disqualified in part or in whole, or you may be asked to edit your submissions in order to become compliant;

(3) Video / Animation / Presentation Guidelines:
   a. Maximum runtime of 300 seconds (5 minutes);
   b. May include both visual and audio channels;
   c. Must be in a widely accepted multimedia format, or as a self-executing file that does not require any additional software to view; and
   d. Submit on a USB flash drive

(4) Presentation Panel Guidelines:
   a. Up to six (6) panels in A-1 format that visually convey information about the proposed Development Plan;
   b. At least one panel should clearly indicate the massing of proposed buildings on all nine Development Blocks in axonometric view;
   c. At least one panel should clearly indicate the siting of proposed buildings on all nine Development Blocks in site-plan view;
   d. At least one panel should clearly indicate a site plan view that articulates the ground floor uses of each building as well as active uses that face the water’s edge;
   e. At least one panel should depict an elevation perspective cross section that indicates:
      i. the location of parking and typical approaches to incorporating parking into the buildings; and
      ii. a typical stacking arrangement of land uses within the buildings; and
   f. Panels should include renderings or illustrations that are indicative of the prospective buildings’ architectural look-and-feel -OR- photos of existing precedent building examples that are consistent with your design language.

(5) User Stories Guidelines:
   a. User stories invite readers to identify with one or more archetypes to understand how they themselves might interact with the features and benefits of the development project, and also helps them understand the cross-section of other
persons they might encounter in the same space;
b. Proponents may create up to twelve (12) archetypes representing any segment of the market they wish, including on-site residents/employees, visitors to the waterfront, nearby residents, and may be a single person or household; and
c. Each user story must be limited to two (2) pages and can contain up to four (4) pictures. There is no minimum page or word count requirement for user stories.

2.1.2 Urban Innovation

(1) Identify innovative plan elements or implementation approaches that will be incorporated into your Pier 8 development. These may include:
   a. Building techniques / materials;
   b. Project delivery tactics;
   c. Demonstration projects;
   d. Participatory programs for residents, workers, visitors; and
   e. Holistic frameworks for sustainable living.

(2) Provide a description of each including:
   a. Explanation of the problem being solved and/or values being promoted;
   b. Explanation of how the proposed measure works;
   c. Description of the size and scale of its planned implementation at Pier 8;
   d. Expected benefits to the development and/or the City, including any preliminary-stage performance targets;
   e. A brief history of its implementation in other projects (if any) and proven outcomes; and
   f. Steps required to make its implementation a reality, including any support or accommodation required from the City.
## 2.1.3 Project Implementation Plan

### 2.1.3.1 Ownership and Financing

1. Provide an overview of your proposed ownership and financing approach, addressing the following topics:
   a. Ownership of lands (shareholders, long-term plan);
   b. Distribution of sites between Team Members with regards to development and/or stewardship responsibilities;
   c. General description of Proponent’s long-term strategy to sustain financing through full build-out;
   d. Anticipated phasing in/phasing out of financial partners during the course of the Project’s development horizon.

2. Include a reference letter indicating your lender’s willingness to provide credit financing for the first phase of your proposed Development Plan as described in your Proposal.
2.1.3.2 Project Delivery

(1) Provide an overview of your proposed project delivery approach, addressing the following topics:
   a. Identification of project delivery team members including roles and responsibilities for disciplines including, but not exclusive to: architectural design, landscape design, site planning, site remediation, site engineering, building construction, project marketing, commercial leasing, etc;
   b. Identification of team personnel who will lead the Proponent Team through the Site Plan approval process;
   c. Authorities framework including decision-making and execution responsibilities and accountabilities between team members; and
   d. Labour resource management strategy including articulation of a fair wage policy and fair wage schedule relative to the City’s Fair Wage Policy and Fair Wage Schedule, which can be found at:


(2) Provide an overview of your proposed timing considerations, addressing the following topics:
   a. Time allocation for site investigation requirements;
   b. Time allocation for managing site conditions;
   c. Time allocation for development approvals (Site Plan and Building Permit)
   d. Projected Development Block draw-down schedule (as reflected in Bid Form 2: Financial Proposal);
   e. Projected implementation timeline from Commencement Date to Project completion date; and
   f. Phase-in of residential volumes, retail/commercial uses, parking, institutional use, mid-Block connections.

(3) Provide an overview of your proposed site management approach, addressing the following topics:
   a. Additional site investigation requirements;
   b. Environmental site remediation strategies; and
   c. Construction staging needs.

(4) Clearly identify any elements of your overall Development Plan and Proposal that are conditional or time-sensitive. Describe the associated conditions and explain how the scope of your Development Plan and Proposal would be different if each condition is not met.
2.1.3.3 Project Stewardship and Change Management

(1) Provide an overview of a proposed governance model that could be employed to manage the relationship with the City, that may include some or all of the following elements:
   a. Identification of Key Personnel who will interact with the City through the various phases of the project;
   b. Proposed strategies and governance structures to maintain a good working relationship with the City;
   c. Decision-making / authorities framework;
   d. Governance body, composition;
   e. Change-management framework; and
   f. Project monitoring and progress reporting commitments.

(2) Provide an overview of your proposed community engagement / communication plan for each of the following phases:
   a. Pre-development; and
   b. During development.

(3) Provide an overview of your proposed interim and post-occupancy operating strategy, addressing the following topics:
   a. Stewardship of commercial and institutional premises;
   b. Administration of affordable housing units;
   c. Ongoing maintenance and operations of specialized building components implemented to achieve sustainability objectives; and
   d. Propose a protocol for auditing the achievement of minimum targets for affordability and sustainability.

(4) Present an analysis of potential future macro-level changes:
   a. Identify “Potential Future Risks” and “Potential Future Opportunities”. Future macro-level changes may be related to technology, consumer tastes / demands, economy, government policy, natural environment, population, etc.; and
   b. Present mitigation strategies against the “Potential Future Risks” and positioning strategies to exploit the “Potential Future Opportunities”.
2.2 Submission Instructions for the Financial Proposal

(1) Each Proponent is required to complete Bid Form 2: Financial Proposal as its sole submission in response to the Financial portion of its Proposal. Proposals received on altered or modified versions of Bid Form 2 without the City’s prior written consent, may be considered a non-compliant Proposal.

(2) Bid Form 2 is structured to reflect the financial deal structure desired by the City which is illustrated as follows:

<table>
<thead>
<tr>
<th>Block Number</th>
<th>(A) Upfront Payment</th>
<th>(B) Minimum Purchase Prices (MPP)</th>
<th>(C) Fair Market Value Share Payment</th>
<th>(D) Value-Add Share (VAS)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ Amount</td>
<td>$ Amount</td>
<td>Target Closing Date (end of Proforma Month #)</td>
<td>% Share of FMV Spread Over MPP</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>Future Value (B1)</td>
<td>Month #</td>
<td>Proposed share of the positive difference between the Fair Market Value and MPP for each Block payable to the City, where the FMV of each Block is referenced as (C1), (C2), …, (C9)</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>Future Value (B2)</td>
<td>Month #</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Proposed one-time payment, not less than $1 Million (Present Value) (A1)</td>
<td>Future Value (B3)</td>
<td>Month #</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>Future Value (B4)</td>
<td>Month #</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Future Value (B5)</td>
<td>Month #</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Future Value (B6)</td>
<td>Month #</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>Future Value (B7)</td>
<td>Month #</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Future Value (B8)</td>
<td>Month #</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td>Future Value (B9)</td>
<td>Month #</td>
<td></td>
</tr>
</tbody>
</table>

where, the Blocks referenced in the “Block Number” column correspond to Figure 1 found in Appendix A: Description of Subject Lands, and the total financial payments made by the Successful Proponent to the City shall be the sum of:

a. The Upfront Payment (i.e., A1); plus
b. the sum of all Minimum Purchase Prices (i.e., B1 + B2 + B3 + B4 + B5 + B6 + B7 + B8 + B9); plus
c. the proposed FMV Share (as described in section 2.2.4), expressed as a percentage rate, of any positive difference between each Block’s FMV and MPP (i.e., FMV Share % x ((C1-B1) + (C2-B2) + (C3-B3) + (C4-B4) + (C5-B5) + (C6-B6) + (C7-B7) + (C8-B8) + (C9-B9)); and plus

d. the VAS Rate Methodology (as described in section 2.2.5) applied to each building built.

(3) **Note that this RFP precludes the receipt of Financial Proposals that contemplate an upfront purchase price in exchange for title conveyance of all Development Blocks in a single transaction.**

(4) In order to facilitate the evaluation of Financial Proposals, Proponents are required to fill in all highlighted cells provided for in Bid Form 2, including dollar amounts, nominal percentage rates, milestone time intervals (month), and gross floor area allocations. Where the entry is intentionally zero, please indicate with a “0”. Blank cells will be assigned a value of “0” and may affect the evaluation and scoring of the Proposal.

(5) Sections 2.2.1 to 2.2.5 provide more detailed instructions and assumptions that may guide the completion of a Financial Proposal.

### 2.2.1 General Guidelines and Assumptions for Submitting Financial Proposals

(1) Assume that land titles for Blocks will be conveyed in fee simple.

(2) The Commencement Date is expected to be the first day of the first calendar month that follows the date that the Development Agreement is duly executed. For the purposes of preparing a Proposal, assume that the Commencement Date is January 1, 2019. Therefore, for the purposes of completing the Minimum Purchase Price section of Bid Form 2, the end of Proforma Month #1 shall correlate to January 31, 2019, and all subsequent Proforma Months to be entered for the Target Closing Dates (in cell array D29 to L29) shall correlate accordingly.

(3) The Registry Date means the date on which the Plan of Subdivision is registered in the local Land Registry Office.

(4) Assume that Blocks must be acquired on “an as-is, where-is” basis, as defined in the Draft Plan of Subdivision, and are not further divisible prior to acquisition.

(5) The protocol for obtaining appraisals will be further clarified in the Contract Documents.

(6) Financial payment amounts quoted in the Financial proposal (Bid Form 2) shall not include Harmonized Sales Tax ("HST") within the meaning of the Excise Tax Act (Canada).
2.2.2 Upfront Payment

2.2.2.1 Application and Assumptions

(1) The Upfront Payment affirms the Successful Proponent’s commitment to the Project, and secures its development rights for the Subject Lands subject to the conditions outlined in this RFP and the Contract Documents.

(2) The Upfront Payment does not represent the purchase and sale price, or cause the conveyance, of any Development Block.

(3) The Upfront Payment is not a deposit or credit against any future payments by the Successful Proponent to the City with respect to the Project.

(4) Assume that the Upfront Payment will be payable on the Commencement Date, but will be held in escrow until the Registry Date.

(5) Once released from escrow, the Upfront Payment will be non-refundable to the Successful Proponent.

(6) In any event, the Upfront Payment shall not be less than One Million Dollars ($1,000,000.00)

2.2.2.2 Proposal Submission Instructions for Upfront Payment (Use Bid Form 2)

(1) Propose a single dollar amount (greater than or equal to $1,000,000) as the Upfront Payment in Bid Form 2 cell D6

(2) Indicate the Upfront Payment as a present value amount (i.e., no inflation or other time-value-of-money modifiers applied)

2.2.3 Minimum Purchase Prices (“MPP”) 

2.2.3.1 Application and Assumptions

(1) MPPs represent the purchase payment installments that the Successful Proponent will make for each Block at specified, respective Target Closing Dates. Payment of the MPP as well as any outstanding Additional Payments, coinciding with the execution of an Agreement of Purchase and Sale will fulfill the requirements to cause the conveyance of title for that respective Block.

(2) Assume that in the event that the Successful Proponent defers its
acquisition of a Block beyond the respective Target Closing Date, an Additional Payment equal to 1/24th of the respective MPP will accrue on a monthly basis, until such time that the Block is eventually acquired, and at such time, both the MPP and the accrued Additional Payment shall be payable prior to conveyance of title.

(3) In the event that the Registry Date must be later than the earliest Target Closing Date, assume that the schedule of Target Closing Dates only, but not the MPP amounts, will be renegotiated between the City and Successful Proponent.

(4) Notwithstanding the above assumptions, the Development Agreement will include provisions for relief from these assessments of Additional Payments in the event of a delayed milestone as a result of extraordinary events or adverse market circumstances.

2.2.3.2 Proposal Submission Instructions for MPPs (Use Bid Form 2)

(1) Indicate an offered MPP and Target Closing Date Proforma Month for each Development Block in Bid Form 2, in cell arrays D28 to L28 and D29 to L29, respectively.

(2) Assume that the City will convey the land title for each Block just prior to the Successful Proponent making its respective site plan control application. As such, Proponents should set the Target Closing Date for each Block to be the month that a respective site plan control application will likely first be made.

(3) Proposed acquisition timing for the Blocks do not have to be in the same order that the Blocks are listed in Bid Form 2. However, the timing must correspond with the development concept and phasing plan indicated in the Proponent’s Technical Proposal.

(4) Be sure to indicate MPPs as future values. Each Proponent is free to use any inflation rates or other assumptions it wishes to determine future values. However, please note that for Proposal evaluation purposes, the City will apply a discount rate of Three and One-half Percent (3.5%) for all proposed revenue streams across all Proposals in order to determine comparable present values.

(5) Notwithstanding subsection 2.2.3.2(4) above, note that the undiscounted face values indicated for MPPs in Bid Form 2 will be the amounts reflected in the Contract Documents.
2.2.4 Fair Market Value ("FMV") Share Payment

2.2.4.1 Application and Assumptions

(1) As a general principle, the City is seeking to obtain financial payments for the sale of the Development Blocks that are as close to Fair Market Value as possible. While the MPPs establish a minimum payment for the Blocks, the true FMVs may only be determined closer to the respective Target Closing Dates. In this regard, there is likely to be some variability between the MPPs and the actual FMVs. The FMV Share rate is the percentage of the variable price component that the Proponent proposes to share with the City. In any event, the proposed FMV Share rate shall not be less than 50%.

(2) Once a Block has been acquired, the corresponding MPP and outstanding Additional Payments paid to the City, and conditional Site Plan approval granted, a Fair Market Value ("FMV") appraisal of the land shall be completed on the basis of the conditionally approved development permits.

(3) The MPP amount already paid for the Block will be subtracted from the FMV, and any positive difference will be multiplied by the proposed FMV Share rate. The resulting amount will be payable to the City as the FMV Share Payment for that Block.

(4) Only one FMV Share rate may be proposed and will be applied consistently in the FMV Share payment calculation for all Blocks.

(5) Since the FMV appraisal is contingent on a conditionally approved development permit, assume that in the event that the Successful Proponent exercises its option to acquire a specific Block, pays the MPP, and receives title, but does not submit a site plan control application within 180 days of title conveyance, an Additional Payment equal to 1/24\(^{th}\) of the respective MPP will accrue on a monthly basis until such time that a site plan control application is received by the City, at which time the accrued Additional Payment amounts shall be payable in full.

(6) Assume that any Additional Payments will be excluded from the determination of FMV Share payments to the City.

2.2.4.2 Proposal Submission Instructions for FMV Share Payment (Use Bid Form 2)

(1) Propose a single percentage rate (greater than or equal to 50%) under the "FMV Share Rate" heading on Bid Form 2, cell C7, that represents the proportion of the positive difference between FMV and the MPP that will be payable to the City.
(2) Fractional percentage rates are not permitted (i.e., no decimal places accepted for the FMV Share rate).

2.2.5 Value-Add Share ("VAS")

2.2.5.1 Application and Assumptions

(1) The Value-Add Share is to be calculated and paid to the City in stand-alone installments for each completed building within a Block as follows:

(a) for condominium unit sales (all uses), the payment will be calculated as a percentage of Gross Sales Revenues, to be calculated and paid not later than twelve (12) months following the sale of the final unit in the building, not including any units held by the Successful Proponent for income producing purposes; and

(b) for any income producing units or properties (e.g., rental residential, leased commercial premises, seniors’ residence, hotel, etc.), the payment will be calculated and paid as a percentage of a Fair Market Value appraisal of the income producing unit or property on a fully stabilized basis, after one full year of operation.

(2) The singular proposed VAS rate will be applied equally to both unit sales and operating businesses share calculations.

2.2.5.2 Proposal Submission Instructions for VAS

(1) Propose a percentage rate under the “VAS Rate” heading on Bid Form 2 cell D8.

(2) Fractional percentage rates are permitted in increments of 1/100th of a percentage point (i.e., up to two decimal places accepted)

(3) Additionally, indicate Gross Floor Area allocations (in square feet) for the various building types your Proposal contemplates for each respective Block in cell array D15 to L25 on Bid Form 2.
3. Proposal Evaluation Criteria and Methodology

3.1 Evaluation Scoring

(1) Proposals will be scored according to the following scoring matrix, where the identified subsections correspond with the Proposal submission requirements specified throughout section 2:

<table>
<thead>
<tr>
<th>Score Allocation</th>
<th>Maximum Subsection Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>60%</td>
<td></td>
</tr>
</tbody>
</table>

### A. Technical Proposal

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1. Development Plan</td>
<td>30%</td>
</tr>
</tbody>
</table>

- Plan Overview – Technical Specifications
- Plan Overview and Design Excellence
- Residential Program
- Place-making
- Environmental Sustainability
- Public Presentation Materials

| A2. Urban Innovation | 15% |

| A3. Project Implementation Plan | 15% |

- Ownership and Financing
- Project Delivery
- Project Stewardship and Change Management

### B. Financial Proposal

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1. Results from inputting Bid Form 2 variables into evaluation model</td>
<td>40%</td>
</tr>
</tbody>
</table>

| Total Proposal Score | 100% |

(2) A Proponent’s Total Proposal Score is the sum of its Technical proposal score (A) and its Financial proposal score (B);

(3) A Proponent’s Technical proposal score is absolute and independent of any other Proponent’s Technical proposal score, whereas a Proponent’s Financial proposal score will be determined through a relative comparison of all eligible Financial proposals received as further described in section 3.3 below.

