



City of Hamilton

AUDIT, FINANCE AND ADMINISTRATION COMMITTEE ADDENDUM

Meeting #: 19-011
Date: August 15, 2019
Time: 9:30 a.m.
Location: Council Chambers, Hamilton City Hall
71 Main Street West

Angela McRae, Legislative Coordinator (905) 546-2424 ext. 5987

6. DELEGATION REQUESTS

- *6.1 Jaideo Debie, ArcelorMittal Long Product Canada, respecting the Raw Water Station Pump Upgrade at Woodward Avenue (For today's meeting)

8. PUBLIC HEARINGS / DELEGATIONS

- *8.2 Jaideo Debie, ArcelorMittal Long Product Canada, respecting the Raw Water Station Pump Upgrade at Woodward Avenue

10. DISCUSSION ITEMS

- 10.4 Management Update on Performance Audit Report 2015-02 - Claims Adjusters and Operations Efficiencies (Value for Money Audit) (FCS17016(a)) (City Wide)

- *10.4.a THIS ITEM HAS BEEN WITHDRAWN

- *10.5 Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068) (CityWide)

Discussion of Confidential Appendix “A” to this report in Closed Session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and the *Ontario Municipal Act, 2001*:

- a proposed or pending acquisition or disposition of land for City purposes; and,
- a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

- *10.6 Audit and Accountability Fund Transfer Payment Agreement (FCS19059(a)) (City Wide)

11. MOTIONS

- 11.1 Restorative Practices Council and Senior Leadership Team Workshop

*11.1.a THIS MOTION HAS BEEN WITHDRAWN

12. NOTICES OF MOTION

- *12.1 Transit Program Initiative

14. PRIVATE AND CONFIDENTIAL

- 14.2 Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068) (CityWide) (Distributed under separate cover)

*14.2.a MOVED TO ITEM 10.5

Added Item 6.1

Form: Request to Speak to Committee of Council

Submitted on Tuesday, August 6, 2019 - 10:43 am

==Committee Requested==

Committee: Audit, Finance & Administration

==Requestor Information==

Name of Individual: Jaideo Debie

Name of Organization: ArcelorMittal Long Product Canada

Contact Number: +1(905) 528-9473 6903

Email Address: jaideo.debie1@arcelormittal.com

Mailing Address:

Complexe Hamilton East
690 Strathearne Ave. N.
Hamilton, Ontario L8H 7N8
905 528-9473

Reason(s) for delegation request: We would like to talk about the Raw Water Station Pump upgrade at Woodward Ave.; we would like to understand the City's scope of work on the electrical upgrade needed and its revised scope of work

Will you be requesting funds from the City? No

Will you be submitting a formal presentation? Yes



ArcelorMittal

Audit, Finance and Administration Committee

ArcelorMittal Long Products Canada (AMLPC)

August 15th 2019

Requirements

- Support and collaboration from the City to revise the Scope Of Work (SOW) and avoid overdesigning by ~30 times the Raw Water Pumping Station (“RW PS”) electrical upgrade.

Designed (2016 – without validation)	AMLPC estimates
30 000 gpm	<1000 gpm (5 years +)
1200 hp	100 hp
6000 kVA	225 kVA
Cost of 500 mcm cable and installation: 405 000 \$	Cost of same 500 mcm cable and installation: 54 000 \$ (based on two quotes)

- Support and collaboration from the City to help negotiate supply raw water and easement agreement by Dec 31st and Dec 2nd, 2019, respectively.

Important involvement

- In order to answer the City's questions and speed up any processes between parties, AMLPC has put together the following team to expedite any discussions with the City to achieve all stakeholders needs:

NAME	TITLE	ROLES
Gilles Quenneville	VP HR and Legal	Direct communication with Board
Charles Fréchette	GM Wire Group	Project Lead
Nadia Thibault	Principal Lawyer	Legal Council
Jaideo Debie	Director Hamilton	Coordinator of Plant
Guillermo Jorquera	Manager Hamilton	Plant specifications
Nicolas Bedard	Electrical Engineer	Engineering specification
Luc Chabot	Director Environment	Environmental specification
Jean-Francois Moisan	Director Special Project	Procurement specification



Roadblocks

- **No transparency** (timelines/schedule and penalty, precise SOW) from City's team
 - Requests made verbally : May. 28, Jul. 17, Jul. 29. *No info provided.*
 - Requests made by written : Jul. 24, Jul. 25, Aug. 1st. *No info provided.*
- **No effort** from City's team to implement updated AMLPC SOW based on actual needs even if City's representant confirmed its technical feasibility (requires less equipment, less investment and consequently less future maintenance).
- **Undue pressure** from City's representative to finalize the water supply and easement agreement before the official December 2019 deadline. This hampers other discussions, which puts at risk our operations, our workers and stops efforts to find a mutually beneficial solution.
- **No acknowledgment** from City's representative to our communication of Aug. 1, 2019 confirming our decision to keep sourcing with the existing RW PS.

