SUBJECT: Lease Extension and Amending Agreement and an Associated Licence Extension and Amending Agreement, Both for Parts of 45 Main Street East, Hamilton (John Sopinka Court House) Between the City of Hamilton (Lessee/Licensee) and the Ontario Reality Corporation, Acting as Agent on Behalf of Her Majesty The Queen in Right of Ontario as Represented by the Minister of Public Infrastructure Renewal (Lessor/Licensor) (PED08062) (City Wide)

RECOMMENDATION:

(a) That a Lease Extension and Amending Agreement for part of 45 Main Street East, Hamilton (John Sopinka Court House) (as shown on Appendix “A” to Report PED08062 attached) between the City of Hamilton (Lessee/Licensee) and the Ontario Reality Corporation, Acting as Agent on Behalf of Her Majesty The Queen in Right of Ontario as Represented by the Minister of Public Infrastructure Renewal (Lessor/Licensor) comprising 15,482 rentable square feet, be approved and completed.

(i) Term: Five (5) year term commencing on September 1, 2007 and terminating on August 31, 2012.

(ii) Property: Leased premise comprises 15,482 square feet of Rentable Area, comprised of administration space and two courtrooms, on the fourth floor of 45 Main Street East, Hamilton.

(iii) Rental Rate: The City shall pay rent in the amount of $11.50 (NET) plus G.S.T., per annum, per square foot of Rentable Area, payable in equal monthly instalments of $14,836.92 plus G.S.T. or $178,043 plus G.S.T.
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per year on the first day of each month of the term. All rent to be charged to Account No. 55358-352125.

(iv) **Operating Costs:** Shall be covered by an additional rent payment estimated at a rate of $5.28 per square foot of Rentable Area, as of 2006 and subject to annual adjustments. The monthly payments of the additional rent payment are estimated to be $6,812.08 ($81,744.96 per year). All additional rent payments to be charged to Account No. 55358-352125.

(v) **Subsequent Five (5) year Extension:** The City is entitled to a further five (5) year lease extension in which the Rentable Area will be adjusted to reflect actual area that the City leases. The Rentable Area in the subsequent five year extension will be increased by 552 square feet to a revised total of 16,034 square feet to reflect the City’s lease of Courtroom No. 300 in 2005, which is 552 square feet larger than the previous leased Courtroom No. 308, which was surrendered to the landlord at the landlord’s request.

(b) That a Licence Extension and Amending Agreement for part of 45 Main Street East, Hamilton (John Sopinka Court House) between the City of Hamilton (Lessee/Licensee) and the Ontario Reality Corporation, Acting as Agent on Behalf of Her Majesty The Queen in Right of Ontario as Represented by the Minister of Public Infrastructure Renewal (Lessor/Licensor), also known as Courtroom No. 326 located on the third floor, be approved and completed.

(i) **Term:** Five (5) year term commencing on September 1, 2007 and terminating on August 31, 2012.

(ii) **Property:** Licensed premises are known as Courtroom No. 326, on the third floor of 45 Main Street East, Hamilton.

(iii) **Rental Rate:** The City shall pay a Licence Fee in the amount of $8,187.00 (Gross), plus G.S.T. per annum, in equal monthly instalments of $682.25 plus G.S.T. on the first day of each month of the term. The Licence Fee to be charged to Account No. 55358-352125.

(iv) **Operating Costs:** None
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(v) **Subsequent Five (5) Year Extension:** The City is entitled to a further five (5) year licence extension beyond the term of the current Licence Extension and Amendment.

(c) That Legal Services be authorized to prepare a by-law under Section 110 of the Municipal Act to propose that this leased area become a City Capital Facility, whereby the City would be exempt from paying realty taxes at this location.

(d) That the Mayor and City Clerk be authorized and directed to execute both the Lease Extension and Amendment and the associated Licence Extension and Amendment Agreement in a form satisfactory to the City Solicitor.

____________________________________
Tim McCabe
General Manager
Planning and Economic Development Department

**EXECUTIVE SUMMARY:**

The purpose of this report is to request City Council’s approval to complete both a Lease Extension and Amending Agreement and an associated Licence Extension and Amending Agreement, for parts of 45 Main Street East, (John Sopinka Court House) between the City of Hamilton (Lessee/Licensee) and the Ontario Reality Corporation, Acting as Agent on Behalf of Her Majesty The Queen in Right of Ontario as Represented by the Minister of Public Infrastructure Renewal (Lessor/Licensor). The leased and licensed space is used by the City as the Provincial Offences Act administration office.