(4) Proposals must earn at least half of the maximum attainable score for the Technical proposal, as well as a “Pass” rating on the Plan Overview – Technical Specifications subsection, in order to have its Financial proposal be eligible for evaluation and included in the relative Financial proposal evaluation exercise.
(5) In the event of a tie, where two or more Proposals earn the same Total Proposal Score (to two decimal places), the Proposals will be compared in the following order until one Proposal is identified as having earned a higher score for the given subsection, which will place that respective Proposal higher in the order than the other:

(a) A1: Development Plan;
(b) A2: Urban Innovation;
(c) B1: Financial Proposal; and
(d) A3: Project Implementation Plan

3.2 Technical Proposal Evaluation Criteria

The following criteria will be applied to the review and evaluation of each category within the Technical proposals submitted in accordance with the instructions specified in section 2.1:

<table>
<thead>
<tr>
<th>Development Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Plan Overview – Technical Specifications</strong></td>
</tr>
<tr>
<td>• Technical consistency with Secondary Plan and Draft Plan of Subdivision (Application 25T-201605 as approved by Council)</td>
</tr>
<tr>
<td>• Technical Consistency with Zoning By-law (Application ZAC-16-034 as approved by Council) – minor variance requirements may be deemed a conditional Pass</td>
</tr>
<tr>
<td>• Meets minimum guideline for affordable units per Council directive</td>
</tr>
</tbody>
</table>

| **Plan Overview and Design Excellence** |
| • Extent to which the City’s desired project outcomes are met and maximized (see Terms of Reference) |
| • Extent to which the City’s vision and guiding principles are referenced and reflected |
| • Extent to which the design concept relates to the overall contexts as laid out in Setting Sail, West Harbour Waterfront Recreational Master Plan, and Pier 7+8 Urban Design Study |
| • Presents a thoughtful strategy to integrate with surrounding existing residential, recreational, and industrial areas |
| • The plan leverages, complements and enhances the adjacent public recreation areas |
| • A strategy to address and mitigate the potential negative impacts of the adjacent industrial uses |
| • Demonstrates an integrative approach to the City’s transportation strategy for the North End neighbourhood and beyond |
| • Creates a cultural link to Hamilton and the Waterfront’s history and future |
| • Extent to which the plan exceeds minimum AODA requirements and reflects a commitment to barrier-free design, universal design, inclusive design, and crime prevention through environmental design (CPTED) for both interior and exterior spaces |
| • Addresses site challenges (e.g., water table, noise attenuation, etc.) through creative design, engineering, and/or site planning |
- A workable parking configuration accommodated within the proposed Development Plan that satisfies the legislated requirement

### Residential Program
- Extent to which the City’s desired project outcomes are met and maximized (see Terms of Reference)
- Extent to which the proposed residential program exceeds the City’s minimum affordability targets
- For the affordable housing units, creativity and practicality of solution to ensure the continuity of affordability beyond the initial homeowner
- Market rationale demonstrates a sound understanding of Hamilton’s market dynamics
- Housing mix addresses the needs of a broad range of incomes, lifestyles, and household configurations
- Housing mix is family-friendly - notable percentage of larger units and features (storage, family amenities, additional bathroom)
- Building and unit typologies address issues such as accessibility and aging populations (including aging-in-place)
- Strategies to achieve diversity of target market segments is clearly foundational to the program

### Place-making
- Extent to which the City’s desired project outcomes are met and maximized (see Terms of Reference)
- Overall plan is inviting to both nearby residents and visitors alike
- Overall plan is appealing to a wide range of demographics
- Retail strategy strikes a balance between local residents’ and visitors’ needs
- Extent to which a clear vision is proposed for the institutional site that integrates it with the neighbourhood
- Strategies promote year-round, ground-floor animation
- Marketing program is supported by sound market research
- Proposed Pier 8 scheme leverages, complements and enhances the adjacent public recreation areas
- Proponent is willing to maintain a long-term commitment to the retail and institutional premises
- Proposed development enhances, and does not detract from, the public realm experience
- The private development provides semi-public and/or community amenities

### Environmental Sustainability
- Extent to which the City’s desired project outcomes are met and maximized (see Terms of Reference)
- Proposed integrated design process for building design and construction
- Demonstrates a firm understanding of site characteristics and micro-climate conditions (e.g., sun/shade, wind, etc.) to be considered in the overall design for environmental sustainability
- Extent to which the Proponent intends to exceed the minimum LEED certification level
- Extent to which targeted LEED credits are a direct result of proactive actions to be taken by the Proponent rather than inherent characteristics of the site and/or actions being taken by the City
- Extent to which the Proponent intends to exceed the minimum energy efficiency performance standard set by the MNECB benchmark
- Extent to which renewable energy sources are employed
- Extent to which the Proposal intends to exceed the Minimum Green Building and Design Guidelines (Appendix F) or have not been met
- Relatively simplicity and affordability of the long-term operations and maintenance of the proposed features
- Extent to which the proposed sustainability measures promote the health and well-being of building occupants and users

Note:
- Attainment of sustainability commitments can only be verified after construction. As such, the Successful Proponent will be required to submit a Letter of Credit that they will meet the committed targets (see Appendix C: Draft Development Agreement)
- This section is meant to assess the extent of committed targets and strategy rather than the degree of creativity and innovation in the implementation approach, which will be more explicitly evaluated in the Urban Innovation section of the evaluation criteria

### Public Presentation Materials
- Presented information is clear and consistent with remaining sections of Proposal that are not publicly released
- Positive public reaction and commentary
- Ability to convey alignment with the Secondary Plan and Urban Design Guidelines
- Ability to convey the features and benefits of the development plan to a wide variety of market segments
- Presents a distinct visual theme while still achieving architectural variety
- Further explanation of the evaluation process for these submission provided in section 3.2.1 below

### Urban Innovation
- Innovative ideas, projects, programs, and tactics that promote any of the following:
  - Health, wellbeing, culture, community, equality
  - Local economic prosperity, skills development, education, entrepreneurship, job creation
  - Support for children, elderly, and marginalized populations
  - Connecting people and nature
  - “Smart city” features, data / analytics, automation, modern communications infrastructure, Internet of Things
  - Innovative transitional land uses (i.e., interim use of undeveloped parcels)
- Sustainable living environments, sustainable building materials, waste management,
- Access to housing, food, wellness services, culture
- Future adaptability, repurposing of buildings, modular / flexible / customizable buildings
- Urban resiliency
- Cost effective and environmentally friendly soil remediation
- Low impact development, water conservation, water quality
- Renewable energy (including public or private district energy systems)
- Efficient parking strategies and/or reduced car-dependency
- Reduced cost-of-living / increased quality-of-life
- Long-term accountability, governance, civic engagement
- Collaboration opportunities with the City
- Any other value that would align with the City’s 10-year Strategic Plan


- Extent to which proposed elements would benefit the immediate neighbourhood socially, economically, or environmentally
- Extent to which proposed elements would benefit the entire City socially, economically, or environmentally
- “Big thinking” will be rewarded. Higher weight will be given to holistic strategies over standalone projects
- Risk-return profile between higher-impact/cutting-edge and lower-impact/proven results will also be a consideration
- Ease of implementation including the degree of support or accommodation required from the City
- Extent to which proposed elements are committed, not conditional, and does not require significant investment or political support from the City to make a reality
- Extent to which an execution plan has been articulated, including a commitment from execution partners (as needed)

### Project Implementation Plan

#### Ownership and Financing
- Degree of commitment indicated in the lender’s letter (i.e., “willing to consider” vs. “credit extended”)

#### Project Delivery
- A thorough list of disciplines identified and team members have been named for each
- No banned vendors or Ineligible Parties identified as part of team. A listing of banned vendors, as updated from time to time, will be shared with all Proponents and the Reserve Proponent.
- Extent of commitment to hiring local labourers
• Extent to which the articulated fair wage policy and fair wage schedule is aligned with the City’s Fair Wage Schedule
• Extent of commitment to using local materials suppliers
• Extent to which the trades and construction strategy limits potential downtime and cost inflation
• Extent to which the phasing / projected draw-down schedule promotes a timely approach to full build-out
• Extent to which the phasing plan aligns to a thoughtful place-making strategy
• Extent to which the phasing as strategy contributes to solution for dealing with adjacent industrial uses
• Extent to which the proposed phase-in schedule prioritizes the public’s interests
• Extent to which the proposed phase-in schedule is compatible with the City’s Waterfront Parking Strategy
• Extent to which additional site investigations required will be intrusive to the Subject Lands and/or may impair the future value of the lands
• Plan for environmental site remediation is compatible with the Risk Assessment and Risk Management Plan as being carried out by the City, with minimal change in approach required
• Construction staging does not unreasonably constrain the City’s right to use the undeveloped Blocks for its own requirements
• Extent to which the proposed Block phasing plan has taken the effective encumbrances in to account in order to minimize negative impacts on the Financial Proposal
• Extent to which the Development Plan as presented is fully committed (i.e., limited conditional elements). Notwithstanding, conditional elements that are tied to Urban Innovation will be evaluated separately in the Urban Innovation section

Project Stewardship and Change Management
• Proposed change management framework remains focused on meeting project objectives while being flexible enough to accommodate a range of “known unknowns” as well as “unknown unknowns”
• Extent to which the Successful Proponent’s project management and decision-making framework is integrated with the proposed City-relationship governance structure
• Well-articulated plan to engage with the local community and all Hamiltonians as they progress their plan
• A strategy that demonstrates the Proponent’s commitment to the stewardship and operation of completed phases
• A fair and equitable approach to project and outcomes monitoring
• Extent to which the proposal today is prepared for potential future risks
• Extent to which the proposal today is prepared for potential future opportunities
• Creativity in suggested risk mitigation and opportunity exploiting strategies
  o Design based
  o Financial based
  o Project delivery based


3.2.1 Public Presentation Materials

(1) Submitted presentation materials pursuant to section 2.1.1.6, are intended to provide an overview of the proposed Development Plan in a format that is easy for a general audience to grasp.

(2) These materials shall be made available for public viewing both physically in-person and digitally online and the public will be invited to submit comments only on the basis of these materials.

(3) Public comments will be collected and reviewed by Evaluation Team members as part of their evaluation process. While the public's responses to the presentation materials will be taken into account, no specific score will be attributed to the public's responses.

(4) The production value of the presented materials will not be specifically evaluated, but each Proponent’s ability to clearly communicate the merits of its Proposal to a general audience will be taken into consideration when establishing scores for the Technical proposals.

3.3 Financial Proposals

(1) To evaluate each Financial proposal, the City will apply the following methodology:

(a) Employ a proprietary model that will make standardized assumptions regarding:
   i. the future Fair Market Value of each Block;
   ii. the time required to procure a development permit;
   iii. the time required to complete construction and achieve sales and/or reach stabilized income; and
   iv. the future value of buildings by use and tenure;

(b) Transpose all information provided in Bid Form 2 into the proprietary model that will plot all future value amounts according to the indicated timing schedule;

(c) Estimate the FMV Share and Value-Add Share using the model and assumptions outlined in subsection (1)(a) above;

(d) Tally the resulting incoming revenue for each time period (month) in the model, resulting in a stream of incoming revenues at future value; and

(e) Apply a standard discount rate of Three and One-half Percent (3.5%) to normalize the anticipated stream of future revenues into a single present value amount. For evaluation purposes, the Commencement Date will be January 1, 2019.

(2) Once all Financial proposals have been reduced to a single present value amount, the present value amounts will be ranked and the top ranked Financial proposal will earn the maximum attainable score for the Financial proposal section and all other Proponents will be assigned a score based on their respective present value amount.
as a proportion of the top present value amount.

4. **Selection of the Preferred Proponent, Contract Finalization and Execution**

   (1) Subject to the City’s reserved rights and privileges set out in this RFP, and subject to the City’s sole, unfettered and absolute discretion to award a contract, the Preferred Proponent shall be the compliant Proponent that has:

   (a) satisfied all Mandatory Requirements;

   (b) met all minimum scoring requirements; and

   (c) the highest overall combined score for both the Technical and Financial Proposal portions of this RFP.

   (2) When evaluating Proposals, the City may consider the full range of options, amenities and enhancement features offered by a Proponent when selecting the Preferred Proponent. The City shall be the sole judge as to whether the value offered in respect thereof presents a benefit for the City.

   (3) The City will notify the Preferred Proponent, in writing, that it has been selected as the Preferred Proponent.

   (4) Prior to commencing Negotiations, the Preferred Proponent shall be required to confirm that its Proposal has not changed.

   (5) The City reserves the right to obtain Council approval of the Preferred Proponent and its Proposal prior to commencing Negotiations.

   (6) The City will engage in time-limited Negotiations with the Preferred Proponent.

   (7) Once a Development Agreement has been successfully negotiated and executed, the Proponent that is party to the Development Agreement shall be the Successful Proponent.

   (8) The City reserves the right to obtain Council approval of the Contract Documents.

   (9) Once Contract Documents have been finalized the Preferred Proponent shall furnish proof of insurance as required by the Contract Documents prior to the execution of the Contract Documents. The Contract Documents will incorporate the Preferred Proponent’s Proposal and all applicable clarifications thereto, as accepted.

   (10) In the event that the Preferred Proponent fails to act in good faith by refusing or failing to negotiate or execute a Contract Document in a timely and reasonable manner, the Preferred Proponent will be deemed to have abandoned all rights and interest in this RFP and all Negotiations with the Preferred Proponent may be discontinued at the discretion of the City.

   (11) The City may then, in its sole discretion, be free to select another Proponent as the
Preferred Proponent and enter into Negotiations to finalize and execute the Development Agreement with that other Proponent per subsections 4(3) to 4(9) above, or reject all Proposals, revise and reissue the RFP or cancel this RFP and/or pursue any other rights or remedies available under this RFP, or otherwise at law or in equity.

5. **Draft Development Agreement**

   (1) Attached as Appendix C, is the City’s draft Development Agreement that the City intends to conclude with the Successful Proponent.

   (2) Each Proponent shall, as part of its Technical proposal, identify any provisions in the draft Development Agreement that it would wish to amend, providing, where appropriate the Proponent’s proposed wording.

   (3) The City is under no obligation to review or accept any of the amendments to the draft Development Agreement proposed by a Proponent. Where no amendments are proposed, the City will be entitled to conclude that the wording in the draft Development Agreement is acceptable.

   (4) Any amendments proposed by one Proponent may not necessarily be considered exclusive to that Proponent. In other words, the City may incorporate an amendment proposed by “Preferred Proponent A” into a negotiation with “Preferred Proponent B”.

   (5) Revisions proposed by Proponents shall not be evaluated or contribute to the scored evaluation of the Proposal.

   (6) In addition to the submission of the proposed revisions as contemplated in paragraph (2) above, the City encourages Proponents to submit preliminary comments regarding these terms and conditions prior to the Commercially Confidential Meetings in accordance with section 1.4 of Appendix D: Commercially Confidential Meetings Protocol.

6. **Indemnification**

   (1) Subject to any indemnity provisions outlined in any executed agreement between the City and the Successful Proponent, the Successful Proponent shall indemnify, defend, and hold the City (including its officials, officers, directors, employees, agents, affiliates, and representatives) [collectively referred to as the “Indemnified Party”] harmless against any and all claims, demands, costs (including legal costs on a substantial indemnity basis), penalties, fines, fees, royalties, damages (including indirect, special, remote, and/or consequential damages) and causes of action, including, without limitation, proprietary or personal injury (including death) that arise from, either directly or indirectly, or relate to, any act or omission of the Successful Proponent, its officials, directors, officers, employees, agents, affiliates, partners
(general or limited), joint venturers, contractors, sub-contractors, and other representatives, in connection with the Successful Proponent’s responsibilities pursuant to this RFP and all Contract Documents, including without limitation, the provision of any and all Goods and Services, as well as any patent, trademark, or copyright infringement or breach of any intellectual property right, except to the extent that same was caused by the negligence or wilful misconduct of the Indemnified Party.

(2) The City shall notify the Successful Proponent upon receipt of any such claim or demand that it receives. No settlement shall be made nor consent to judgment given without prior written approval of Successful Proponent and its insurers, which approval shall not be unreasonably withheld.

(3) The rights to indemnity contained herein shall survive the early termination or expiry of any contract arising pursuant to this RFP.

(4) The City may enforce the rights of indemnity conferred on the elected officials, officers, employees, and affiliates of the City under subsection (1) on their behalf and to the same extent as if they were parties to the Contract.

(5) The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of the Indemnified Party provided in the Contract Documents.
FORM OF PROPOSAL

To:    Procurement Manager
       City of Hamilton
       Standard Life Building
       9th Floor, Suite 900
       120 King Street West
       Hamilton L8P 4V2
       (the "City")

RFP Number: C11-66-17
Pier 8 Development Opportunity

<table>
<thead>
<tr>
<th>Business structure of Proponent (check one):</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ corporation – specify where incorporated: ______________________________</td>
</tr>
<tr>
<td>□ partnership</td>
</tr>
<tr>
<td>□ sole proprietorship</td>
</tr>
<tr>
<td>□ other – specify: ____________________________________________</td>
</tr>
</tbody>
</table>

Registered business name of Proponent (if applicable): __________________________

The City of Hamilton reserves the right to verify the business name and structure of the Proponent, whether or not this section is completed, to ensure that the Proponent is an existing legal entity. If the Proponent is not an existing legal entity, the Proposal will be rejected.

Legal Name of Proponent: ____________________________________________
   (this name must exactly match the name on all documentation required of the Successful Proponent)

Business Address: ____________________________________________________
   (include street, city, province and postal code)

Head Office Address: __________________________________________________
   (if different than above, include street, city, province and postal code)

<table>
<thead>
<tr>
<th>Telephone Number:</th>
<th>Fax Number:</th>
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</thead>
<tbody>
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</table>

Email Address: ___________________________ Date: __________________

C11-66-17
Request for Proposals for Pier 8 Development Opportunity (for Prequalified Proponents)
1. The undersigned Proponent, having carefully examined the RFP Documents, hereby proposes and offers:

(a) to complete the Project as contemplated within the Proposal and to reflect such covenants in the Contract Documents;
(b) to honour all proposed financial payments to the City as contemplated within the Proposal and to reflect such covenants in the Contract Documents;
(c) to pay all applicable Taxes and all other charges as specified; and
(d) to fully, properly, diligently and in good faith undertake, perform and complete all of the Proponent’s (and upon any award of the contract those of the Successful Proponent) duties, obligations and responsibilities under the Contract Documents,

in full accordance with the Contract Documents.

Receipt of the RFP Documents from the City is hereby acknowledged.

2. **Addenda**

I/We have made any necessary inquiries with respect to Addenda issued by the City and have ensured that we have received, examined and provided for all Addenda to the Request for Proposal in this Proposal.

**NOTE: Any Addenda issued are posted on the following website:**

hamilton.bidsandtenders.ca

3. **Commencement and Completion**

If awarded the contract, I/we, the Proponent:

a. agree(s) to commence and complete the Project as per the Contract Documents; and
b. undertake to complete and provide all necessary documents as set forth in this RFP prior to the commencement of this Project.

4. **Additional Work**

I/We also agree that if awarded the contract, I/we shall execute whatever additional or extra work that may be required, in accordance with the Contract Documents.

5. **Occupational Health and Safety**

I/We understand and agree that the Project-related work must be conducted in a safe manner. Accordingly, I/we confirm that I/we and all Team Members employed on the Project will comply with all applicable laws, regulations and by-laws of Canada, the Province of Ontario and the City, including but not limited to the Occupational Health and Safety Act, and all applicable regulations thereunder. Further, without limiting any of
the foregoing, I/we confirm that I/we have both a written occupational health and safety policy and program to implement that policy, and that all of our employees, Team Members representatives and any other persons performing the work are appropriately trained, licensed and certified, as required to perform the work.

6. No Collusion / Conflict of Interest

I/We hereby declare that no person, firm or corporation other than me/us has any interest in this Proposal or in the proposed contract(s) for which this Proposal is made. I/We further declare that this Proposal is made without any connection to, comparison of figures, arrangements with or knowledge of, any other corporation, firm or persons making a Proposal for the same Project and is in all respects fair and without fraud or collusion.

I/We declare that no member of the City, and no officer, employee or agent of the City has or will have an interest indirectly or directly as a contracting party, partner, shareholder, surety or otherwise in the performance of the contract(s), or in the supply, work or business to which they relate or in any portion of the profits thereof, or in any of the monies to be derived there from.

7. Interpretation

I/We confirm that I/we have received no oral communication, representation, information, instruction or advice (collectively referred to as “representation”) from any officer, employee, agent, or any other person acting on the behalf of or at the direction of the City which in any way amends or modifies the content of this Request for Proposals, any Addenda thereto, or any performance of the Project, obligations or responsibilities or the exercise of any rights thereunder or with respect thereto. I/We specifically release and waive any right and claim I/we may have to a claim for negligence, misrepresentation, misstatement or otherwise for any oral communication or representation whatsoever. I/We represent that I/we have not been induced by any oral communication or representation whatsoever to submit this offer and acknowledge that the City is relying on the representations and waiver made by us herein. I/We further acknowledge that I/we have carefully reviewed, understand and agree to the communication provisions of the Instructions to Proponents.

I/We acknowledge and agree that I/we have not assumed that any information concerning our operations, business or personnel or any other information required to be provided by me/us when submitting our Proposal is known to the City, regardless of whether such information may be actually previously known to the City or not. Further, I/we acknowledge and agree that all information to be provided by me/us is to be complete and full and in such detail as required.

8. Procurement Policy

In submitting a Proposal in response to the RFP, I/we agree and acknowledge that I/we have read the terms and conditions of the City’s Procurement Policy. I/We understand that the City’s Procurement Policy can be viewed on the City’s website at:
9. **Accessibility for Ontarians with Disabilities Act, 2005**

I/We confirm that I/we and all Team Members used on the Project will comply with all applicable accessibility laws, regulations and by-laws of Canada, the Province of Ontario and the City of Hamilton, including but not limited to the Ontarians with Disabilities Act, 2001 (ODA), the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), Ontario Regulation 429/07 (Accessibility Standards for Customer Service) and Ontario Regulation 191/11 (Integrated Accessibility Standards), throughout the term of the Development Agreement.

per: ______________________________________
(Printed Name of Officer)

_______________________________________
(Original Signature)

I / We have the authority to bind the Proponent.
TERMS OF REFERENCE

A. Overview

The City of Hamilton seeks Proposals that outline a development concept plan and financial bid for the Subject Lands. Through the evaluation of Proposals, the City intends to identify a Preferred Proponent that will be invited to enter into Negotiations with the City to conclude Contract Documents that will govern the purchase and sale, and the development, of the Subject Lands.

NOTE: Nothing in this RFP derogates from, interferes with, or fetters the exercise by the City, or its officers, employees, agents, representatives or elected and appointed officials, of all of their rights, or imposes any obligations on the City or its officers, employees, agents, representatives or elected and appointed officials (whether discretionary or mandatory), or imposes any obligations on the City in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including all planning rights and regulatory responsibilities particularly with respect to the Subject Lands.

B. Desired Outcomes

The City’s desired outcomes from the Project are as follows:

1. a vibrant, mixed-use community that enhances the area while respecting the existing neighbourhoods;
2. an animated waterfront that offers a comprehensive cultural, recreational and retail experience for residents and visitors alike;
3. enhanced physical and visual connections to the harbour and increased public access to the water’s edge;
4. a community that is planned, designed, and built to support a multi-modal transportation system that integrates with the rest of the City’s network;
5. a community that is inclusive of a diverse range of incomes, household configurations, and lifestyles; and
6. a community that stands as a model of excellence in the fields of design, sustainable living, accessibility, and environmental conservation.