Next Suggested Steps

- **Aug. 22nd: Confirmation by City that the existing electrical system at the raw water pumping station (“RW PS”) will be upgraded with the proper revised SOW as established in collaboration with AMLPC.**
- Work sessions:
 - Aug. 22nd: Engineering teams to review scope of work
 - Aug. 22nd: Set timelines (aiming to not impede with City’s other upgrades)
 - Oct. 15th: (aligned with actual City timeline for the pulling of cables) :
Installation of upgraded and revised electrical system at RW PS
 - Dec. 1st: Closing of all agreements

If not possible...

- AMLPC will have no choice but to take legal action in order to mitigate cost and secure license to operate.



Quick Facts and Key Dates

- **June 12 2018 letter:** the City clearly states that “the scheduled upgrades for the electrical feeds to the Raw Water Pumping Station have been cancelled by the City”. Surprisingly, on July 29th conference call, Mr. Winters confirmed a existing planned schedule for October 2019 but confirmed that to date, no equipment was purchased specifically for this related work.
- **August 15, 2018 and February 7, 2019 :** Audit, Finance, Administration Committee (Report 18-011 and Report 19-002) :
Council approval of deadline December 1st, 2019 for the closing of a Raw water Supply and Easement Agreement
- **June 12 2019 email communication from the City :**
Requested “AMLPC to advise the City of its decision respecting the location of the Pumping Station by no later than August 6, 2019”.
- **July 24th 2019 and July 25th 2019 AMPLC’s correspondences.**
AMPLC shared its adequate electrical upgrade scope needs.
- **July 29, 2019 conference call :**
City’s representants confirmed the technical feasibility of the revised work scope proposed by AMPLC, which significantly requires less equipment, less investment and consequently less associated costs for future repair and maintenance.
- **July 31, 2019 City’s correspondence :**
City categorically refuses to team with AMPLC to resolve the situation and refuses to share on a voluntarily basis the supporting documentation of its project.
- **August 1, 2019 AMLPC’s correspondence :**
AMLPC confirmed “its needs to be supply with raw water thought the City’s current existing pumping station and reiterates its willingness to work with the City to define the scope of work required by AMPLC for the electrical upgrade to the existing pumping station.”
- **August 12, 2019 City’s correspondence :**
Affirms “that AMLPC has not confirmed by the requested August 6, 2019 date, its intention to continue to receive raw water supply from the City [...]. Accordingly staff will report to Committee and Council with a recommendation that the City discontinue the supply of raw water to 690 Strathearne Avenue North as of January 1, 2020. The Report will be considered by the City’s Audit, Finance & Administration Committee on September 5, 2019.”



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	August 15, 2019
SUBJECT/REPORT NO:	Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Marcin Zukowski (905) 546-2424 Ext. 2162 Brian McMullen (905) 546-2424 Ext 4549
SUBMITTED BY:	Mike Zegarac General Manager, Finance and Corporate Services Corporate Services Department
SIGNATURE:	

Discussion of this Confidential Appendix “A” to this Report in Closed Session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and the *Ontario Municipal Act, 2001*:

- a proposed or pending acquisition or disposition of land for City purposes; and,
- a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

RECOMMENDATION(S)

- (a) That the General Manager, Finance and Corporate Services, be authorized to enter into and execute any necessary agreements, including any agreements with Infrastructure Ontario’s Loan Program, to secure the capital funding required for CityHousing Hamilton Corporation (CHH) projects as attached in Appendix “A” to Report FCS19068;

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SUBJECT: Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068) (City Wide) – Page 2 of 7

- (b) That the General Manager, Finance and Corporate Services, be authorized and directed to enter into and execute any necessary agreements to engage the services of all required persons, agencies and companies to negotiate and confirm the terms and issuance of all necessary debenture issue(s) including, but not limited to, external legal counsel, fiscal agents and financial professionals, to secure the capital funding required for CityHousing Hamilton Corporation (CHH) projects as attached in Appendix “A” to Report FCS19068;
- (c) That the General Manager, Finance and Corporate Services, be authorized to negotiate and confirm the terms and placement of all debenture issue(s), and / or private placement debenture issue(s), in either a public or private market and / or bank loan agreements and debenture issue(s) and / or variable interest rate bank loan agreements and debenture issue(s), in an amount not to exceed \$24,741,020 Canadian currency of CityHousing Hamilton for projects as attached in Appendix “A” to Report FCS19068;
- (d) That the Mayor and City Clerk be authorized and directed to enter into and / or execute, on behalf of the City of Hamilton, all agreements and necessary ancillary documents required for CityHousing Hamilton Corporation (CHH) projects as attached in Appendix “A” to Report FCS19068 including those required to secure and confirm the terms and issuance of any required debenture issue(s), with content acceptable to the General Manager, Finance and Corporate Services, and in a form satisfactory to the City Solicitor;
- (e) That staff be directed to prepare all necessary By-Law(s) to authorize and implement CityHousing Hamilton Corporation (CHH) projects as attached in Appendix “A” to Report FCS19068 including those By-laws necessary to negotiate, place and secure all required capital funding;
- (f) That confidential Appendix “A” to Report FCS19068, respecting Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects, remain confidential and not be released as a public document until the completion of the negotiation of the construction contracts and the completion of the purchase and sale agreement for projects as attached in Appendix “A” to Report FCS19068.