**BACKGROUND:**

The Provincial Offences Act (POA) Office was the responsibility of the Province of Ontario until this function was transferred to the former Region of Hamilton-Wentworth. The leased and licensed space at 45 Main Street East, Hamilton is used for courtrooms, administration and prosecution offices, and interview and pre trial rooms.

The original lease between the municipality and the Province for the lease of 9,264 square feet in the courthouse was authorized by the former Regional Council on
November 25, 1999 with the approval of Item No. 4, of the Committee of the Whole Report 5-99. The initial rental rate was $10.00 (NET) plus G.S.T. per square foot. The subsequent lease extension to August 31, 2007 included an increase in the rental rate to $11.00 (NET) plus G.S.T. per square foot. The City also paid operating costs, which were $4.93 per square foot in 2002.

In addition to the original lease as noted above, additional space was leased from the province with the approval of Item No. 5 of the Committee of the Whole Budget Report by City Council on May 23, 2002. This additional space was required for administration staff. The rental rate for the additional space coincided with the rates for the original space. Both these leases had a termination date of August 31, 2007.

The City had also entered into a Licence Agreement with the province for use of Courtroom No. 320 on a daily basis to accommodate periods when the courtrooms under lease were not sufficient to handle the volumes. At the request of the province, pursuant to the root lease, the courtrooms were shuffled in 2004, and now the licence agreement for the “day court” applies to Courtroom No. 326. This amended licence was approved by delegated authority on October 20, 2004, with a termination date of August 31, 2007. The initial rates for the “day court” were $125.00 plus G.S.T per day. Under the agreement the City pre-pays the landlord $625.00 (GROSS) plus G.S.T. per month, ($7,500 GROSS) plus G.S.T. per year, for 60 days use of the “day court”. If the POA office did not use the “day court” for 60 days over the year, the payments were reconciled in favour of the City.

The rental rates and operating costs for the proposed five year extensions are $11.50 (NET) plus G.S.T. per square foot of Rentable Area and $5.28 (2006) per square foot of Rentable Area, respectively. Therefore, the rental rate is increasing 50 cents (4.5%) over the expiring lease. The operating costs are $5.28 per square foot as of 2006 and are subject to annual adjustments which will be reviewed and approved by the Facilities Section.

In order to maintain the continuity of the POA offices at the present location the Real Estate Section attempted to obtain a ten year extension of the lease and associated licence agreement rather than just a five year extension. The province would not offer a ten year extension; however, an option for a second five year term for both agreements was negotiated.

The Real Estate Section recommends the proposed five year Lease Extension and Amending Agreement and the associated Licence Extension and Amending Agreement,
for parts of 45 Main Street East, (John Sopinka Court House) at the noted rental rates and the option for a second five year term be approved.

**ANALYSIS/RATIONALE:**

Completing these two agreements will permit the POA administration offices to remain in their present location with an option for a further five year term.

**ALTERNATIVES FOR CONSIDERATION:**

No alternatives were investigated as the costs to relocate the POA offices and house the Justices in another suitable facility would be cost prohibitive and operationally extremely difficult.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** The recommended option will require Facilities to make some back payment of rent and adjust for the payment increases in both the rental rate and operating costs moving forward.

**Staffing:** There are no identified staffing implications as a result of this report.

**Legal:** Legal Services would be required to work with the Real Estate Section to complete the execution of these two agreements.

**POLICIES AFFECTING PROPOSAL:**

This recommendation is consistent with the Real Estate Management Portfolio Strategy Plan as approved by City Council on November 24, 2004, and the “Procedural By-law for the Sale of Land”, By-law 04-299. Based on current City policies, City Council must approve any lease, licence or renewals with a term or an option that extends beyond five year terms.

**RELEVANT CONSULTATION:**

The Real Estate Section consulted with Legal Services, Clerks and staff from the POA office.
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CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Allows continued enforcement of POA cases.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Continues this office use in the downtown core.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Most cost effective manner to accommodate the POA office.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No

SGB:sd
Attach. (1)