C. Approach

The decision drivers that will inform the evaluation of all Proposals include:

1. consistency with established policies, vision, and Council directives;
2. creative and strategic approach to all aspects of the Development Plan and delivery model;
3. social, environmental and economic benefits for the City;
4. balance between innovation and ease of execution;
5. long-term commitment to the site and thoughtful approach to unanticipated changes (i.e., change management strategy);
6. cooperative / collaborative approach to relations with the City administration and the general public, including community and special interest groups;
7. overall financial value for the City; and
8. fair and equitable risk-reward sharing model with the City.

The following set of questions provides some guidance regarding the interpretation of submission requirements and the evaluation criteria as outlined in the Evaluation Process. Proponents are not required to directly answer each question in its Proposal, but may incorporate the key messages in their Proposals. For further clarity, responses to these questions will not be specifically scored; the evaluation criteria as detailed in section 3 of the Evaluation Process shall be the prevailing scoring framework.

<table>
<thead>
<tr>
<th>Question</th>
<th>Relevant Principles from Policy and Vision Frameworks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The City of Hamilton believes that inclusivity and variety of lifestyle choices for all socio-economic and demographic groups are important foundations for a healthy community. Please describe how your concept is aligned with these values.</td>
<td>Affordability, Neighbourhood</td>
</tr>
<tr>
<td>2. Many people have disabilities, and disability also increasingly affects people as they age. Please explain how your concept serves and will be prepared to accommodate a population that will increasingly require barrier-free living. In your response, please include examples of design and construction techniques that you would incorporate into your development, both indoors and outdoors, to meet this objective.</td>
<td>Accessibility, Design, Connections</td>
</tr>
<tr>
<td>3. Please describe how your proposal's approach to design, building, and marketing considers the unique cultural history of the West Harbour district.</td>
<td>Culture, Design</td>
</tr>
<tr>
<td>4. Please describe how your proposal will integrate with and promote the City’s vision for a balanced, multi-modal transportation network in the West Harbour precinct.</td>
<td>Transportation, Connections</td>
</tr>
<tr>
<td>5. Notwithstanding the designated public areas being developed, programmed and maintained by the City, please explain how your proposal will contribute to “place-making” by connecting with and enhancing the visual and recreational experience for both residents and visitors of the Pier 8 neighbourhood.</td>
<td>Connections, Design, Public Access, Culture, Waterfront</td>
</tr>
<tr>
<td>6. Being located on Lake Ontario and as a key stakeholder to the Environment,</td>
<td>Environment,</td>
</tr>
</tbody>
</table>
### Remedial Action Plan for Hamilton Harbour

The City envisions Pier 8 developments that demonstrate a high degree of responsibility towards the overall environmental health of the harbour. Please describe how your proposal will contribute to the promotion of a healthy harbour.

### 7. Parking and traffic

Parking and traffic are issues that affect developments of all sizes and scales. What considerations have been made in your proposal to address these issues? Can you suggest solutions that could further mitigate the impact of vehicular traffic and parking?

### 8. Commercial premises

Please describe your vision for the commercial premises and how it could benefit the following groups: a) the immediate local community; and b) visitors to the area.

### 9. Healthy community life

The City of Hamilton believes that healthy community life includes access to recreation, social services, public art, health and safety, public engagement, and cultural heritage. Please describe how your proposal will assist the City in delivering on these objectives.

### 10. Economic impact

The City of Hamilton welcomes investments that support our local businesses, promotes local job creation, and invests in the future of our employee base. Please explain how your proposal will make a positive economic impact on both the immediate community as well as the City as a whole.

### 11. Conservation

The City of Hamilton believes strongly in conserving our planet and improving it for future generations. Please provide examples of design, construction, and operational techniques that you would incorporate into your development to contribute to this positive environmental impact.

### 12. Neighbourhood change

It is recognized that the development of Pier 8 will represent a major change to the “look and feel” as well as the functioning of the West Harbour neighbourhood. Please explain how your proposal will respect, while enhancing, the character and functionality of the existing surrounding neighbourhoods.

### Project Background Information

Background information and materials that may inform a Proponent's Proposal may be found at [www.hamilton.ca/westharbour](http://www.hamilton.ca/westharbour). This includes the same background information materials that were available during the Request for Qualifications phase, including applicable policy documents, technical reports regarding the Subject Lands, and relevant City staff reports.
The City intends to continue using this platform to distribute additional background materials that may also be viewed by the general public. It is the responsibility of each Proponent to periodically check for updates at this location in order to ensure that all available materials have been received.

From time to time, the City may also wish to distribute Project-related materials that contain discretionary information not intended for general public consumption. Instead of posting such materials to www.hamilton.ca/westharbour the City will employ a platform that ensures equal access for all Proponents while maintaining the required level of discretion. Credentials to access these materials will be distributed in confidence by email to each Proponent Team’s identified Primary Contacts. If these materials contain confidential information, the City may require Proponents and their Team Members to execute and deliver Non-Disclosure Agreements prior to gaining access to the information.

E. Required Specifications

Each Proposal must meet the following specifications:

1) Affordability

Not less than 5% of the units in the Project must meet the “affordable home ownership” standard outlined in section 1 of the City’s Municipal Housing Facilities By-law No. 16-233 being “a sale price that is at least 10% below the median resale price” applied to the sale of condominium units within the City of Hamilton, as reported monthly by the Realtors Association of Hamilton-Burlington. A copy of the City’s Municipal Housing Facilities By-law can be found in the public electronic data room at:


2) Consistency with City Policies

All responses to the RFP must be consistent with applicable City-wide or site-specific planning legislation, policies, and Council decisions including, but not exclusive to the following:

- Urban Hamilton Official Plan
- West Harbour Secondary Plan (“Setting Sail”)
- Pier 7+8 Urban Design Guidelines
- Draft Plan of Subdivision Application 25T-201605 (approved by Council, under OMB appeal)
- Zoning By-law Application ZAC-16-034 (approved by Council, under OMB appeal)
- City-wide Comprehensive Development Guidelines and Financial Policies
- City-wide Site Plan Guidelines
- Other City-wide property development policies can be found at:

  https://www.hamilton.ca/develop-property/policies-guidelines

F. **Base Assumptions**

In addition to the Required Specifications outlined in Section E above, Proponents are instructed to make the following assumptions;

1) Delivery of Lands:

   Proponents are directed to assume that the City will deliver individual Development Blocks in the following condition:

   - With a registered title, in line with the approved Draft Plan of Subdivision (Application 25T-201605);
   - With new zoning by-law amendments in effect, in line with the approved zoning by-law amendment (Application ZAC-16-034);
   - With a Record of Site Condition registered for the Subject Lands and Certificates of Property Use for each Development Block issued by the Ministry of Environment and Climate Change (MOECC);
   - A fully serviced road network complete with service connections to each Development Block which will be set at pre-grade level. Additional site infrastructure shall include a municipal wastewater storage and pumping station and a “clean water pipe” system specifically installed for development site stormwater drainage.

   These conditions shall be reflected in the Development Agreement.

   Notwithstanding the above assumptions:

   - It is recognized that it may be practically advantageous to the City and/or the Successful Proponent to have the scope of site development finish be less than 100%; and
   - Assuming that Proposals may contemplate different phasing plans for the Subject Lands, the City is open to working with the Successful Proponent to develop a corresponding phased schedule for the subdivision servicing implementation plan.

   Where either or both of the above circumstances are mutually agreeable between the City and Preferred Proponent, the Development Agreement and/or Subdivision Agreement shall contain provisional language that clarifies the City’s and Successful Proponent’s obligations. However, for the purposes of preparing
2) Soil Management:

The City intends to deliver the Subject Lands with a registered Record of Site Condition and Certificate of Property Use issued by the MOECC. Copies of the detailed Phase 2 ESA Report and the Risk Assessment Report as submitted to the MOECC can be found in the Project’s electronic data room:


In the interim, the City will disclose to the Proponents and Preferred Proponent, all salient correspondence with the MOECC and any resulting modifications to the Risk Management Plan as they occur.

Given the extensive amount of data that has been made available for review, the City believes that Proponents have adequate information to value the Subject Lands on an “as is” basis. As such, Proponents shall assume that it will bear 100% of the soil remediation and/or replacement costs. Any proposed innovative techniques for managing contaminated soils may be evaluated and scored under the Urban Innovation criteria.

3) Due Diligence Investigations:

The City anticipates that Proponents may wish to conduct drilling activities in order to investigate the geotechnical condition of the soils beneath the Subject Lands over and above any investigative data results already shared by the City. Given that this is a very intrusive activity, the City proposes that it hire a single contractor to perform the drilling samples on behalf of all Proponents, at the cost of the City. The engaged drilling contractor shall produce not less than one (1) borehole per Development Block, the locations of which shall be at the absolute discretion of the City.

The City will invite Proponents and their consultants to:

- suggest the soil testing parameters it desires these additional samples fulfill; and
- be present on-site during the drilling.

Proponents shall be required to request and receive conditional written authority from the City prior to entering secured areas of the Subject Lands for any other due diligence activities.
4) Parking Strategy:

An analysis of both private and public parking needs throughout the waterfront area has revealed a likely shortfall of approximately 200 public stalls as the build-out of Piers 6, 7, and 8 progressively complete. To that end, the City would like to explore a partnered strategy with the Successful Proponent that satisfies both the City's and the private development's parking needs on lands that may include any part of the Pier 8 lands, as well as potentially other off-site City-owned lands. This strategy may involve a combination of cost-sharing, revenue-sharing, and easement arrangements with the City. The terms and conditions for pursuing a joint strategy shall be defined in the Development Agreement. However, for the purposes of preparing Proposals, Proponents are directed to assume that only the parking requirements in accordance with the applicable zoning by-law need to be considered.

5) The “Greenway”:

In line with the Pier 7+8 Urban Design Guidelines, the Draft Plan of Subdivision contemplates a public walkway referred to as the “Greenway” (Blocks 12 to 14 on the Draft Plan of Subdivision). The Greenway is envisioned to serve simultaneously as a public pedestrian corridor, open space, and a stormwater management feature. It is the City’s expectation that the Successful Proponent will design and build the Greenway on behalf of the City as a condition of Site Plan development approvals. Engineering drawings provided by the City at the time of Site Plan design will identify the outlet elevations as well as the location of the clean water pipe so that abutting Blocks shall be adequately designed to integrate and interface with the Greenway. For the purposes of preparing Proposals, Proponents are directed to assume that the Successful Proponent will be reimbursed in full for designing and constructing the Greenway, subject to prior approval by the City with respect to technical specifications and scale. Upon construction completion, the Greenway, will be owned and maintained by the City as a public right-of-way. Details regarding Greenway obligations and consents shall be included in the Development Agreement.

6) Noise Pollution Control:

As part of its approval of the Draft Plan of Subdivision, the City has designated Pier 8 as a Class 4 area under the Ministry of Environment and Climate Change’s NPC 300, Environmental Noise Guideline: Stationary and Transportation Sources. Proponents are directed to assume that mitigation and control measures must be implemented at reception (i.e., on the Subject Lands) rather than at source, generally through design, material selection, and construction techniques.
7) Development Charges and Dedications:

In preparing its Proposals, Proponents are directed to assume that development charges and parkland dedications, will apply to the Subject Lands in accordance with the terms and conditions of the Plan of Subdivision.

8) Development Incentive Programs:

The City typically offers financial incentive programs to help promote economic development activity and sustainable building and land development practices. Given that the Subject Lands are being purchased from the City at a price dictated by the Successful Proponent, these financial incentive programs shall not apply to the Subject Lands – any financial support from the City would be implicit within the Financial Proposal. In particular the following programs shall not be available to the Subject Lands:

- LEED Grant Program; and
- Environmental Remediation and Site Enhancement (ERASE) programs including the Study Grant, Redevelopment Grant, Education Tax Assistance, Development Charge Reduction, Remediation Loan Program, and the Municipal Acquisition and Partnership Program.

These conditions shall be reflected in the Development Agreement.

9) Minimum Green Building and Design Guidelines

- The City requires each Proponent to incorporate a variety of minimum green building and design elements into the development of their Development Plan and financial feasibility proforma. Appendix F provides a detailed list of these guideline requirements.
- These guidelines specify performance measures only. Implementation strategies and tactics are at the Proponents’ discretion, subject to any other applicable City regulations.
- Implementation of these design elements will be confirmed at Site Plan approval for each Block and will be a condition of releasing the requested permits.
- If a City-wide policy or design guidelines has established an implementation specification or performance metric that is more stringent than that of the Minimum Green Building and Design Requirements, then the City-wide guideline shall prevail.

The City reserves the right, in its absolute discretion, to change, delete, or add to, any of these assumptions by way of issuing a written Addendum to the RFP.
G. **Contract Documents**

Subject to Council approval of the Preferred Proponent and authorization to negotiate, the City will invite the Preferred Proponent to engage in Negotiations that attempt to conclude Contract Documents that will govern the transaction for the Subject Lands and delivery of the Project. The Contract Documents may include one or more, or a series, of the following:

(a) Development Agreement;
(b) Agreements of Purchase and Sale;
(c) Project Delivery Agreement;
(d) Subdivision Agreement; or
(e) any other agreement not contemplated in this RFP that may be mutually agreed between the City and the Successful Proponent.
APPENDIX A: DESCRIPTION OF SUBJECT LANDS

The Subject Lands shall be comprised of nine (9) individual Development Blocks which shall be created by the registration of the Draft Plan of Subdivision in accordance with Application 25T-201605. As of the release date of this RFP, the Draft Plan of Subdivision had not yet been registered. A copy of the Draft Plan of Subdivision can be found at:


For the purposes of preparing Proposals, Proponents are directed to assume that the designated Development Blocks outlined in yellow in Figure 1 below shall represent the approximate locations and areas of the Subject Lands. Any reference to Development Block numbers within the RFP, Addenda, and Bid Forms shall correspond with this Figure 1.
Figure 1: Simplified Location of Development Blocks
APPENDIX B: PROPOSENT AND RESERVE PROPOSENT TEAMS

(1) Only Proposals received from the following Proponents will be accepted by the City in response to this RFP:

List of Proponents

<table>
<thead>
<tr>
<th>Proponent Team Name</th>
<th>Core Team Members and Architectural Design Lead(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daniels</td>
<td>Core Team Members:</td>
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<tr>
<td></td>
<td>- The Daniels Corporation</td>
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<td></td>
<td>Architectural Design Lead:</td>
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<tr>
<td></td>
<td>- CORE Architects</td>
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<tr>
<td>GulfDream (Pier 8) Limited Partnership</td>
<td>Core Team Members:</td>
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<tr>
<td></td>
<td>- Great Gulf Enterprises,</td>
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<td>- Dream Asset Management Corp.</td>
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<td>Architectural Design Lead:</td>
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<td></td>
<td>- Hariri Pontarini Architects</td>
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<tr>
<td>Tridel</td>
<td>Core Team Members:</td>
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<td></td>
<td>- Tridel Builders Inc.</td>
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<td></td>
<td>Architectural Design Lead:</td>
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<td></td>
<td>- architectsAlliance</td>
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<tr>
<td>Urban Capital / Core Urban</td>
<td>Core Team Members:</td>
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<td></td>
<td>- Urban Capital Property Group</td>
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<td></td>
<td>- Core Urban Inc.</td>
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<td></td>
<td>- Milborne Real Estate Group</td>
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<td>Architectural Design Lead:</td>
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<td></td>
<td>- Saucier + Perrotte</td>
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<td></td>
<td>- RAW Design</td>
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<tr>
<td>Waterfront Shores Development Corporation</td>
<td>Core Team Members:</td>
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<td></td>
<td>- Cityzen Development Corp.</td>
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<td>- Fernbrook Homes Group</td>
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<td>- Greybrook Realty Partners Inc.</td>
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<td>- GFL Environmental Inc.</td>
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<td></td>
<td>Architectural Design Lead:</td>
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<tr>
<td></td>
<td>- KPMB Architects</td>
</tr>
</tbody>
</table>
List of Reserve Proponents

<table>
<thead>
<tr>
<th>Reserve Proponent Team Name</th>
<th>Core Team Members and Architectural Design Lead(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Harbour Development Limited Partnership</td>
<td>Core Team Members:</td>
</tr>
<tr>
<td></td>
<td>• Fram + Slokker</td>
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<td></td>
<td>• Homes by DeSantis</td>
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<td>• Marz Developments Inc.</td>
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<td>• Melrose Investments Inc.</td>
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<td>• Rankin Construction Inc.</td>
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<td></td>
<td>Architectural Design Leads:</td>
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<tr>
<td></td>
<td>• Giannone Petricone Associates Inc.</td>
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<tr>
<td></td>
<td>• Thier + Curran Architects Inc.</td>
</tr>
</tbody>
</table>

(2) This list may be amended by the City from time to time, in order to:

(a) more accurately reflect the intended corporate name of a Proponent or Reserve Proponent Team under which a Proposal will be submitted;
(b) remove a team that has withdrawn from, or has become ineligible to continue participating in, the RFP; or
(c) reflect a Material Change or Substitution.

(3) This list may not be amended to add any party that was not prequalified through RFQ C14-02-17.

(4) The Reserve Proponent’s eligibility to submit a Proposal shall be governed by the Reserve Proponent Protocol detailed in Appendix E of this RFP.

(5) Individual companies or entities listed under the “Core Team Members and Architectural Design Lead(s)” heading:

(a) may not unilaterally submit a Proposal; and
(b) may not submit a Proposal with any other parties other than with the Core Team Members and Architectural Design Lead(s) with whom it is listed within this Appendix B, subject to a Material Change or Substitution approved by the City.

Contravention of this paragraph (5) may, in the City’s absolute discretion, result in the disqualification of the associated Proponent Team(s) from this RFP.
APPENDIX C: DRAFT DEVELOPMENT AGREEMENT
CITY OF HAMILTON PIER 8
DEVELOPMENT AGREEMENT

BETWEEN

CITY OF HAMILTON
(the "City")

AND

Company Name
(the "Builder")
THIS AGREEMENT is effective as of the Commencement Date.

BETWEEN:

CITY OF HAMILTON (the "City")

- and -

COMPANY NAME (the "Builder")

Each a “Party” and collectively the “Parties”

WHEREAS:

A. The Builder has agreed to purchase from the City the lands described in the Request for Proposals attached as Schedule "A" (the "Site") to develop the Proposed Development and, as a condition of such acquisition, agreed to enter into this Agreement outlining the nature, timing, design, construction and function of the Proposed Development;

B. It is the intention of both the Builder and the City that this Agreement shall be registered on title to the Site, and that the covenants contained herein shall run with the title to the Site and each and every part thereof.

NOW THEREFORE, in consideration of the foregoing, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Builder and the City agree as follows:
ARTICLE I
INTERPRETATION

1.01 Definitions

The following terms and expressions used herein shall have the following meanings:

(a) "Actual Completion Date" refers to the date on which the Proposed Development reaches Completion which shall be no later than [INSERT NEGOTIATED DATE];

(b) "Affordable Housing" has the meaning outlined in the City of Hamilton’s Municipal Housing Facilities By-law No. 16-233, or its successor by-law, each as amended from time to time;

(c) "Agreement" means this Agreement, as amended from time to time and includes all schedules and attachments;

(d) "Agreement of Purchase and Sale" has the meaning outlined in section 1.05;

(e) "Applicable Law" means:

   (i) any statute or proclamation or any delegated or subordinate legislation including regulations and municipal bylaws;

   (ii) any lawful requirement of an Authority; and

   (iii) any applicable judgment of a relevant court of law, board, arbitrator or administrative agency of competent jurisdiction that is binding and enforceable in the Province of Ontario;

(f) "Applicable Planning Documents" shall include the City of Hamilton Official Plan, the Setting Sail Secondary Plan, Zoning By-law No. 17-095, the City’s Urban Design Guidelines and Draft Plan of Subdivision Waterfront Pier 8 and draft plan conditions (File 25T-201605) each as revised, supplemented or restated from time to time;

(g) "Appraisal" refers to each of the appraisals to be conducted in accordance by the Appraiser in accordance with this Agreement;

(h) "Appraiser" refers to the qualified appraiser appointed by the Parties pursuant to this Agreement;

(i) "Arbitrator" has the meaning ascribed thereto in section 9.02;

(j) "Authority" means any governmental or quasi-governmental authority, agency, body or department whether federal, provincial, regional, municipal or local having jurisdiction over the Proposed Development from time to time;

(k) "Block" refers to one of nine (9) individual subdivided land parcels to be created by Draft Plan of Subdivision Application 25T-201605 which together comprise the Site;

(l) "Builder" is the same as, or a successor to, the “Successful Proponent” as defined in the RFP;
(m) "Business Day" means any day, other than a Saturday, Sunday, statutory holiday in Ontario or a day on which the City of Hamilton’s main offices are closed;

(n) "Canada Green Building Council" means the Canada Green Building Council or any successor organization that is recognized as having assumed the role of the Canada Green Building Council in respect of LEED certification in Canada;

(o) "Certificate of Property Use" means a certificate of property use that may be issued by the Ministry of the Environment and Climate Change which may be registered on title to all or any part of the Site;

(p) "City" means the City of Hamilton;

(q) "Closing Date" means, for each Block, the actual date on which the legal title to that Block is transferred from the City to the Builder;

(r) “Commencement Date” is the date on which this Agreement has been executed by both Parties;

(s) "Completion" means the completion of the design, development, construction and commissioning of all material components of the Proposed Development, sufficient to permit occupancy of substantially all components;

(t) "Contaminant" has the same meaning as that contained in the Environmental Protection Act, R.S.O. 1990, c. E.19, including its associated regulations, as amended from time to time, and shall include the requirements of any and all guidelines and/or policies having the force of law issued by the Ontario Ministry of the Environment and Climate Change and/or the Ministry of Labour;

(u) "Development Schedule" means the schedule outlining all major activities, objectives, Milestone Event and associated dates, including the Milestone Dates agreed to by the Parties as revised, restated or amended with the City’s approval from time to time that is attached as Appendix “A” to the Proposal;

(v) "Development Team" means the engineering firms, architecture firms, consultants, contractors, developers and all other Persons identified in the Proposal as having a role in the execution of the Proposed Development;

(w) "Environmental Laws" includes, but is not limited to, all applicable federal and provincial statutes, municipal and local laws, common law, and deed restrictions, all statutes, by-laws, regulations, codes, licenses, permits, orders, directives, guidelines and decisions rendered by any Authority relating to the protection of the environment, natural resources, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Substance;

(x) "Event of Default" has the meaning ascribed thereto in Article X;

(y) “Fair Market Value” or “FMV” refers to the value appraised by the Appraiser of:
(i) each Block as of the date that the Builder’s Site Plan for that Block is granted conditional approval and assumes that all such conditions have been satisfied; and

(ii) any income producing unit or property for the purposes of calculating the City’s Value-Added Share;

(z) “Fair Market Value Share” means, for each Block, [X%] of the difference between the MPP and the FMV to be paid by the Builder to the City within thirty (30) days of the date of the Appraisal;

(aa) “Greenway” refers to the pedestrian corridor, stormwater management feature and public space on the Site to be designed by the Builder, approved by the City and then built by the Builder in accordance with the RFP;

(bb) “Gross Sales Revenues” refers to the cumulative gross revenues derived from the arm’s length sales by the Builder to the purchasers of all residential and commercial units as well as the associated amenities, real property, parking, storage etc. within a Block;

(cc) “Hazardous Substance” includes, but is not limited to, any hazardous or toxic chemical, waste, by-product, pollutant, contaminant, compound, product or substance, including without limitation, any Contaminant, asbestos, polychlorinated biphenyls, petroleum and its derivatives, by-products or other hydrocarbons and any other liquid, solid or gaseous material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which, is prohibited, controlled or regulated by any and is defined in or pursuant to any Environmental Law;

(dd) “HRCA” means the Hamilton Region Conservation Authority;

(ee) “LEED” means Leadership in Energy and Environmental Design Green Building Rating System administered by the Canada Green Building Council, as revised and reissued from time to time;

(ff) "Letter of Credit" has the meaning ascribed thereto in section 88.02;

(gg) “Level of Government” means any, or all of, the Government of Canada, the Province of Ontario, or the City of Hamilton, as the case may be, and Levels of Government means all of the foregoing governments;

(hh) “Major Market Disruption” means either:

(A) a decline in the volume of sales of new residential condominium units in the Greater Toronto and Hamilton Area of more than sixty percent (60%) over any six (6) month period as compared to the same six (6) month period in the preceding calendar year; or

(B) a forty percent (40%) decline in the annual sales volume of new residential
condominium units in the Great Toronto and Hamilton Area as against the average volume for the preceding rolling five (5) year period, and a reduction in the average index price of new residential condominium units in the Greater Toronto and Hamilton Area in four (4) of the last eight (8) calendar quarters, all as determined by the statistics and records maintained by the Realtors Association of Hamilton-Burlington, the Toronto Real Estate Board, the Oakville, Milton and District Real Estate Board, the Mississauga Real Estate Board, the Brampton Real Estate Board and the Durham Region Association of Realtors, or, if those real estate boards are not maintaining such records, as determined based on the statistics and records maintained by an alternative data provider selected by the City;

(ii) “Material Change” is any change in the Builder’s circumstances including, but not limited to, a change in its corporate structure or profile, its financial standing or status or the departure of a team member that could reasonably affect its: financial strength, stated financing track record, or current financing capacity; ability to meet insurance or security requirements; Proposal or vision for the Proposed Development; or development or design expertise;

(jj) "Milestone Events" refer to the events listed in sections 4.02(a)(iv);

(kk) "Milestone Dates" mean the dates for achievement of each Milestone Event listed in section 4.02;

(ll) "Minimum Green Building Requirements" refers to the minimum standards established by the City in the RFP;

(mm) “Minimum Purchase Price(s)” or “MPP” refers to the price that the Builder will pay to the City for each Block at the specified Closing Date for that Block;

(nn) "MOECC” means the Ministry of the Environment and Climate Change of the Province of Ontario and any successor Authority with comparable jurisdiction;

(oo) "Notice" has the meaning ascribed thereto in section 12.01;

(pp) “Parking Plan” refers to the parking plan agreed to between the Parties based on those elements of the Proposal that speak to parking as outlined in Appendix “A” to Schedule “B”;

(qq) "Person" includes a natural person, corporation, partnership, government entity or joint venture;

(rr) "Personal Information" is as defined in MFIPPA;

(ss) "Plan of Subdivision" means the registered plan of subdivision arising out of the Draft Plan of Subdivision Waterfront Pier 8 and draft plan conditions (File 25T201605) a true copy of which is attached as Schedule “D”;

(tt) "Post-Closing Out-of-Pocket Costs" means the costs properly included within the definition of "Pre-Closing Out-of-Pocket Costs", whether incurred before or after the Closing Date, plus the reasonable arm's length third party costs (evidenced by receipts
and similar arm's length documentation) incurred by the Builder in respect of the Proposed Development on and after the Closing Date, including the purchase price paid by the Builder for the Block(s) and any land transfer tax paid by the Builder on the acquisition of any Block;

(uu) "Pre-Closing Out-of-Pocket Costs" means, in addition to a completed Upfront Payment, the reasonable arm's length third party costs (evidenced by receipts and similar arm's length documentation) incurred by the Builder in respect of the Proposed Development in planning, designing and carrying out pre-construction work for the Proposed Development; marketing (including sales office construction and furnishing), publicity and sales costs, including commissions paid or liability for which has been incurred by the Builder in selling proposed residential condominium units or freehold commercial parcels; consultants' fees and disbursements; legal fees and disbursements for legal advice in connection with pre-construction activities; permits; commitment fees and related expenses for construction financing; and the reasonable costs of discontinuing the Proposed Development, terminating unit sales agreements and other contracts, all subject to the Builder taking all reasonable steps to mitigate its costs and net of any realizable proceeds. Pre-Closing Out-of-Pocket Costs shall not include costs of financing pre-construction activities, travel costs of the Builder and its affiliates, the internal expenses of the Builder or its affiliates, or costs of terminating agreements entered into on other than standard commercial terms for comparable projects;

(vv) "Privacy Laws" means Ontario’s Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA"), Ontario’s Personal Health Information and Protection of Privacy Act ("PHIPA") and the federal Personal Information Protection and Electronic Documents Act ("PIPEDA"), each as amended or supplemented from time to time, and any applicable legislation now in force or that may in the future come into force governing the treatment of confidential information in Ontario applicable to the City or the Builder or to the activities contemplated under this Agreement;

(xx) "Proposal" means the proposal submitted by the Builder in response to the RFP (a true copy of which is attached as Schedule “B”);

(yy) "Proposed Development" means the description and features of the proposed development submitted by the Builder in its Proposal attached hereto as Schedule "B", as amended, revised, restated and supplemented by the mutual agreement of the Parties;

(ww) "Public Realm Improvements" refers to the creation of Promenade Park as well as improvements to road allowances, sewer, stormwater, water and other infrastructure implemented by the City on the Site;

(xx) "Registry Date" means the date on which the Plan of Subdivision is registered in the local Land Registry Office;

(yy) "RFP" means the Request for Proposals for Contract Number C11-66-17 issued by the City on or about December 11, 2017 (a true copy of which is attached as Schedule “A”);

(yy) "Risk Assessment Report" means the City’s risk assessment report including the risk management plan as revised and approved by the MOECC from time to time a true copy of which is attached as Schedule “E”;
"RSC" means a record of site conditions filed in the environmental site registry in respect of the Site;

"Site" means the lands described in the RFP (Schedule “A”) as the “Subject Lands” which includes the approximately 5.24 hectares of developable land that is created by the subdivision of Pier 8 as outlined in Draft Plan of Subdivision Application 25T-201605;

“Target Closing Date” refers to the closing date for each Block proposed by the Builder in its Proposal;

"Unavoidable Delay” means any bona fide delay beyond the reasonable control of either Party, provided that Unavoidable Delay will not include any delay resulting from unseasonable weather, construction problems (other than as a result of an industry-wide labour disruption or inability to obtain materials for a reason other than the cost thereof), material costs or availability, subsurface conditions, marketing failure, financing issues, delays caused by any Event of Default, Major Market Disruptions or delays caused by any impecuniosity of the Builder;

“Upfront Payment” means the amount referred to as such in the Proposal that is payable on the Commencement Date, but will be held in escrow until the Registry Date, and once released from escrow, will be non-refundable to the Builder; and

“Value-Added Share” or “VAS” refers to the City’s share of the increase in property value to be paid by the Builder to the City in accordance with this Agreement.

1.02 Term of Agreement

This Agreement is effective as of the Commencement Date, and subject to section 13.16, will expire as of the Actual Completion Date.

1.03 Schedules

This Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Agreement:

Schedule "A" The RFP
Schedule "B" Builder’s Proposal
Schedule “C” Agreement of Purchase and Sale Template
Schedule “D” Plan of Subdivision
Schedule “E” Risk Assessment Report Approved by MOECC

1.04 Resolving Inconsistencies
In the event of a conflict or inconsistency between, or an omission or ambiguity with respect to, any term(s), condition(s) or provision(s) contained in any of the following documents, the term(s), condition(s) or provision(s) contained in the following documents shall apply and prevail in the following successive order of priority to the extent of such conflict, inconsistency, omission or ambiguity or incongruity:

(h) the text in the main body of this Agreement;
(i) any executed Agreement of Purchase and Sale;
(j) the approved Site Plan for each Block;
(k) the Plan of Subdivision;
(l) the Risk Assessment Report;
(m) the RFP including any Addenda or appendices; and
(n) the Builder’s Proposal including the Development Schedule and the Parking Plan, as revised and accepted by the City.

1.05 Agreements of Purchase and Sale

This Agreement is entered into conjunction with the agreements of purchase and sale between the City and the Builder for each Block including the minimum conditions attached as Schedule “C” (each an "Agreement of Purchase and Sale"). Each Party acknowledges that each Agreement of Purchase and Sale is subject to conditions for the benefit of each of the City and the Builder and that, if any one of those conditions is not satisfied or if one of the Parties to an Agreement of Purchase and Sale defaults, the Agreement of Purchase and Sale may be terminated before the relevant Block has been conveyed by the City to the Builder. If an Agreement of Purchase and Sale is terminated for any reason before the relevant Block has been conveyed by the City to the Builder, this Agreement may, at the option of the City, be terminated subject only to the survival of those provisions listed in section 13.16 as surviving termination.

ARTICLE II
REPRESENTATIONS

2.01 Representations of the City

The City represents and warrants to the Builder that as of the date of this Agreement:

(a) the City is municipal corporation incorporated and validly existing under the laws of the Province of Ontario and has all the requisite corporate power and authority to carry on its business as it is currently being conducted, and to execute, deliver and perform this Agreement, and to enter into and perform all other agreements, instruments, undertakings and documents as are required by this Agreement;
(b) no steps or proceedings have been taken or are pending to supersede or amend its corporate power and authority in a manner that would impair or limit its ability to perform its obligations under this Agreement;

(c) this Agreement has been duly authorized, executed, and delivered by the City and constitutes a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms, subject only to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

(ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;

(d) the execution, delivery and performance by the City of this Agreement does not and will not violate or conflict with, or constitute a default under:

(i) any Applicable Law; or

(ii) any covenant, contract or agreement to which it is a party or by which it or any of its properties or assets is bound or affected; and

(e) there are no actions, suits, proceedings, or (to the best of the City's knowledge) investigations pending or threatened against the City at law or in equity before any Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of the City or in any impairment of its ability to perform its obligations under this Agreement and the City has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Authority or arbitral body that could result in any such materially adverse effect or impairment.

2.02 Representations of the Builder

The Builder represents and warrants to the City that as of the date of this Agreement:

(a) the Builder is a corporation incorporated and validly existing under the laws of the Province of Ontario and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement and to perform its obligations hereunder;

(b) the Builder has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;
(c) no steps or proceedings have been taken or are pending to supersede or amend its constating documents, letters patent or by-laws in a manner that would impair or limit its ability to perform its obligations under this Agreement;

(d) this Agreement has been duly authorized, executed, and delivered by the Builder and constitutes a legal, valid, and binding obligation of the Builder, enforceable against the Builder in accordance with its terms, subject only to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

(ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;

(e) the execution, delivery, and performance by the Builder of this Agreement does not and will not violate or conflict with, or constitute a default under:

(i) its constating or organizational documents;

(ii) any Applicable Law; or

(iii) any covenant, contract or agreement to which it is a party or by which it or any of its properties or assets is bound or affected;

(f) there are no actions, suits, proceedings, or (to the best of the Builder's knowledge) investigations pending or threatened against the Builder at law or in equity before any Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of the Builder or in any impairment of its ability to perform its obligations under this Agreement, and the Builder has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Authority or arbitral body that could result in any such materially adverse effect or impairment; and

(g) the Builder is able to meet, and in the ordinary course of its business does meet, its obligations as they generally become due and payable.

ARTICLE III
DEVELOPMENT OBLIGATIONS OF THE CITY

3.01 Access to Blocks

The City hereby commits to reasonably accommodating the construction activities of the Builder and will grant the Builder unfettered access to each Block after the Closing Date for each Block to construct the Proposed Development.

3.02 Easements and Construction Licences
The City shall, at the reasonable request of the Builder, grant the Builder, its employees, contractors, agents and representatives or others acting through any of them, any required temporary permissions, easements or licences, for a nominal fee if appropriate, to facilitate development and construction activities, including, without limitation, access, phasing, storage, staging, pinning and crane swings. The Builder shall, acting reasonably, identify the extent and duration of the permission, easement or licence required and a reference plan shall not be required for any such permission, easement or licence which is intended to expire no later than the Actual Completion Date.

3.03 Environmental

The City shall, by the Closing Date:

(a) complete all investigations and other work necessary to finalize a Risk Assessment Report for the Site, shall file the Risk Assessment Report with the MOECC and obtain the MOECC's acceptance of the Risk Assessment Report;

(b) complete and register, or cause to be registered, a Certificate of Property Use on title to the Site; and

(c) settle a RSC with the MOECC and file the RSC, or cause the RSC to be filed, in the environmental site registry.

3.04 Affordable Housing

The City shall ensure that Authority requirements for the provision of Affordable Housing associated with the Proposed Development are satisfied.

3.05 Servicing

(a) The City shall provide or cause to be provided to each Block sufficient servicing capacity consistent with Zoning By-law 17-095 approved by City Council on May 24, 2017 comprised of access to a dedicated public street, water, storm sewers and sanitary sewers, all provided to the perimeter of each Block by the date of the first occupancy of any residential unit in that Block (or such subsequent date as agreed to by the Parties). The City shall provide the Builder with the locations of all services.

(b) All service connections will be in locations satisfactory to the City and the Builder.

(c) The City will provide locations of all service connections by the date of the first occupancy of any residential unit in that Block.

(d) The Builder shall immediately provide written acknowledgement to the City once the City’s obligations outlined in sections 3.03 (a), (b) and (c) have been satisfied.
3.06 Public Realm Improvements

(a) The City shall use reasonable commercial efforts to have all Public Realm Improvements at or adjacent to each Block completed prior to the first occupancy of any residential unit in that Block.

(b) The City shall provide or cause to be provided the detailed design for the Public Realm Improvements for inclusion in the Builder’s site plan application and detailed design, procurement and construction of Public Realm Improvements on abutting roads and public lands as required.

(c) The City shall protect any improvement on the Site that is constructed prior to the completion of the Public Realm Improvements from any damage by the City or its contractors during construction of the Public Realm Improvements and shall carry or require its contractors to carry insurance against any claim arising out of damage to the improvements on the Site.

3.07 Extensions of Time to Complete Obligations

(a) If the City elects to extend the time for satisfaction of one or more of its obligations under this Agreement or if the City agrees to the Builder’s request to extend the time for satisfaction of one or more of the Builder’s obligations under this Agreement then each affected Milestone Date shall be extended by an appropriate and reasonable period of time.

(b) If the Agreement of Purchase and Sale is terminated in respect of a Block as a result of the City being unable to deliver title to the Block, the City shall pay to the Builder the Builder’s Pre-Closing Out-of-Pocket Costs in respect of that Block.

ARTICLE IV
DEVELOPMENT OBLIGATIONS OF THE BUILDER

4.01 Control and Security of Project

(a) The Builder hereby commits to reasonably accommodating the construction activities of the City.

(b) The Builder shall take all reasonable steps at its cost to ensure the safety and security of all Blocks under its control at all times.

(c) In particular, the Builder shall assume responsibility for all activities occurring on the Blocks under its control and shall ensure that its employees, contractors, sub-contractors, agents and representatives comply with all Applicable Laws including, in particular, Ontario’s Occupational Health and Safety Act and Workplace Safety and Insurance Act, each as amended from time to time.
4.02 Milestone Events and Milestone Dates

(a) The Builder shall achieve each of the following Milestone Events by the applicable Milestone Date:

(i) pay the Upfront Payment in full to the City on or before the Commencement Date;

(ii) remove any objections to releasing the Upfront Payment from escrow on or before the Registry Date;

(iii) for each Block, pay the City the Minimum Purchase Price on or before the Closing Date;

(iv) for each Block, submit a complete application for site plan approval (as required by the Planning Act (Ontario)) to the City within one hundred and eighty (180) days of the Closing Date;

(v) for each Block, pay the City its Fair Market Value Share within thirty (30) days of the Builder’s receipt of the Appraisal for that Block;

(vi) for each Block, submit a complete application for building permit (as required by the Building Code Act (Ontario)) for the entire Block within one (1) year of receiving conditional site plan approval;

(vii) for each Block, achieve occupancy of the first units within eighteen (18) months of receipt of the building permit;

(viii) for each Block, achieve occupancy of the last units within thirty (30) months of receipt of the building permit;

(ix) for each Block, the Builder shall pay to the City the City’s Value-Added Share within thirty (30) days of the date of calculation in accordance with section 10.14; and

(x) complete the design, planning, development, marketing, construction and sale to end users of the Proposed Development by the Actual Completion Date which shall be no later than [INSERT NEGOTIATED DATE].

(b) If a Major Market Disruption occurs the Builder may request the City's consent to delay the Closing Date. If the City consents, each of the Milestone Dates and the Actual Completion Date may be deferred by a time period stipulated by the City acting reasonably in the circumstances.

4.03 The Development Schedule

Each of the Milestone Events and Milestone Dates shall be listed in the Development Schedule and incorporated into this Agreement. If necessary, the Development Schedule may be amended from time to time to reflect that actual dates that comprise the Milestone Dates as the Proposed Development evolves.
4.04 The Development Team

The Builder undertakes that each member of the Development Team shall be engaged in the role contemplated in the Proposal and the Builder shall not make any change in the roles or responsibilities of a Development Team member or remove or replace a Development Team member without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In addition, the Builder shall not engage, or use the services of, any “Ineligible Party” as defined in the RFP, without the City’s prior written consent.

4.05 Mandatory Green Building Requirements

(a) The Builder shall adhere to the Mandatory Green Building Requirements outlined in the RFP. The Builder shall ensure that each building in the Proposed Development achieves a minimum of LEED [Insert Agreed Level] certification. The Builder shall retain at its own expense the services of an experienced LEED design team and shall utilize an integrated design process as described in the Mandatory Green Building Requirements. Prior to commencement of construction of any improvement on the Site and again prior to requesting the release of any amount of the Letter of Credit pursuant to section 8.02(c), the Builder shall provide to the City a report from the Builder's LEED advisor outlining in detail the LEED points to be achieved by the proposed improvement, the anticipated LEED certification level to be achieved and the status of progress on each of the requirements of the Mandatory Green Building Requirements. The Builder shall ensure that all necessary monitoring is included to demonstrate a minimum of LEED [Insert Agreed Level] certification and compliance with the Mandatory Green Building Requirements. The Builder shall apply for, pursue, and obtain a minimum of, LEED [Insert Agreed Level] certification for the Proposed Development at its own expense as soon as possible and provide the City with all information requested from time to time regarding the status of the certification process. The Builder shall provide the City with evidence of registration of the Proposed Development with the Canada Green Building Council prior to commencement of construction and evidence of at least LEED [Insert Agreed Level] certification of the Proposed Development within twenty-four (24) months after initial occupancy for such building.

(b) The Builder shall ensure that an obligation for the continued maintenance and operation of features that are required to establish a minimum of LEED [Insert Agreed Level] certification or compliance with Mandatory Green Building Requirements is assumed by any condominium corporation created on the Site or by the Builder's successor in title (other than purchasers of residential condominium units) and shall provide to the City an assumption agreement from any condominium corporation or transferee in form and content satisfactory to the City.

(c) The Builder shall ensure that each residential unit to be created in the Proposed Development has separate check metering of hydro, water, heat, cooling and any other utility so as to ensure individual unit owners and occupants are aware of energy consumption as required by the Mandatory Green Building Requirements.

4.06 Public Realm Improvements

The Builder shall protect any Public Realm Improvements that are constructed on the Site from any damage by the Builder or its contractors during the Builder’s construction on the Site and
shall carry or require its contractors to carry sufficient insurance satisfactory to the City against any claim arising out of damage to the Public Realm Improvements.

4.07 Design of the Proposed Development

The Builder shall be responsible for developing the detailed design and ensuring that the design, construction and occupation of the Proposed Development, including the Greenway, complies with all Applicable Law and the requirements of the Applicable Planning Documents.

4.08 Environmental Risk Management

(a) The Builder shall comply with all provisions of the Risk Assessment Report that apply to the Builder's use and occupation of the Site, including any provisions regarding maintenance or monitoring obligations on the Site. The Builder shall ensure that any continuing obligations under the Risk Assessment Report are assumed by any successor in title or this Agreement. The Builder shall ensure that any condominium corporation created on the Site assumes all such obligations.

(b) The Builder shall plan and construct the Proposed Development in compliance with the Risk Assessment Report and the RSC obtained by or on behalf of the City and implement any conditions in the Certificate of Property Use issued by MOECC.

(c) Notwithstanding any other provision in this Agreement, the Builder shall design and construct the Proposed Development without contribution from, or liability of, the City or any other person in respect of the environmental condition of the Site. The environmental condition of the Site is the Builder's risk solely and the Builder shall obtain the environmental risk insurance outlined below.

(d) The Builder shall ensure that any excess fill from the Site is dealt with first on-site, if feasible. If on-site use of excess soil is not feasible then, subject to the City's approval, excess fill may, in the City’s absolute discretion, be used on other lands under the control of the City.

4.09 Environmental Liability

The Builder shall comply with all environmental laws and regulations affecting this Site and Proposed Development and its access to, occupancy and use of the Site and will defend, indemnify and save harmless the City, the City’s affiliates, their respective councillors, directors, officers, employees, volunteers, shareholders, agents, contractors, successors, representatives, insurers and assigns (each an “Indemnified Party” and collectively, the “Indemnified Parties”) against and from any and all claims, demands, damages, costs, expenses, actions and causes of action whatsoever suffered or incurred by the Indemnified Parties resulting from, in connection with or arising in any manner whatsoever out of the failure by the Builder (and/or those for whom the Builder is in law responsible) to fully comply with all such environmental laws and regulations and/or resulting from, in connection with or arising in any manner out of any hazardous substance, (including, without limitation, any contaminants, pollutants, toxic substances and wastes as defined in any applicable laws, regulations, and orders) being released into the environment or deposited, discharged, placed or disposed of in, on or about the Site by the Builder and those for whom the Builder is in law responsible. The obligations of the Builder to indemnify the Indemnified Parties will survive the expiration or termination of this Agreement and will remain in full force and effect for the benefit of the Indemnified Parties.
4.10 Hazardous Substances

The Builder shall take all reasonable and necessary measures to prevent a leak or emission of a Hazardous Substance at the Site. If the Builder encounters any Hazardous Substance at the Site or has reasonable grounds to believe that Hazardous Substances are present at the Site, the Builder shall take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness, or death and that no part of the Site is injured or destroyed as a result of exposure to or the presence of the substances or materials, and immediately report the circumstances to the City in writing.

4.11 Environmental Indemnity

(a) The Builder shall defend, protect, indemnify and hold harmless the Indemnified Parties from and against, and shall reimburse the Indemnified Parties for, any and all actual out-of-pocket costs (including, without limitation, legal fees, expenses and court costs), expenses or losses arising from any claim, liability, damage, injunctive relief, injury to person, Site or natural resources, fine, penalty, action, and cause of action (collectively, “Costs and Liabilities”), incurred by or asserted against any Indemnified Party and arising directly or indirectly, in whole or in part, out of the release, discharge, deposit or presence, or alleged or suspected release, discharge, deposit or presence of any Hazardous Materials at, on, within, under, about or from the Site, or in or adjacent to any part of the Site, or in the soil, groundwater or soil vapor on or under the Site, or elsewhere in connection with the transportation of Hazardous Materials to or from the Site in violation of any laws applicable to Hazardous Materials, whether or not known to the Builder or the Indemnified Parties, whether foreseeable or unforeseeable, regardless of the source of such release, discharge, deposit or presence. Without limiting the generality of the foregoing indemnity, such Costs and Liabilities shall include, without limitation, all actual out-of-pocket costs incurred by Indemnified Parties in connection with: (i) determining whether the Site is in compliance or the amount of money required to remediate any environmental contamination, and causing the Site to be or become in compliance, with all laws applicable to Hazardous Materials; (ii) any removal or remediation of any kind and disposal of any Hazardous Materials present at, on, under or within the Site or released from the Site to the extent required by any laws applicable to Hazardous Materials in effect at the time of such removal, remediation or disposal; and (iii) repair of any damage to the Site or any other Site caused by any removal, remediation or disposal.

(b) Upon demand by any Indemnified Party, the Builder shall defend any investigation, action or proceeding in connection with any claim or liability, or alleged claim or liability, that would, if determined adversely to such Indemnified Party, be covered by the foregoing indemnification provisions, such defense to be at the Builder’s sole cost and expense and by counsel reasonably approved by such Indemnified Party, which counsel may, without limiting the rights of an Indemnified Party, also represent the Builder in such investigation, action or proceeding. If an Indemnified Party determines reasonably and in good faith that its defense by the Builder is being conducted in a manner which is prejudicial to its interests, such Indemnified Party may elect to conduct its own defense through counsel of its own choosing and at the expense of the Builder.
4.12 HRCA Development Permit

The Builder shall apply for and obtain all necessary development permits from the HRCA under Ontario Regulation 166/06, as amended or restated from time to time, prior to obtaining any municipal permits (including excavation, shoring or building permits). The City shall use reasonable commercial efforts to provide advice and assistance to the Builder in connection with these permit applications. The Builder acknowledges that any development permits issued by the HRCA may be conditional until the development is complete and functional to the satisfaction of the HRCA.

4.13 Development Charges, Fees and Permits

(a) The Builder shall pay all development charges, application fees, permit fees and other lawful levies payable to any Authority in connection with the development, planning, construction and occupancy of the Proposed Development.

(b) If any development charges are pre-paid by the City, the Builder shall reimburse the City for the amounts so paid on the issue of a building permit for the above grade portion of the Proposed Development. If development charge credits are made available to the Builder as a result of infrastructure provided by the City, the Builder shall pay the City the full amount of such credits as and when received by the Builder.

4.14 Plan of Subdivision

The Builder shall perform all of the obligations outlined in the Plan of Subdivision that are applicable to the Site other than: (i) those obligations that have been completed by the City prior to the execution of this Agreement; (ii) those obligations that must be completed by the City in order to satisfy conditions set out in an Agreement of Purchase and Sale, including, without limitation, the requirement for a Risk Assessment Report; and (iii) those obligations specifically undertaken by the City under this Agreement. The Builder shall perform all remaining obligations under the Plan of Subdivision.

4.15 Zoning

(a) The Builder acknowledges that the requirements of the City as described in the Applicable Planning Documents may be more restrictive than the relevant zoning bylaw and may limit development capacity more than the relevant zoning bylaws. Notwithstanding the allowable development height or other requirements of the zoning bylaw, the requirements of the Applicable Planning Documents may constrain the Builder such that the Builder may not be entitled to realize the maximum density or other aspect of the Proposed Development to the extent permitted by the zoning bylaw. The Builder shall not be entitled to claim any compensation from the City or abatement in the amounts paid to the City under this Agreement in respect of any density or development potential that the Builder is unable to realize as a result of the constraints imposed under this Agreement.

(b) The Builder shall not seek any change to the zoning of any part of the Site or to the conditions contained in the Plan of Subdivision. The Builder shall not submit any application for minor variance from the zoning or request any minor waiver or amendment of the Plan of Subdivision without the prior written approval of the City, acting reasonably. The City may require the Builder to host a public meeting or make
other reasonable efforts to consult with the local community regarding any variance application as a condition of the City's approval.

4.16 Residential Units and Marketing

(a) The Builder shall provide the City with floor plans, suite mix and areas for all proposed units.

(b) The Builder shall present its marketing plan to the City for information before commencing marketing.

4.17 Servicing Connections

The Builder shall be responsible for the construction of connections to the servicing provided by the City to each Block.

4.18 Builder Performance Standards

Without limiting any other provision of this Agreement, the Builder shall perform its duties and obligations under this Agreement with a standard of care, quality, diligence, and professionalism that is commensurate and consistent with best practices of the urban real estate development industry with respect to services and projects such as the Proposed Development. The Builder shall have the experience, professional qualifications, and the expertise that is necessary to fully perform its obligations under this Agreement. All information that is provided or disclosed by the Builder to the City pursuant to, or in any connection with, this Agreement shall be accurate, complete and current in all material respects, and the Builder accepts, acknowledges and confirms the City's reliance on same.

4.19 Compliance with Applicable Laws

The Builder agrees that it shall fully comply in all material respects with all Applicable Laws concerning this Agreement, including the Builder's performance of its obligations herein.

4.20 Compliance with the City’s Policies and Procedures

The Builder shall comply with or cause to be complied with all applicable policies and procedures that may from time to time be established by the City including, but not limited to, any reasonable conflict of interest, sexual harassment, security, health and safety policies that have been adopted by the City. The Builder will collect, use, store, deliver, transfer, transmit, disclose, dispose of and otherwise handle Personal Information in compliance with the Privacy Laws and the City’s then current policies relating to the collection, use, storage, disclosure, access to, disposal of and other handling of Personal Information.

4.21 Construction Hoarding

Up to fifty percent (50%) of the Site hoarding on each side of the Site during construction may be used by the City, in its discretion, for display of City waterfront programs. The Builder shall not use construction hoarding for any display or advertising other than The City or Builder display or advertising. The Builder may use up to fifty percent (50%) of the construction hoarding on each side of the Site for display or advertising for its own purposes. Each of the City and the Builder shall provide the other with prior notice of any displays and an opportunity to comment on each
proposed display. The City may use display space to promote other features in the City of Hamilton, including other waterfront projects, but shall not identify the Builder or Builders of any potentially competitive developments.

4.22 Fair Wage Policy

The Builder shall adopt and comply with the City of Hamilton’s Fair Wage Policy and Fair Wage Schedule each as amended from time to time.

4.23 Affordable Housing

The Builder shall ensure that, on the Actual Completion Date, no less than 5 percent (5%) of the residential units in the Proposed Development meet the definition of Affordable Housing.

ARTICLE V
BROADBAND

5.01 Broadband Service

The City may, at its option, elect to provide broadband capacity to the Proposed Development. The City shall advise the Builder whether it will provide broadband capacity by the date of the first occupancy of any residential unit in the first Block to be developed. If the City so elects the Builder shall not enter into any agreement to permit any broadband capacity supplier to have exclusive rights (including exclusive marketing rights) in respect of broadband in the Proposed Development.

ARTICLE VI
REVIEW AND APPROVAL PROCESS

6.01 Consent Required

The Builder shall obtain the prior written consent of the City for:

(a) any Material Change to the Proposed Development and the Development Schedule;

(b) all material submissions to the City or any other Authority in connection with the Proposed Development;

(c) all those portions of any disclosure documents prepared for distribution to buyers of proposed residential units that demonstrate compliance by the Builder with the terms of this Agreement and the draft condominium plan for any condominium plan proposed for the Site and assumption agreements for proposed condominium corporations to assume obligations that the Builder is required to have assumed hereunder, including, without limitation, obligations for the maintenance and operation of sustainable development features incorporated into the Proposed Development;

(d) an application for a minor variance from the zoning; and

(e) any other matters specifically identified as requiring the City’s consent or approval hereunder.
Any consent required from the City pursuant to this section 6.01 shall not be unreasonably withheld or delayed.

6.02 Consent or Approval Process

Whenever the prior written or other consent or approval from the City is required or contemplated hereunder, the Builder shall follow the following process:

(a) the Builder shall provide the City with a schedule of the consents and approvals that the Builder anticipates requiring from the City over the next six (6) months, based on the then current status of the Proposed Development;

(b) the Builder shall submit to the City all documentation, plans, drawings and other materials reasonably necessary for the City to consider each consent or approval not less than ten (10) Business Days prior to the date for which the Builder has scheduled the consent or approval;

(c) the City shall review the materials submitted and confirm that the materials are adequate or request additional materials or a meeting to review materials and additional material required within ten (10) Business Days after receipt. The City shall review the materials submitted and any additional materials submitted at the City's request and provide the Builder with its decision on the requested consent or approval within ten (10) Business Days after receipt of the last of such materials. If the City fails to provide its decision within such ten (10) Business Day period the Builder may give written notice of such failure to the City and if such failure continues for a further period of five (5) Business Days, the City shall be deemed to have given its consent or approval at the expiration of such five (5) Business Day period; and

(d) if The City withholds its consent or approval, it shall provide its reasons in writing and the Builder may re-submit materials to address any deficiencies.

If the City withholds its consent and the Builder disputes the City's reasons, the Builder may refer the issue for resolution pursuant to Article IX. Consent or approval by the City does not relieve the Builder from its obligation to comply with the terms of this Agreement or the requirements of any other Authority having jurisdiction.

6.03 Consultation, Reports and Assistance

The Builder shall consult with the City throughout the detailed design development and site planning process and shall consult with the City when requested by the City. The Builder shall also provide to the City contemporaneous copies of all regulatory applications and any material revisions thereto.
ARTICLE VII
COVENANTS OF THE BUILDER

7.01 The City’s Access

The Builder shall allow the City and its authorized employees, contractors, agents and representatives access to the Site from time to time as may be reasonably required by the City to confirm the Builder's compliance with the terms of this Agreement. All such access shall be subject to the Builder's safety and security policies and at the sole risk of the City or the contractor, agent or representative exercising such right.

7.02 Insurance

(a) While the City reserves the right to change the minimum insurance requirements at any time, on or before the Effective Date of this Agreement, the Builder shall provide to the City written confirmation satisfactory to the City of the following minimum insurance coverages:

(i) Commercial General Liability in an amount of not less than $5,000,000 (endorsed to include the City of Hamilton as additional insured);

(ii) Standard Form Automobile Liability Insurance of not less than $2,000,000 per occurrence;

(iii) Non-Owned Automobile Liability Insurance having an inclusive limit of not less than $2,000,000 per occurrence;

(iv) Property Installation Floater All Risks Insurance;

(v) Motor Truck Cargo or Transportation Insurance;

(vi) Contractors Pollution Liability Insurance in an amount of not less than $2,000,000 per claim or per occurrence (endorsed to include the City of Hamilton as additional insured);

(vii) Property Insurance with respect to loss or damage of its own property, including the Site, and property in its care, custody and control used in connection with the Proposed Development; and

(viii) Errors & Omissions Liability or Professional Liability in an amount of not less than $2,000,000.

(b) Notwithstanding section 7.02(a), the Builder shall secure and maintain commercial general liability insurance providing for no less than a single combined limit of $10,000,000 for bodily injury, death, and property damage. The City and any other person designated by the City shall be added as an additional insured to such insurance policy. The Builder shall be responsible for the deductible amount.

(c) The Builder shall insure all improvements and developments from time to time located on the Site in an amount not less than the amount carried by prudent owners of comparable property in the City of Hamilton.
(d) All policies of insurance shall:

(i) be issued by an insurance company licensed to conduct business in the Province of Ontario;

(ii) constitute primary coverage and not merely coverage in excess of, or co-coverage with, any insurance otherwise available to the City;

(iii) contain cross-liability and severability of interest provisions; and

(iv) be endorsed to provide the City with at least thirty (30) Business Days prior written notice of any cancellation or adverse change in coverage.

7.03 Indemnity and Release

(a) The Builder hereby indemnifies the Indemnified Parties from and against all damages, loss, liability, harm, injury, costs, expenses, actions, demands and claims that are suffered, sustained or incurred by an Indemnified Party as a result of, or in connection with, the Builder's performance or non-performance of this Agreement (including any claims arising out of or in connection with any action by the City or its agents in performing or attempting to perform the obligations of the Builder after default by the Builder hereunder) or any of the activities of the Builder or its agents or contractors on or about the Site or any incident on or about the Site, except to the extent directly attributable to any negligent act or unlawful conduct of the Indemnified Parties.

(b) The Builder hereby indemnifies the Indemnified Parties from and against all damages, losses, liabilities, harm, injuries, costs, expenses, actions, demands and claims that are suffered, sustained or incurred as a result of or in connection with any breach of or non-compliance with the Risk Assessment Report or the Certificate of Property Use and any breach of Environmental Laws by the Builder or its agents or contractors on or about the Site, except to the extent directly attributable to any negligent or unlawful conduct of the Indemnified Parties.

(c) The Builder acknowledges and agrees that all obligations and duties of the City in connection with this Agreement, are the sole and exclusive obligations and duties of the City, and no other Person (including any Level of Government) has any duty or obligation either for or on behalf of the City.

(d) The Builder represents, warrants and covenants that it shall not make any claim or bring an action or demand in contract, tort, negligence, common law, equity or otherwise against any Level of Government (except in its capacity as an assignee of the City's interest in this Agreement), and their respective officers, agents, and employees for damage, loss, liability, harm, cost, expense, or injury it may incur or suffer in connection with this Agreement. The Builder irrevocably waives and surrenders all such rights, remedies and entitlements and agrees that the provisions of this section 7.03 are fair and reasonable in the commercial circumstances of this Agreement and in the public policy circumstances of the Proposed Development.
7.04 Maintenance of the Site

From and after the acquisition of ownership of any part of the Site the Builder shall maintain the Site in compliance with Applicable Law and the Builder shall pay or cause to be paid all taxes or assessments as and when due and payable.

7.05 Unavoidable Delay

If the Builder suffers an Unavoidable Delay, the Builder shall notify the City in writing forthwith following the event or events creating such Unavoidable Delay. The Builder's written Notice shall set out in detail the circumstances that have caused the Unavoidable Delay, the duration or anticipated duration of the Unavoidable Delay, and the measures that the Builder is taking to mitigate the impact of the Unavoidable Delay. The City may either accept the Builder's Notice or may dispute the claim of Unavoidable Delay. If the Builder and the City are unable to agree on the existence or duration of any Unavoidable Delay, the Parties shall resolve their disagreement pursuant to Article IX. If the City is satisfied that an Unavoidable Delay has occurred, or if it is established pursuant to Article IX that an Unavoidable Delay has occurred, the City shall consult with the Builder and shall give the Builder written Notice of the new Milestone Dates and the Actual Completion Date resulting from such Unavoidable Delay. The New Milestone Dates and the Actual Completion Date shall be reasonable in the circumstances and shall include an allowance for the remobilization of the Builder's resources. If an Unavoidable Delay persists for more than thirty (30) days, the Builder shall provide the City with an update report on the status of its mitigation efforts monthly. If an Unavoidable Delay is deemed to have occurred pursuant to section 7.06 or section 8.03, the Builder shall not have an obligation to provide Notice or update reports.

7.06 Pre-Closing Date Delays Attributable To The City

If the City fails to complete its obligations under sections 3.01, 3.02 or 3.03 by the dates provided in those sections, the Builder may extend each of the Milestone Dates and the Actual Completion Date by an amount equal to the period by which the City has been late in meeting its obligation, up to a maximum of twelve (12) months. If the City is late in meeting its obligations under sections 3.01, 3.02 or 3.03 by more than the foregoing twelve (12) month period and the Closing Date has not occurred, the Builder may terminate this Agreement and the City shall compensate the Builder by paying to the Builder an amount equal to its Pre-Closing Out-of-Pocket Costs. The Builder shall transfer to the City all design, drawings, agreements or other property acquired by the Builder from the Pre-Closing Date Out-of-Pocket Costs as requested by the City.

7.07 Unexecuted Agreements and Encumbrances

(a) As of the date of this Agreement, the City has made available to the Builder the most current draft of the Risk Assessment Report, the draft Plan of Subdivision and the Agreement of Purchase and Sale Template. If there are new or modified provisions included in the Risk Assessment Report, the Certificate of Property Use, the RSC, the Plan of Subdivision, the Agreement of Purchase and Sale or in any of the agreements or encumbrances that the Builder is required to assume or take title subject to that are materially more onerous to the Builder than those contained in, contemplated by or consistent with these drafts, the City may, in its absolute discretion, assume the responsibility for the performance of or compliance with any such provision, agreement or encumbrance or may compensate the Builder for the incremental cost imposed on the Builder as a result of the Builder's performance of or compliance with such provision,
agreement or encumbrance. The Builder shall not assume any obligation for which it may be entitled to compensation pursuant to this Agreement without giving the City prior notice and an opportunity to intervene to negotiate a compromise of the obligation.

(b) The Builder acknowledges that, as of the date of this Agreement, there were no new provisions or modified provisions included in any of the agreements or encumbrances that the Builder is required to assume or take title subject to (excluding the Risk Assessment Report, the Certificate of Property Use, or the RSC) that are materially more onerous to the Builder or that materially impact the Proposed Development other than those contained in the draft documents and agreement or encumbrances provided to the Builder prior to execution of the Agreement of Purchase and Sale.

7.08 No Corruption

Neither the Builder nor, to the Builder's knowledge, any of its consultants, contractors or representatives, has: (a) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity; (b) made any unlawful payment to foreign or domestic government officials or to foreign or domestic political parties or campaigns or violated any provisions of the Corruption of Foreign Public Officials Act (Canada); or (c) made any other unlawful payments.

7.09 Restatement of Agreement

The Builder shall enter into an amendment and restatement of this Agreement prior to completing the purchase of any Block if requested to do so by the City.

ARTICLE VIII
DEFAULT AND ENFORCEMENT

8.01 Builder Events of Default

The occurrence of any of the following events or circumstances shall constitute an Event of Default by the Builder:

(a) if the Builder defaults in the payment or performance of any monetary obligation on the date such obligation is due and such default continues for a period of five (5) Business Days after written Notice of default is given to the Builder by the City;

(b) if the Builder:

(i) fails to achieve any Milestone Event by the applicable Milestone Date, as modified in accordance with the terms of this Agreement; or

(ii) fails to achieve Completion on or before the Actual Completion Date as modified in accordance with the terms of this Agreement;
unless: (A) prior to the date of such failure the Builder has provided the City with written Notice of its anticipated failure; (B) the Builder has provided the City with an updated Development Schedule for the Completion of the Proposed Development; (C) the Builder has provided the City with a feasible plan (the "Schedule Remediation Plan") for achieving the applicable Milestone Event or Completion, as the case may be, within the shortest reasonable period after the then current applicable Milestone Date or the Actual Completion Date; and (D) the Builder is proceeding diligently, subject to any Unavoidable Delay, in accordance with the updated Development Schedule and the Schedule Remediation Plan; and (E) the City approves the Schedule Remediation Plan;

(c) if the Builder defaults in the performance of any obligation or covenant under this Agreement other than as dealt with in sub-paragraph 8.01(a), (b), (d), (f), (g) or (h) and if the default, in the opinion of the City, is capable of being remediated within a period of thirty (30) days and the City gives the Builder Notice of such default and of the City's opinion that it can be remediated within thirty (30) days and the Builder fails to either:

(i) remedy such default within a period of thirty (30) days after receipt of such written Notice of default from the City; or

(ii) within a period of ten (10) days after receipt of such written Notice of default from the City provide the City with a plan for remediation (a "Default Remediation Plan") acceptable to the City and to diligently pursue remediation in accordance with the Default Remediation Plan accepted by the City, subject to any Unavoidable Delay, to complete the remediation within a period of thirty (30) days after receipt of the written Notice of default from the City;

(d) if the Builder defaults in the performance of any obligation or covenant under this Agreement other than as dealt with in sub-paragraph 8.01(a), (b), (c), (f), (g) or (h) and if the default, in the opinion of the City, is not capable of being remediated within a period of thirty (30) days but is capable of being remediated within a longer period, the Builder fails to either:

(i) remedy such default within such longer period as may be specified by the City after receipt of written Notice of default specifying the period selected by the City for remediation; or

(ii) provide the City with a plan for remediation ("Long Term Remediation Plan") acceptable to the City and to diligently pursue remediation in accordance with the Long Term Remediation Plan accepted by the City, subject to Unavoidable Delay, within such longer period specified by the City in its written Notice to the Builder;

(e) if the Builder has provided a Schedule Remediation Plan, a Default Remediation Plan or a Long Term Remediation Plan and fails to proceed diligently with such plan and such failure continues for a period of thirty (30) days after written Notice of such default under any such plan is given to the Builder by the City;

(f) if the Builder transfers, conveys, charges or encumbers all or any portion of its interest in the Site other than as provided in this Agreement without the prior written consent of the City; or
if the Builder becomes insolvent or takes any step to dissolve, wind up or seek protection from its creditors under any legislation or if any creditor commences an action or proceeding to have the Builder found to be insolvent or to take the Builder's assets out of the Builder's control which action or proceeding has not been stayed within thirty (30) days after commencement.

8.02 The City's Remedies

(a) On the occurrence of an Event of Default by the Builder, the City shall have the right (but not the obligation) to terminate this Agreement without prejudice to the City’s other remedies at law including the right to claim damages from the Builder and may, at its option, enter on to the Site, either directly or through one or more authorized agents, consultants or contractors, and perform, or cause to be performed, any or all of the obligations of the Builder at the Builder’s expense.

(b) As additional security for the performance of the obligations of the Builder hereunder and under each other agreement entered into between the Builder and the City in respect of the Site and the Proposed Development (the "Agreements"), the Builder shall deliver to the City on the Closing Date for each Block an irrevocable and unconditional letter of credit (the "Letter of Credit") in the amount of Two Million Dollars ($2,000,000.00) issued and confirmed by a bank included in Schedule I to the Bank Act (Canada) or another bank satisfactory to the City. The Letter of Credit shall:

(i) have a term expiring eighteen (18) months after the Block reaches Completion;

(ii) shall permit the City to draw on the Letter of Credit to fund payments due from the Builder to the City under the Agreements, expenses properly incurred by the City in performing the obligations of the Builder hereunder, direct damages incurred by the City as a result of the Builder's default hereunder or otherwise in enforcing any of the Builder’s obligations under the Agreements; and

(iii) shall provide that it may be drawn from time to time by the City on presentation of a certificate from the City stating that an amount is due from the Builder to the City under the Agreements or that the Builder has not performed an obligation required to be performed by it under the Agreements.

(c) If no Builder Event of Default has occurred under the Agreements that remains unremedied and the Builder has provided the report from its LEED advisor as contemplated in section 4.05(a), on the Builder’s request, the City will release fifty percent (50%) of the Letter of Credit on the Builder giving occupancy to the first arm's length third party purchaser of a residential unit in that Block.

(d) The City may also draw on the Letter of Credit: (i) to fund payments due from the Builder to the City under this Agreement or any other agreement; (ii) on behalf of the City to fund payments due from the Builder to the City under the Agreement of Purchase and Sale; (iii) to fund expenses properly incurred by the City in performing the obligations of the Builder hereunder; (iv) on behalf of the City to fund expenses properly incurred by the City in performing the obligations of the Builder under the Agreement of Purchase and Sale; (v) to fund expenses properly incurred or to be incurred by the City in performing the obligations of the Builder under any other agreement; (vi) to fund expenses of the City incurred otherwise in enforcing this Agreement or any other
agreement; and (vii) to fund claims for damages by the City arising out of Builder Events of Default under this Agreement or any other agreement or on behalf of the City for damages arising out of defaults under the Agreement of Purchase and Sale.

(e) The City may draw against the Letter of Credit to satisfy any obligation of the Builder in any order and at any time, without prejudice to the City's rights to have recourse to any other right.

(f) If the Letter of Credit is drawn down at any time, the Builder shall replace the Letter of Credit or cause the Letter of Credit to be replaced with a new Letter of Credit in the full face amount required hereunder within five (5) Business Days after receipt of notice that the City has drawn down under the Letter of Credit, provided there are obligations of the Builder that are secured by the Letter of Credit remaining outstanding.

(g) If the City terminates this Agreement, the City may retain the Letter of Credit as security for the obligations of the Builder that remain outstanding and the obligations of the Builder for any claim for damages that may be suffered by the City as a result of the Builder's defaults under any of the Agreements. If there are any such obligations outstanding the Builder will be obligated to arrange for the replacement of the Letter of Credit to secure such obligations.

(h) The Builder acknowledges that the damages that would be suffered by the City if the Builder fails to achieve LEED [Insert Agreed Level] certification would be difficult to quantify. If the Builder fails to achieve LEED [Insert Agreed Level] certification for any reason but is successful in obtaining LEED Silver certification the Builder will pay to the City an amount equal to Five Thousand Dollars ($5,000.00) multiplied by the number of proposed residential units in the Proposed Development. If the Builder fails to achieve LEED [Insert Agreed Level] or LEED Silver certification for any reason the Builder will pay to the City an amount equal to Ten Thousand Dollars ($10,000.00) multiplied by the proposed number of residential units in the Proposed Development. The Parties agree and acknowledge that these amounts are each a genuine pre-estimate of the liquidated damages that would be suffered by the City and are not a penalty or forfeiture.

(i) In addition to its other rights hereunder, the Builder hereby grants to the City an option to purchase any Block from the Builder at any time after the occurrence of an Event of Default and where such Event of Default remains outstanding unremedied, at an option price (the "Option Price") equal to ninety percent (90%) of the Minimum Purchase Price paid by the Builder for the Block. This option shall be enforceable against the Builder and any person deriving rights to the Block through the Builder. This option to purchase may be exercised by the City at any time that an Event of Default is outstanding and unremedied by written notice to the Builder. The Builder shall execute and deliver a transfer of the Block to the City or as the City directs in exchange for payment of the Option Price on the first Business Day ten (10) days after delivery of notice by the City of the exercise of the Option (the "Purchase Closing Date"). The City may set off against the Option Price all amounts paid by the City to remedy or attempt to remedy the Event of Default or any amounts for which the City has become liable.
(j) The Builder agrees and confirms that an occurrence of an Event of Default by the Builder shall cause immediate and irreparable harm to the City for which damages alone cannot fully or adequately remedy such Event of Default or compensate the City, and the Builder agrees that, notwithstanding any other provision in this Agreement, the City may bring an action in court and the Builder shall not (and hereby irrevocably waives its rights to) defend against, interfere with or otherwise oppose, on the basis that an equitable remedy is not appropriate, any action by the City for equitable relief in the form of an injunction to which the City may be entitled. Nothing herein shall limit or impair the right of the Builder to seek compensation for any improper exercise of an equitable remedy by the City. The Builder agrees and confirms that the provisions of this section 8.02 are fair and reasonable in the commercial circumstances of this Agreement. The City may seek equitable relief pursuant to this section 8.02 notwithstanding any procedures underway or proposed pursuant to section 9.01.

(k) All remedies, compensation and rights provided to the City in this section 8.02 shall not be exhaustive, and this section 8.02 shall not exclude, limit, restrict or otherwise diminish any right or remedy that is available to the City, whether at common law, equity, or otherwise.

8.03 The City Events of Default

An Event of Default by the City shall exist if the City defaults in the performance of any obligation or covenant under this Agreement and such default continues for a period of ninety (90) days after written Notice of default has been given by the Builder to the City.

8.04 Builder Remedies

(a) Subject to paragraphs (b), (c) and (d) below, on the occurrence of an Event of Default by the City, an Unavoidable Delay shall be deemed to have occurred and shall continue until such time as the Event of Default by the City has been cured.

(b) If the Event of Default by the City continues for a period of twelve (12) months the Builder may terminate this Agreement by notice to the City, the City shall pay to the Builder an amount equal to the Builder's Post-Closing Out-of-Pocket Costs and the Builder shall transfer all Blocks then owned by the Builder to the City, subject to no encumbrances other than those to which the Site was subject when the Builder acquired the Site and those encumbrances, improvements, excavating and other physical construction on the Site and title registrations arising out of and in the normal course of the Builder's construction of the Proposed Development. The Builder must submit a statement itemizing the Post-Closing Out-of-Pocket Costs to the City for approval within sixty (60) days after termination of the Agreement of Purchase and Sale in respect of the Block. The Builder shall make available to the City and its advisors all reasonable supporting documentation requested by the City. The City shall either approve the statement of Post-Closing Out-of-Pocket Costs and pay the amount claimed to the Builder within sixty (60) days after receipt of complete supporting documentation or, if the City disagrees with the calculation of the Post-Closing Out-of-Pocket Costs, provide a revised statement of Post-Closing Out-of-Pocket Costs together with payment of the amount not disputed by the City. If the Builder disagrees with the City's accounting, the Builder may refer the calculation of Post-Closing Out-of-Pocket Costs to arbitration pursuant to Article IX of this Agreement.
(c) Other than as specifically provided herein, the Builder shall have no other remedy or recourse against the City for any Event of Default by the City. The Builder, on its own behalf and on behalf of its affiliates, officers, directors, employees, shareholders, partners, creditors, insurers, successors and assigns hereby releases the City from all other claims under this Agreement.

8.05 No Consequential Damages

Neither the City nor the Builder shall be liable for indirect, incidental or consequential damages suffered by the other, or for punitive damages, with respect to any term or the subject matter of this Agreement, even if informed of the possibility thereof in advance. This limitation applies to all causes or action, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, fraud, misrepresentation and other torts.

8.06 Limitation on Liability for The City

The maximum liability of the City under this Agreement and all of the other agreements between the City and the Builder shall not exceed one hundred thousand dollars ($100,000.00) in the aggregate other than for claims for Pre-Closing Out-of-Pocket Costs and Post-Closing Out-of-Pocket Costs pursuant to this Agreement.

ARTICLE IX
DISPUTE RESOLUTION

9.01 Dispute Resolution

(a) The Parties shall each, in good faith, use their best efforts to co-operate and work together to preserve the intentions and mutual benefits contemplated by this Agreement, and to ensure the effective and efficient performance of this Agreement's terms and conditions.

(b) Any dispute, controversy or claim between the Parties relating to this Agreement or the matters contemplated herein (a "Dispute") shall be resolved in accordance with the provisions of this Article IX.

(c) All Disputes shall initially be referred by either Party to the other Party for review, consideration and resolution. Such referrals shall all reasonably relevant accurate information and documentation. If the Parties are unable to resolve the Dispute within ten (10) Business Days after referral of the Dispute, the Parties shall then submit the Dispute to the senior executives of the Parties identified in paragraph (d) ("Settlement Nominees") for resolution. Either Party may, in its sole and unfettered discretion, elect to submit the Dispute to the Settlement Nominees at any time more than ten (10) days after the referral.
(d) In the event that a Dispute cannot be resolved pursuant to paragraph (c), the Dispute shall be referred to each of the chief executive officer of the Builder and to the City’s City Manager, for their review, consideration and resolution. Such referral shall include an executive summary of each Party's assessment of the Dispute and the differences between the Parties that have prevented the resolution of the Dispute prior to that stage of the proceedings. If such individuals are unable to resolve the Dispute within ten (10) Business Days after referral of the Dispute to them, either Party, in its sole and unfettered discretion, shall then have the right to proceed to arbitration of the Dispute pursuant to section 9.02 hereof.

9.02 Arbitration

In the event that either Party submits the Dispute to binding arbitration, the arbitration shall be before one (1) arbitrator (the "Arbitrator") in Hamilton, Ontario pursuant to the Arbitration Act, 1991 (Ontario), except as modified below:

(a) such arbitration shall be the exclusive dispute settlement procedure between the Parties, and the decision of the Arbitrator shall be binding on each of the Parties, subject only to the exclusions in section 9.02 hereof and the exclusive right of each Party to only appeal a decision on a question of law;

(b) such arbitration shall be conducted by the Arbitrator stipulated in section 9.03;

(c) in the event that the Arbitrator, is not available (due to injury, health, death or otherwise in accordance with the terms of the Arbitrator Retainer Agreement) then the Parties may mutually agree to appoint another person as the Arbitrator failing which either Party may, by written notice to the other Party, submit a request to the Ontario Superior Court to promptly appoint an Arbitrator;

(d) the Parties shall agree in advance as to the manner in which the Arbitrator shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration procedures and failing agreement within five (5) Business Days from the date of the formal deployment of the Arbitrator, the Arbitrator shall formulate his/her own procedural rules and promptly commence and expeditiously conduct the arbitration proceedings;

(e) the Arbitrator shall conduct the arbitration and issue his/her decision in writing within twenty (20) Business Days from the date the Designated Arbitrator was formally deployed or such other date as the Parties may agree;

(f) as part of any arbitration, the Arbitrator may elect to become advised by a subject matter expert on any technical matter. In such circumstances, the Arbitrator may appoint an expert in a technical field who has expertise and experience in technical matters that are relevant to the Dispute (a "Technical Referee"). The Parties agree that the Technical Referee will only be authorized to advise the Arbitrator in respect of the specified technical matter;

(g) nothing in this section 9.02 shall prevent either Party from applying to a court of competent jurisdiction in the Province of Ontario for any equitable relief pending final disposition of the arbitration proceeding;
the Arbitrator shall not limit, expand or modify the terms of this Agreement nor award damages in excess of compensatory damages permitted under this Agreement, and each Party waives any claim to such excess damages. The Arbitrator shall not have the right to award any damages in excess of damages that could lawfully be awarded by a court of competent jurisdiction inclusive of interest in accordance with the Courts of Justice Act, 1990 (Ontario);

without limiting the timeline stipulated in paragraph (e), the entire arbitration shall be completed as expeditiously as possible from the date on which notice of the arbitration is delivered, unless otherwise agreed to by the Parties. The Arbitrator shall issue a written decision containing findings and conclusions on all significant issues. The costs of the arbitration shall be in the discretion of the Arbitrator. Each Party shall bear its own expenses of the arbitration. The venue for the arbitration shall be within the municipal boundaries of the City of Hamilton unless otherwise agreed to by the Parties in writing. Unless the Parties agree otherwise, the arbitration shall be held in private and shall be conducted in English;

the arbitration award shall be given in writing and shall be final and binding on the Parties, shall be only subject to appeal on grounds of legal error, and shall deal with the question of costs of arbitration and all matters related thereto; and

judgment upon the award rendered may be entered in any court having jurisdiction, or, an application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be.

9.03 Appointment of Arbitrator

The City and the Builder agree to appoint within six (6) months after execution of this Agreement the Arbitrator pursuant to the terms and conditions of an arbitrator appointment agreement to be entered into between each of the City, the Builder and the Arbitrator, containing reasonable terms and conditions that are acceptable to all such parties (the "Arbitrator Retainer Agreement"). Each of the City and the Builder agrees not to enter into any agreement or arrangement, or to permit any Person controlled by or under common control with it, to enter into any commercial transaction, agreement or other arrangement with the Arbitrator that would influence or reasonably create a perception that it might influence the decisions of the Arbitrator. If the City and the Builder have not agreed on the Arbitrator within six (6) months either Party may apply to a judge of the Ontario Superior Court to request the appointment of an Arbitrator.

9.04 Proceedings Confidential

(a) Unless the Parties agree otherwise, all dispute resolution and arbitration proceedings (including all related information, communications, documents, materials and evidence) shall be strictly confidential, and each Party shall have a fiduciary obligation to the other Party to protect, preserve and maintain the integrity of such confidentiality.

(b) Notwithstanding section 9.04(a), both Parties acknowledge that all records in the City’s custody or control, including this Agreement and any records arising from it, are subject to the Privacy Laws.

ARTICLE X
PAYMENTS AND PROPERTY TRANSFERS

10.11 The Upfront Payment

The Builder shall pay the Upfront Payment to the City on the Commencement Date. The City shall hold the Upfront Payment in escrow until the Registry Date at which time the City may dispose of the Upfront Payment in its discretion.

10.12 The Minimum Purchase Price

The Builder shall pay the Minimum Purchase Price for each Block to the City on the Closing Date for that Block in return for which the City shall transfer legal title to that Block to the Builder.

10.13 The Fair Market Value Share

(a) Within thirty (30) days of the Closing Date for each Block, the Builder shall apply for Site Plan approval for that Block. Immediately after conditional Site Plan approval is obtained, the Appraiser shall appraise the value of that Block in accordance with this Agreement.

(b) The Builder shall pay the Fair Market Value Share for each Block to the City within thirty (30) days of the receipt of the Appraisal for that Block.

10.14 The City’s Value-Added Share for each Block shall be calculated (and paid to the City within thirty (30) days of calculation in stand-alone installments) for each completed building within a Block as follows:

(3) for condominium unit sales (all uses), the payment will be calculated as a percentage of Gross Sales Revenues, to be calculated not later than twelve (12) months following the sale of the final unit in the building, not including any units held by the Builder for income producing purposes; and

(4) for any income producing units or properties (e.g., rental residential, leased commercial premises, seniors’ residence, hotel, etc.), the payment will be calculated and paid as a percentage of a Fair Market Value appraisal of the income producing unit or property on a fully stabilized basis, after one full year of operation.
10.15 The City and the Builder agree to appoint no later than six (6) months after the execution of this Agreement a qualified appraiser (the “Appraiser”) pursuant to the terms and conditions of an appointment agreement to be entered into between each of the City, the Builder and the Appraiser, containing reasonable terms and conditions that are acceptable to all such parties (the "Appraiser Retainer Agreement"). Each of the City and the Builder agrees not to enter into any agreement or arrangement, or to permit any Person controlled by or under common control with it, to enter into any commercial transaction, agreement or other arrangement with the Appraiser that would influence or reasonably create a perception that it might influence the decisions of the Appraiser. If the City and the Builder have not agreed on the Appraiser within six (6) months either Party may apply to a judge of the Ontario Superior Court to request the appointment of an Appraiser.

10.16 The Appraiser shall conduct all appraisals contemplated by this Agreement:

(a) for appraisals conducted to calculate the City’s Fair Market Value Share, the Appraiser shall appraise the value of the Block as of the date that the Builder obtained Site Plan approval on the basis of the uses permitted by the then existing development approvals even if such uses are not the ‘highest and best use’ of the Block; and

(b) for appraisals conducted to calculate the City’s Value-Added Share, the Appraiser shall appraise the value of the income producing property or unit on an ‘as is’ basis as of the date that the income producing property has been in operation for 12 months.

ARTICLE XI
COMMUNICATION AND OVERSIGHT

11.01 Parties’ Representatives

Each Party shall, within 30 days the Commencement Date, appoint a representative (respectively, the “City Representative” and the “Builder’s Representative” and collectively the “Representatives”) with primary responsibility for coordination and communication with respect to this Proposed Development.

11.02 Function and Role

(a) The Representatives shall promote cooperative and effective communication with respect to matters related to the Proposed Development.

(b) The Representatives shall meet at least monthly and reviewing all matters related to the Proposed Development, including:

(i) any design, construction and commissioning issues;

(ii) the Development Schedule;

(iii) any issues arising from reports or documents provided by the Builder;

(iv) any quality assurance and safety issues;

(v) any special matters referred by the City or the Builder;
(vi) any community and media relations issues;

(vii) the Parking Plan; and

(viii) any other issues pertaining to the Proposed Development.

(c) The Representatives shall keep minutes of all such monthly meetings.

11.03 Public Consultation

(a) The City shall provide the Builder with support for its site plan application by providing feedback of its review of the Builder's presentations. At the City’s discretion, the Builder may be directed to prepare and present to members of the public and other stakeholder groups a presentation of the proposed site plan as required by the City. The City shall not require more than two (2) such presentations.

(b) The Representatives shall themselves constitute a committee known as the “Community Liaison Committee” with a mandate to receive and respond on a timely basis to all inquiries received from members of the public.

11.04 Communications

(a) All communications involving the Parties and shall be directed through the respective Representatives.

(b) All communications relating to the Proposed Development made to media or placed on the Parties’ respective websites or social media accounts intended to be communicated to the public shall first be reviewed by the other Party’s communication coordinator’s contact, as determined from time to time, for content and timing concerns prior to being released, posted, published or communicated to the public at large.

ARTICLE XII
ADMINISTRATION

12.01 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “Notice”) required or permitted under this Agreement shall be writing and shall be delivered by hand (including courier) or email as follows:

If to the City: The City of Hamilton
71 Main St W, Hamilton, ON L8P 4Y5
Attention: City Manager
Email: chris.murray@hamilton.ca

with a copy to: The City Solicitor
Email: Nicole.auty@hamilton.ca

If to the Builder: Company Name
Company Address

Attention:

Email:

with a copy to: Position

Email:

12.02 Change of Address

Each Party shall immediately advise the other of any change in its contact information as outlined in section 12.01 by Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

12.03 Deemed Receipt of Notices

A Notice shall be deemed to have been received by the receiving Party as of the next Business Day following delivery.

12.04 Status Statement

The City shall provide to any Person that proposes to buy or take an interest in any portion of the Site a status statement confirming that this Agreement has been complied with by the Builder, or, if not complied with, confirming the nature and extent of any non-compliance of which the City is aware. A request for a status statement must be delivered to the City at the then registered office of the City. The City will respond to any request for a status statement within ten (10) Business Days. The City may charge a fee for providing a status statement in an amount sufficient to cover the City's reasonable costs of response, as established by the City from time to time.

12.05 Releases

The City, in its absolute discretion, may release this Agreement or any provision of this Agreement in whole or in part in respect of all or any part of the Site at any time. The City shall not release the Builder or its successors in title from any continuing obligations under the Risk Assessment Report.
ARTICLE XIII
GENERAL

13.01 Successors and Assigns

This Agreement shall be binding upon the Builder and each and every successor to this Agreement or in title to all or any portion of the Site.

13.02 Assignment by Builder

(a) The Builder shall not assign, transfer or convey any interest in the Site or in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. The City may withhold its consent to any assignment where:

(i) the City reasonably believes the assignee will not have the capacity to complete the Proposed Development; or

(ii) the proposed assignee has not entered into an agreement with the City agreeing to perform all of the obligations of the Builder hereunder in respect of the portion of the Site to be transferred.

(b) The Builder may convey condominium units and freehold retail or commercial parcels created on the Site by registration of a condominium plan approved by the City pursuant to section 6.01 to purchasers without the consent of the City.

(c) The Builder shall not mortgage, charge, encumber or create a security interest in, on or over any part of the Site unless the proposed chargee or encumbrancer (the "Chargee") enters into an agreement with the City acknowledging and agreeing that the Builder’s obligations to the City under this Agreement take precedence over the Builder’s commitments to the Chargee.

13.03 Changes in Ownership and Control

(a) No change in the ownership or control of the Builder, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units of or any other ownership interest in the Builder or any such person (a “Change in Control”), shall be permitted:

(i) where the person acquiring the ownership interest or control is a person whose history, reputation, standing or activities may reasonably be expected to adversely affect public confidence in the Proposed Development; or

(ii) if such Change in Control would have a material adverse effect on the Proposed Development; or

(iii) unless the person acquiring the ownership interest or control provides written confirmation satisfactory to the City that s/he/it agrees to assume all of the Builder’s obligations under this Agreement.

(b) No Change in Control of the Builder, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in the
Builder shall be permitted without the prior written consent of the City, which consent will not to be unreasonably withheld or delayed.

(c) This section shall not apply to a Change in Control by persons whose equity securities or ownership units or any other ownership interests are listed on a recognized stock exchange.

(d) Upon becoming aware of any reasonable prospect in the Change of Control of the Builder, the Builder shall provide timely notice to the City of the proposed Change in Control and such notification shall include a statement identifying all such present and proposed owners, or persons with an ownership interest in the Builder, as the case may be, and their respective holdings of such ownership interest in the Builder, prior to and following any such Change in Control.

13.04 Builder to Require Compliance

The Builder shall require any successor, agent, contractor, licensee or invitee on the Site to comply with the terms of this Agreement and shall take all such actions as may be necessary to enforce such compliance.

13.05 Assignment By The City

The City may assign this Agreement to: (i) any successor entity; (ii) Her Majesty the Queen in Right of Canada or any agent of Her Majesty the Queen in Right of Canada; (iii) Her Majesty the Queen in Right of Ontario or any agent of Her Majesty the Queen in Right of Ontario; or (iv) any agent of the City, at any time upon the delivery of written Notice to the Builder and without consent of the Builder. The City shall not otherwise assign, transfer or convey any interest in this Agreement without the prior written consent of the Builder, which consent shall not be unreasonably withheld or delayed.

13.06 Time

Time shall be of the essence of this Agreement.

13.07 Force Majeure

Neither Party may be responsible to the other for any non-performance or delay in performance occasioned by any causes beyond its reasonable control, including without limitation, any acts or omissions of the other party, acts of civil or military authority, embargoes, insurrections or acts of God. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the length of the delay, provided that the Party affected makes reasonable efforts to correct the cause or reason for such delay and gives the other Party prompt notice of such delay.

13.08 Waiver

(a) No waiver made or given by a Party shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any
other instance involving the exercise of the right, power, or remedy or with respect to any other such right, power, or remedy.

(b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

(c) No consent or approval contemplated herein or provided by the City shall constitute a waiver of any requirement herein.

13.09 Entire Agreement

Except where provided otherwise in this Agreement, this Agreement (including all attachments) constitutes the entire agreement between the Builder and the City in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

13.10 Headings

The division of this Agreement into Articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part of it.

13.11 Severability

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by an adjudicator of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.

13.12 Enurement

This Agreement and any other agreement entered into in connection with the Proposed Development to which both the City and the Builder are parties shall enure to the benefit of, and be binding on, the City and the Builder and their respective successors and permitted transferees and assigns.

13.13 Relationship of the Parties

The City and the Builder shall be, and are hereby, independent contractors, and nothing herein shall create (nor is this Agreement intended to create) any partnership, agency, employment, or joint venture relationship whatsoever. No Party shall act or have the authority or power to act for the other Party or to make any commitment, obligation, representation or warranty on behalf of the other Party as its agent or otherwise.
13.14 Currency and HST

(a) All amounts specified in this Agreement shall be deemed to be in Canadian currency.

(b) Unless specified to the contrary, all references to consideration to be paid to or by any person under this Agreement are stated exclusive of applicable taxes. Taxes, including the harmonized sales taxes under the *Excise Tax Act* R.S.C. 1985, c.E-15, as amended or succeeded, are payable where applicable.

13.15 Gender/Number

In this Agreement, words importing the singular include the plural and vice-versa, words importing gender include both genders and words importing persons include corporations and vice-versa.

13.16 Survival

The provisions of sections 1.01, 1.03, 1.04, 1.05, 2.02, 4.01, 4.05, 4.06, 4.08, 4.09, 4.10, 4.11, 7.01, 7.02, 7.03, 7.04, 8.02, 8.05, 8.06, 12.01, 12.02, 12.03 and 13.19 shall remain in effect after the termination of this Agreement, until such time as the Parties mutually agree to the release of the obligations contained therein. No termination of this Agreement by any Party shall affect the continuation of such rights and obligations of any Party which have accrued as of the date of such termination.

13.17 Good Faith and Acting Reasonably

Each of the Builder and the City shall act expeditiously, reasonably and in good faith in carrying out their respective obligations or exercising their discretions under this Agreement.

13.18 Counterpart and Email

This Agreement may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. This Agreement may be delivered via email and the Parties adopt any signature received via email as an original signature as long as the transmitting Party shall forthwith deliver an originally executed copy of this Agreement to the other Party.

13.19 City’s Municipal Discretion Not Fettered

(a) Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the City of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the City in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the City or its officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City or its officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement.
(b) No communication or dealing between the Builder and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City that is not clearly in respect of and in accordance with this Agreement will be deemed to be a communication or dealing under this Agreement between the Builder and the City as Parties to this Agreement, or affect the City with notice of any such communication or dealings. It is intended and agreed that any communication or dealing between the Builder and the City as Parties to this Agreement will only be effective if delivered in accordance with the notice provisions in this Agreement. No communication or dealing between the Builder and the City will relieve the Builder from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed under this Agreement.

13.20 Further Assurances

The Parties acknowledge and represent that each of them has the power, authority and ability to enter into this Agreement and the transactions, actions and events contemplated hereunder. Each of the Parties will, from time to time, at the other’s request and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment and take such further actions as the other may require to more effectively complete or confirm any matter provided herein.

EXECUTION PAGE FOLLOWS
IN WITNESS WHEREOF this Agreement has been executed by the Parties.

CITY OF HAMILTON

Per: ____________________________
Name: ____________________________
Title: ____________________________
Date: ____________________________

Per: ____________________________
Name: ____________________________
Title: ____________________________
Date: ____________________________

We have the authority to bind the Corporation.

BUILDER’S NAME

Per: ____________________________
Name: ____________________________
Title: ____________________________
Date: ____________________________

Per: ____________________________
Name: ____________________________
Title: ____________________________
Date: ____________________________

We have the authority to bind the Corporation.
SCHEDULE "A"

THE RFP

SCHEDULE "B"

THE BUILDER’S PROPOSAL
APPENDIX “A” TO SCHEDULE “B”

THE DEVELOPMENT SCHEDULE
APPENDIX “B” TO SCHEDULE “B”

THE PARKING PLAN
SCHEDULE “C”

AGREEMENT OF PURCHASE AND SALE TEMPLATE

OFFER TO PURCHASE

I/We, [BUILDER] of the City of ---, in the Province of Ontario (the “Purchaser”) hereby agree to and with the CITY OF HAMILTON (the “Vendor”) to purchase all and singular that certain parcel or tract of land and premises situated in the City of Hamilton, and being composed of:

at the price of --------- of lawful money of Canada, payable as follows:

(a) a deposit of ------ by cash or cheque payable to the Vendor; and

(b) the balance of the purchase price namely ---------

($ ) and subject to adjustments, by certified cheque on the Closing Date of this transaction.

Forming part of this Offer to Purchase is Appendix “A” attached hereto.

Provided that this Offer to Purchase is subject to the following conditions:-
1. This Offer shall be irrevocable by the Purchaser and may be accepted by the Vendor up to but not after the day of , 2018 by a letter mailed or delivered by the City Solicitor to the Purchaser's Solicitor.

2. In the event that this Offer is not accepted, this Offer and everything herein contained shall be null and void and no longer binding upon any of the parties hereto and the deposit shall be returned by the Vendor without interest and the Vendor shall not be liable for any damages or costs.

3. In the event of and upon the acceptance of this Offer, this Offer and the letter of acceptance shall be a binding contract of purchase and sale and shall be completed in accordance with the terms hereof.

4. The title is good and free from all encumbrances, except as to any registered restrictions or covenants.

5. The Purchaser is not to call for the production of any title deeds, abstract or evidence of title except such as are in the possession of the Vendor.

6. The Purchaser is to be allowed 30 days from the date of acceptance of the Offer to examine the title at his own expense. If within that time any valid objection to title is made in writing to the Vendor, or its Solicitor, which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, the contract arising out of the acceptance of this Offer shall, notwithstanding any intermediate acts or negotiations in respect of such objections, be null and void and all monies shall be returned by the Vendor without interest and it shall not be liable for any damages or costs. Save as to any valid objection so made within such time the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the real property.

7. This transaction shall be closed on or before the day of , 2018, in accordance with the terms and conditions contained in Appendix "A" attached hereto which forms a part of this Agreement.

8. On the Closing Date of this transaction, the Vendor will convey the said lands to the
Purchaser by a good and sufficient deed thereof in fee simple, free and clear of dower rights and all encumbrances, except as to any registered restrictions or covenants, and shall deliver vacant possession of the said lands to the purchaser free of all tenancies.

9. The Purchaser shall assume all taxes, local improvements, water and sewer rates from the date set out in paragraph 7 hereof.

10. The deed or transfer is to be prepared at the expense of the Vendor. The deed is to be registered at the expense of the Purchaser.

11. This agreement and its acceptance is to be read with all changes of gender or number required by the context.

12. This agreement may not be assigned by the Purchaser without the written consent of the City.

13. In the event of failure of the Purchaser to complete this transaction by the date set out in paragraph 7 hereof, the deposit shall be forfeited to the Vendor as liquidated damages, in addition to any other right or remedy to which the Vendor may be entitled hereunder.

14. The Purchase Price does not include Harmonized Sales Tax ("HST") and, if this transaction is subject to HST, then applicable HST shall be in addition to the Purchase Price. All HST shall be collected and remitted as required by law. The Purchaser shall provide the Vendor with the Purchaser's HST registration number, and evidence satisfactory to the Vendor that such registration is in good standing and has not been varied or revoked. The Purchaser does hereby indemnify and save harmless the Vendor from and against any liability for payment of any HST in respect of this transaction of purchase and sale. The Vendor and Purchaser agree with each other that the provisions of this section shall not merge on the Closing Date of this transaction, or upon the registration of a deed on title, but shall continue thereafter in full force and effect.

15. Any tender of documents required in connection with the herein transaction shall be made as follows by way of the delivery by facsimile transmission upon the solicitor for the non-tendering party by five (5:00) p.m. on the day of Closing Date of the following:
(a) Executed non-registration Closing Date documents;
(b) Paper copy of registrations documents electronically messaged by Teraview electronic mail, signed for completeness by the tendering party’s solicitor;
(c) If acting for the Purchaser, a copy of the certified cheque, solicitor’s trust cheque or in the case of payment by the City, a copy of the City’s cheque for the balance due on Closing Date; and
(d) Covering letter detailing enclosures.

16. The Purchaser acknowledges and agrees that except as expressed herein: (i) there have been no representations and/or warranties by the Vendor whatsoever with respect to the lands and that the lands are being purchased on an “as is”, “where is” basis; (ii) it submits the offer to purchase contemplated by this agreement without any agreement, representation or warranty from the Vendor with respect to the lands; and (iii) it shall rely entirely upon its own environmental site assessment and other inspections and investigations with respect to the quality, quantity, value and title of the lands. It is understood and agreed by the Purchaser that the Vendor has not warranted the suitability of the lands for any development use or any other proposed use by the Purchaser.

If there is a conflict between any provision written or typed in this Agreement (including any Appendix(s) to this Agreement) and any provision in the printed portion hereof, the written or typed provision shall supersede the printed provision to the extent of such conflict. This Agreement including any Appendix(s) attached hereto shall constitute the entire Agreement between the Purchaser and Vendor. There is no representation, warranty, collateral agreement or condition, whether direct or collateral or expressed or implied, which induced any party hereto to enter into this Agreement or on which reliance is placed by any such party, or which affects this Agreement or the property or supported hereby, other than as expressed herein.

Time shall be of the essence of this Agreement, which shall enure to the benefit of and be binding upon the Purchaser, his heirs, executors, administrators, successors and assigns, and shall enure to the benefit of and be binding upon the Vendor, its successors and assigns.

DATED at this day of , 2018.
Appendix “A” to the Agreement of Purchase of Sale

Timing
The Agreement of Purchase and Sale (APS) for each Block will be signed prior to the Closing Date for each Block confirming the identity of the Block, the Builder’s name, the estimated purchase price and the Closing Date for each Block.

Purchase Price
The Purchase Price will be as outlined in the Builder’s Proposal as revised or amended by the Parties.

Timing of Payment of Purchase Price
The Purchase Price shall be payable as outlined in the Builder’s Proposal as revised or amended by the Parties.

Direction of Proceeds
The City will provide the Builder with an irrevocable direction to pay all amounts under the APS to the City or as the City may direct.

Purchase Price Security
The APS shall provide that the Builder will, on Closing Date, provide the City with a registrable charge equal to 150% of the City's estimate of the Purchase Price as security. The security will be subordinate to construction financing.

"As-is" Environmental
Each Block will be sold "as is, where is" with no representations or warranties by the City as to its environmental condition. The Builder will release the City from any claim regarding the environmental quality of the Block. The Builder will indemnify the City against any claims arising out of the Builder's activities on the Block or the activities of any person on the Block at the invitation or request of the Builder, including in respect of any environmental investigations or remediation undertaken by the Builder.

The Builder shall provide such covenants as required under the Environmental Protection Act and related regulations for the City to benefit from the liability protection available to municipalities with respect to post-Closing Date Records of Site Condition.

Permitted Encumbrances
The Builder will take title to the Lands subject to Permitted Encumbrances as outlined in the APS, including all easements necessary for the City of Hamilton to protect its municipal services within the lands, including municipal services.

Applicable Laws
The Builder shall comply with all municipal, provincial and federal applicable laws, including City of Hamilton by-laws, official plan, zoning and any s or restrictions registered on title to the lands.

Development Agreement
The Builder will enter into a Development Agreement with the City for the Site, and agrees with the City either to comply with the Development Agreement covenants that are to the benefit of the City, or to include such specific covenants in the APS.

Assignment and Subletting
The Builder may not sell, assign, transfer or encumber any interest in the APS without the City's consent, not to be unreasonably withheld. The Builder will not be permitted to resell any Block for a profit without developing (i.e. no-flipping).

Ancillary Agreements
The Builder will have the right to access the Site prior to the Closing Date to conduct reviews and inspections subject to entering into a license agreement with the City but will require the City’s specific prior written permission for any intrusive testing including geotechnical investigations. The Parties may enter into any other licenses, easements, encroachments or other agreements necessary to implement the development of the Site.

Pre-Development Applications
The City shall provide consent, solely in the City's capacity as land owner of the Site for pre-developent applications by the Builder that are not otherwise required to be submitted by the City under the Development Agreement, provided that the City has approved such application, the Builder indemnifies the City in respect of such applications, and on condition that such consent shall not fetter the City's planning and municipal rights and obligations.
SCHEDULE “D”

PLAN OF SUBDIVISION
SCHEDULE “E”

RISK ASSESSMENT REPORT APPROVED BY MOECC
APPENDIX D: COMMERCIALY CONFIDENTIAL MEETING PROTOCOL

1.1 General

(1) Attendance at CCMs is not mandatory and Proponents that do not request or attend a CCM are still permitted to submit a Proposal.

(2) Proponents that do not participate in Round 1 CCMs are permitted to request a Round 2 CCM, subject to the registration requirements outlined in section 1.2.

(3) The Fairness Monitor will be present at all Commercially Confidential Meetings.

(4) Proponents will not be evaluated on any issues raised or comments made during these meetings, nor are the Commercially Confidential Meetings interviews for the purpose of evaluation.

(5) Proponents are reminded that Commercially Confidential Meetings are not intended to be the forum in which requests for information, clarification or questions with respect to the RFP, the RFP process, or the Project are submitted for oral response. The process for submitting general or “commercially confidential” RFIs is that is outlined in section 6 of the Special Provisions is intended to serve that purpose.

1.2 Registration for and Allocation of Commercially Confidential Meetings

(1) Not less than five (5) business days prior to the deadline for Proponents to submit a completed CCM Registration Form for each respective round of CCMs, the City shall confirm with the Proponents, the available dates, times and locations for the respective round of CCMs.

(2) Proponents requesting a Commercially Confidential Meeting must register by submitting a completed CCM Registration Form, in the form attached as Attachment 1 (the “CCM Registration Form”), no later than the date set out in the RFP Schedule to the City’s Contact Person.

(3) The CCM Registration Form must include all requisite information including an indication of first, second, and third choice of available CCM dates and times, in order for a CCM to be granted. Submission of an incomplete CCM Registration Form may result in a delayed time slot allocation and/or a Proponent not being given consideration for their preferred choices.

(4) Upon receipt of a completed CCM Registration Form, the City will allocate a CCM timeslot and advise the Primary Contacts for each Proponent of the confirmed date, time and place for their Commercially Confidential Meeting.
(5) CCM time slots will be allocated on a first-come-first-served basis, or at the absolute discretion of the City, where an alternate allocation method benefits the City.

(6) Each Commercially Confidential Meeting time slot shall be permitted to last up to three (3) hours in length.

### 1.3 Attendance at Commercially Confidential Meetings

(1) There is no requirement for all Team Members to attend the CCM. Team Member attendance at the CCM is at the discretion of the Proponent.

(2) Proponents are restricted to eight (8) attendees per Commercially Confidential Meeting.

(3) Notwithstanding registration for, and attendance at, a CCM, Team Members may be amended at any time prior to submission of a Proposal, subject to sections 4 and 5 (Material Change and Substitutions, respectively) of the Special Provisions.

### 1.4 Commercially Confidential Meetings Proceedings

(1) The primary purpose of the Commercially Confidential Meeting is to discuss issues related to the RFP and the Proponent’s Proposal that the Proponent believes are commercially sensitive. At least five (5) business days prior to the date of a scheduled Commercially Confidential Meeting, Proponents should submit to the City’s Contact Person, the Proponent’s agenda, along with any relevant comments or documents, which set out the issues that the Proponent would like to prioritize for the Commercially Confidential Meeting. Each Proponent should note that it is expected to lead the discussion through their agenda and City representatives will respond to issues as the meeting progresses.

(2) The City may or may not provide complete responses to any issues raised during the Commercially Confidential Meetings and may request that a Proponent submit a question in writing pursuant to the process set out in section 6 of the Special Provisions. Subject to any questions submitted in writing to the City, the information provided by the Proponents in the Commercially Confidential Meeting will remain confidential with the City. If, as a result of discussions at any Commercially Confidential Meeting, the City makes a decision to amend the RFP documents, the revisions will be communicated to all Proponents by Addendum.

(3) The Proponent, its Team Members and their respective advisors and representatives and any of their attendees at CCMs acknowledge and agree that:
(a) any statement made at a CCM by the City or any of its advisors or representatives is not and shall not be deemed or considered to be an indication of a preference by the City or a rejection by the City of anything said or done by the Proponent, its Team Members or any of their respective advisors or representatives;

(b) any statement made at a CCM by the City or any of their advisors or representatives shall not and will not be relied upon in any way by the Proponent, its Team Members or any of their respective advisors or representatives for any purpose, including any purpose in connection with the RFP, the Project or otherwise, except and only to the extent expressly confirmed by Addendum, provided that the City shall not be under any obligation to confirm any information by Addendum;

(c) as the City deems appropriate, the City may share process-related or Project-related information, including clarifying information, with all Proponents; and

(d) the Proponent, its Team Members and their respective advisors and representatives:

   (i) shall participate in the CCMs in accordance with the guidelines, procedures and processes set out in this Appendix D;

   (ii) waive any and all rights to contest and/or protest the RFP and the processes and guidelines set out herein, including the CCMs, based on the fact that CCMs occurred or on the basis that information may have been received during a CCM by another Proponent, another Proponent’s Team Member, or their respective advisors or representatives that was not received by the Proponent, its own Team Member(s) or any of their respective advisors or representatives; and

   (iii) agree that the Proponent, its Team Members and their respective advisors and representatives must treat information received at a CCM as confidential information.
### Attachment 1
**CCM REGISTRATION FORM**

<table>
<thead>
<tr>
<th>Name of Proponent:</th>
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<table>
<thead>
<tr>
<th>Name of Primary Contact Person:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Telephone:</td>
<td>Fax:</td>
</tr>
<tr>
<td>Alternate Telephone:</td>
<td>E-mail:</td>
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<tr>
<th>Name of Alternate Contact Person:</th>
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<tbody>
<tr>
<td>Telephone:</td>
<td>Fax:</td>
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<tr>
<td>Alternate Telephone:</td>
<td>E-mail:</td>
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<tr>
<th>Participating Team Members (include Full Name, Company and Title):</th>
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<tbody>
<tr>
<td>1.</td>
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<td>2.</td>
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<td>4.</td>
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<td>7.</td>
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<td>8.</td>
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</tbody>
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<tr>
<th>Preferred Dates and Timeslots:</th>
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<tbody>
<tr>
<td>First Choice</td>
</tr>
<tr>
<td>Date:</td>
</tr>
<tr>
<td>Time:</td>
</tr>
</tbody>
</table>
APPENDIX E: RESERVE PROPOSER PROTOCOL

A. Interpretation

1) Unless otherwise indicated, the definitions contained in the RFP shall be incorporated into and shall form a part of this Reserve Proponent Protocol.

2) Section references within this Reserve Proponent Protocol refer strictly to sections within this Reserve Proponent Protocol.

B. Protocols

1. Eligibility to be named a Proponent

1.1. The following three conditions must all be met before a Reserve Proponent is eligible to be named by the City as a Proponent:

   (i) At least one Proponent is no longer a participant in the RFP process as a result of:

      (a) voluntarily withdrawing on or before the Commitment Date;
      (b) being removed from the RFP process by the City on or before the Commitment Date; or
      (c) not providing to the City its written intent-to-bid confirmation on or before the Commitment Date;

   (ii) The Reserve Proponent confirms its continued interest in participating in the RFP and confirms its ability to submit a Proposal by the Closing Time without any special considerations or concessions, which the Reserve Proponent must do within three (3) business days of receiving the City’s request to do so; and

   (iii) The Reserve Proponent has maintained good standing in the RFP process per section 3.

1.2. The City reserves the right, in its absolute discretion, to determine if and when the conditions outlined in section 1.1 exist. However, once the City announces that these conditions exist, no other conditions need be met in order for the Reserve Proponent to be eligible to be named as a Proponent, save and except the formal announcement outlined in section 1.3.

1.3. The Reserve Proponent is not a Proponent until formally named as one, with such announcement made in writing by the City’s Contact Person and communicated to all Proponents.
2. The Reserve Proponent’s Participation in the RFP Process

2.1. The Reserve Proponent is not required to participate in the RFP process and does so at its own discretion.

2.2. For the duration of the RFP process until the Commitment Date, the Reserve Proponent is invited to participate in all activities as if it was a Proponent and will be invited to all general meetings and briefings, as well as its own confidential meetings, will have access to the same information that will be made available to Proponents, including the RFP, all addenda and background information, and have the right to submit requests for information or clarification.

2.3. The invitation to have the Reserve Proponent participate alongside Proponents through the RFP process is intended to maximize the competitive environment and optimize the outcomes for the City while adhering to target timelines for the Project, and should not be construed as the City’s support of the Reserve Proponent’s prospective eligibility to be named a Proponent.

3. Withdrawal and/or Ineligibility

3.1. Should the Reserve Proponent decide to withdraw from the RFP process at any time, it shall immediately so advise the City in writing.

3.2. If a Material Change is reported by the Reserve Proponent to the City, and upon consideration of any proposed Substitutions, the City concludes that the Reserve Proponent team’s skills, qualifications or experience no longer meet the City’s expectations for this Project, the City may, in its absolute discretion, notify the Reserve Proponent that it is no longer eligible to continue participating in the RFP and it will be removed from the process.

3.3. If the Reserve Proponent, or any of its Core Team Members, or Architectural Design Lead violates any confidentiality, collusion, lobbying, or communication requirements outlined in either the RFQ or RFP, the City, in its absolute discretion, may notify the Reserve Proponent that it is no longer eligible to continue participating in the RFP and it will be removed from the process.

3.4. If any of the Reserve Proponent’s Core Team Members or Architectural Design Lead is added to the City’s banned vendor list, which is maintained and updated from time-to-time by the City’s Procurement Section, the Reserve Proponent will be required to report a Material Change and/or Substitution in accordance with section 3.2.
4. Timeline

4.1. For further clarity, the Reserve Proponent is welcome to participate in the RFP as outlined in section 2, until the earliest of:
   (i) the date when the Reserve Proponent withdraws;
   (ii) the date the Reserve Proponent is removed by the City from the RFP process in accordance with section 3; and
   (iii) the end of the Commitment Date unless the City announces that the conditions outlined in section 1.1 exist and the Reserve Proponent confirms its intention to continue participation in the RFP as a Proponent.

4.2. Upon voluntary withdrawal, removal by the City, or expiry of eligibility status, any of the Reserve Proponent’s Core Team Members may be named as an Adjunct Team Member, but not as a Core Team Member, of a Proponent’s team.

4.3. Once the Reserve Proponent withdraws or is removed from the RFP process, or has its eligibility status expire on the Commitment Date, it may not be reinstated as a Reserve Proponent or be eligible to become a Proponent.
APPENDIX F: MINIMUM GREEN BUILDING AND DESIGN GUIDELINES

<table>
<thead>
<tr>
<th>1a. LEED Credits (if BD+C: New Construction path chosen)</th>
<th>Intent: To ensure that the pursuit of LEED certification (under the BD+C: New Construction standard) includes the achievement of specific credits that align with the City’s sustainability objectives.</th>
<th>Minimum Requirements: Achieve at least 70% of the total aggregate attainable points for the following credit categories, (excludes prerequisite requirements):</th>
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<tbody>
<tr>
<td></td>
<td>Outdoor Water Use Reduction</td>
<td>• Outdoor Water Use Reduction</td>
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<tr>
<td></td>
<td>Indoor Water Use Reduction</td>
<td>• Indoor Water Use Reduction</td>
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<tr>
<td></td>
<td>Water Metering</td>
<td>• Water Metering</td>
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<tr>
<td></td>
<td>Optimize Energy Performance</td>
<td>• Optimize Energy Performance</td>
</tr>
<tr>
<td></td>
<td>Advanced Energy Metering</td>
<td>• Advanced Energy Metering</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>1b. LEED Credits (if BD+C: Multifamily Midrise path chosen)</th>
<th>Intent: To ensure that the pursuit of LEED certification (under the BD+C: Multifamily Midrise standard) includes the achievement of specific credits that align with the City’s sustainability objectives.</th>
<th>Minimum Requirements: Achieve at least 70% of the total aggregate attainable points for the following credit categories (excludes prerequisite requirements):</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Outdoor Water Use</td>
<td>• Outdoor Water Use</td>
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<tr>
<td></td>
<td>Indoor Water Use</td>
<td>• Indoor Water Use</td>
</tr>
<tr>
<td></td>
<td>Total Water Use</td>
<td>• Total Water Use</td>
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<tr>
<td></td>
<td>Annual Energy Use</td>
<td>• Annual Energy Use</td>
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<tr>
<td></td>
<td>Advanced Utility Tracking</td>
<td>• Advanced Utility Tracking</td>
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</tbody>
</table>

| 2. Bicycle Parking and Storage                          | Intent: To reduce emissions associated with automobile use by supporting effective bicycle infrastructure. | Minimum Requirements: Residential buildings shall provide secure and covered bike racks and/or storage at a convenient and easily accessible location at a ratio of 0.75 spaces per residential unit |
### 3. Electric Vehicle Infrastructure

**Intent:**
To reduce non-point source emissions associated with automobile use.

**Minimum Requirements:**
Provide the following infrastructure that supports electric vehicle (EV) adoption:

- Provide EV infrastructure (minimum Level 2 charging standard) for 20% of all residential tenant and commercial parking spaces in accordance with the requirements of the Ontario Building Code (2018) and the Electrical Safety Code.
- Deliver the remaining residential and commercial parking spaces as “EV-ready” by providing roughed-in raceways (including conduits connected to junction box, cable trays, etc.) to allow for future installation of Level 2 EV infrastructure that connects the utility electrical supply to the planned future electrical equipment and to all parking spaces.
- Provide a plan, acceptable to the electrical authority having jurisdiction, for upgrading the building’s power infrastructure to accommodate future demand from completed EV charging infrastructure for all parking spaces.
- Provide the necessary additional space required to accommodate EV infrastructure (such as panels, transformers, and other electrical infrastructure) to meet future EV demand.

### 4. Smart Building

**Intent:**
To provide in-building and in-suite infrastructure that permits building residents and occupants to access ultra-high-speed broadband and wireless networks, track and control their utility usage, and to pay for energy based on each suite’s actual consumption.

**Minimum Requirements:**
Provide the following components for metering and data collection:

- A central system that collects consumption data for energy (electricity and natural gas) and water (hot and cold) for the whole building and includes infrastructure for remote access. Thermal meters are to be certified by CSA, EN, UL, ETL, or other applicable standardization authority.
- The infrastructure for suites to be independently billed for their utilities based on consumption.
<table>
<thead>
<tr>
<th>5. High-Efficiency Appliances</th>
<th></th>
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<tbody>
<tr>
<td><strong>Intent:</strong></td>
<td>To maximize energy and water efficiencies to reduce the burden on energy supply and municipal water and waste water systems.</td>
</tr>
<tr>
<td><strong>Minimum Requirements:</strong></td>
<td>All appliances supplied by the developer that are eligible under the Energy Star program must be Energy Star compliant.</td>
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<tr>
<td>Eligible appliances include:</td>
<td></td>
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<tr>
<td>- Clothes washers</td>
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<tr>
<td>- Combination washer-dryers</td>
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<tr>
<td>- Dishwashers</td>
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<td>- Freezers</td>
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<tr>
<td>- Refrigerators</td>
<td></td>
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<tr>
<td>- Ventilating fans (kitchen, bathroom exhaust)</td>
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</tbody>
</table>
6. Waste Management

**Intent:**
To minimize waste entering landfills and to encourage all building residents and occupants to participate in responsible waste management and for residents to benefit from waste collection services that form part of their municipal tax rate

**Minimum Requirements:**
All kitchen suites must provide separated cabinet space for segregated collection of three waste streams:
- Recyclables
- Organics
- Waste

Residential buildings above three storeys must provide tri-sorting or separate chutes, for collection of each of the three waste streams on all floors.

All buildings must provide collection areas for household hazardous wastes (HHW), including paints & solvents, cleaners & detergents, oils, batteries, electronics, and compact fluorescent light bulbs. HHW does not include propane or other explosives.

7. Water Quality, Quantity and Efficiency

**Intent:**
To promote the efficient use of water, minimize stormwater that leaves the site, manage and clean the stormwater that leaves the site.

**Minimum Requirements:**
Ensure that the maximum allowable annual runoff volume from the site is no more than 50% of the total average annual rainfall depth.

Separate the conveyance of clean site run-off (e.g., roof tops) from other contaminated run-off (e.g., parking areas)

Remove 80% of total suspended solids from all runoff leaving the site.

Provide drought-tolerant plants for at least 50% of the landscaped site area (including at-grade landscapes, vegetated roofs and walls)
### Long-Term Stewardship

**Intent:**
To provide building owners/operators and occupants with information necessary to operate and maintain the building optimally

**Minimum Requirements:**
Provide owners/operators and managers of residential and commercial buildings with the following material:

- Common area operating manual that includes:
  - A summary of the green building features incorporated in the building;
  - Maintenance requirements and recommendations for all common area and building plant equipment;
  - Operation instructions for common area and building plant equipment;
  - Commissioning instructions for common area and building plant equipment;
  - List of products used in base building that managers should consider, such as low VOC paint, carpet, energy efficient light bulbs, etc.;
  - Housekeeping policy, including a list of available green cleaners;

Provide owners of any owned residential or commercial units with the following material:

- Occupant suite operating manual that includes:
  - A summary of the green building features incorporated in the building;
  - Maintenance requirements and recommendations for all in-suite equipment;
  - Operation instructions for in-suite equipment;
  - Repair instructions for in-suite equipment;
  - List of products used in base building that occupants should consider, such as low VOC paint, carpet, energy efficient light bulbs, etc.;
  - Housekeeping policy, including a list of available green cleaners;

- Support material for service contracts (landscaping, snow removal, housekeeping, etc.).

- Instructions to the condominium corporations on how consumption-based billing may be implemented based on the provisions installed as per the “Smart Building” requirement.
Place a requirement on the condominium board or the operator/manager of rental buildings to:

- Establish a ‘green team’ made up of the building manager/property manager, energy manager, facilities manager, utility manager, sustainability consultant, a representative from the residential owners/occupants, and a representative from the commercial owners/occupants
- Direct the ‘green team’ to meet at least once a year to improve the building operational performance for energy/sustainability issues, including energy consumption, energy management systems, automated energy management, tenant comfort, tenant controls;
- Provide documented evidence to the City that these meetings have occurred

9. Long-Term Flexibility

**Intent:**
To provide building characteristics that allow for future changes in use without structural modifications

**Minimum Requirements:**
Provide the following flexibility measures:

- Ground Floor for all development, excluding residential buildings that are within the category of Part 9 of the Ontario Building Code (Housing and Small Buildings), shall provide:
  - A minimum clear slab-to-slab height (or to underside of 2nd floor) of 5m
  - A minimum structural live load capacity of 4.8 kPa
- Typical Floors above ground (other than Ground Floor) shall provide a clear slab-to-slab height of 2.75 m
- Above Grade Parking shall provide:
  - Flat floors with a minimum clear slab-to-slab height of 2.4 m (or 2.4m clear height after levelling floor slopes – include a narrative describing how the design allows for levelling)
  - A minimum structural live load capacity (slab on grade) of 7.2 kPa
  - A minimum structural live load capacity after levelling (suspended slabs) of 4.8 kPa
- Residential Suites:
  - Residential buildings shall be designed to ensure that residential suites which initially contain fewer than three bedrooms can be converted or combined with other suites to form new suites that contain
| 10. At-Grade Premises | **Intent:**  
To ensure that the use and enjoyment of the ground-level public realm is enhanced, and not detracted, by the private realm uses at ground-level.  

**Minimum Requirements:**  
Frontages of buildings that face the water or park edge without a public roadway separating the Block from the public open space, shall not be permitted to have residential units at-grade.  

The at-grade uses in those water-facing frontage premises must be limited to retail, community, educational, institutional, or common area amenities. |