EXECUTIVE SUMMARY

The Board of Directors of CityHousing Hamilton Corporation (CHH) have passed resolutions for debt financing of \$24,741,020 for CityHousing Hamilton Corporation (CHH) projects as attached in Appendix “A” to Report FCS19068 as follows:

- CHH Board meeting of June 10, 2019 through Confidential report CHH Report #17029(d) respecting Roxborough Park Development Project
- CHH Board meeting of July 18, 2019 through Confidential report CHH Report #18012(c) respecting 500 MacNab Tower Renewal Update

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SUBJECT: Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068) (City Wide) – Page 3 of 7

The purpose of Report FCS19068 is to:

- request the authority to negotiate, secure and guarantee debenture issues, where required, for CHH debt of \$24,741,020;
- provide Council with an updated Annual Debt Repayment Limit as required by Ontario Regulation 403/02 of the *Municipal Act*, and
- provide Council with the debt-related financial indicators of the City Debt Management and Lease Financing Policy.

The City of Hamilton issues or secures debt instruments (debentures or loans) when the need exists and market conditions are right to attain funds to finance Capital Projects in accordance with the City's Debt Management Policy and Lease Financing Policy (Report FCS13074).

The Provincial Government of Ontario establishes an Annual Repayment Limit (ARL) representing the maximum amount which a municipality can commit to payments for debt obligations. Before authorizing any capital project or class of work or any increase in expenditure for a previously authorized capital project or class of work that would require a long-term debt or financial obligation, the municipal Treasurer shall calculate an updated repayment limit.

Since the last Annual Repayment Limit (ARL) update, adjustments have been made to the City of Hamilton's debt including debt maturity and annual debt payments. The City's adjusted ARL is \$220,254,135 in annual debt charge which corresponds to total debt of \$2,286,162,606. In comparison, the City's Debt Policy limit is \$1,376,882,730. The City's total consolidated municipal and housing corporation outstanding debt as at December 31, 2018 was \$484,891,359 which is far below the two mandated limits.

Council approved a Debt Management Policy and Lease Financing Policy (Report FCS13074) in October 2013, which contains the City-internal goals on debt levels, statutory limits on debt and financial ratios related to debt. Collectively, these financial indicators for the past five years (2014 to 2018) and estimates for 2019 are provided in Appendix "C" to Report FCS19068. With new debt issues over several years, these financial ratios will generally increase but remain well within the affordability range and acceptable levels of prudent financial management.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The City's Capital Financing Plan takes into account borrowing to finance municipal capital projects with the associated debt charges included in the Tax Supported Operating Budget and the Rate Supported Water, Wastewater, Stormwater Operating Budget.

SUBJECT: Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068) (City Wide) – Page 4 of 7

The City's total consolidated municipal and housing corporation (CHH) outstanding debt as at December 31, 2018 was \$484,891,359 which is below the statutory limits of \$2,286,162,606 and City of Hamilton debt limit of \$1,376,882,730.

Negotiating, securing and guaranteeing debenture issues, where required, for CHH debt of \$24,741,020 does not impact the City's Tax Supported or Rate Supported Operating Budgets as the debt and related debt servicing costs will be reported by CHH. Financial details on CHH's development strategy were approved at the CHH Board meeting of June 10, 2019 (confidential report CHH Report #17029(d)) and CHH Board meeting of July 18, 2019 (confidential report CHH Report #18012(c)).

Staffing: N/A

Legal: Outside legal counsel is required in order to execute the issuance of debentures.

HISTORICAL BACKGROUND

Council approval is required to authorize the issuance of debentures in accordance with the City's Debt Management Policy and Lease Financing Policy (Report FCS13074).

On March 27, 2018, the Board of Directors of CHH passed resolutions through confidential Report #17021(b) requesting CHH debt of \$24,539,000 for a Development Strategy to renovate, rebuild and build new social and affordable housing.

On April 11, 2018, Council approved CHH debt of \$24,539,000 through Report FCS18011 respecting Authority to Negotiate and Place a Debenture(s) in Audit, Finance and Administration Committee Report 18-004 which included debt for the following locations:

- \$9,750,000 500 MacNab
- \$8,533,000 Bay-Cannon
- \$1,656,000 Wellington-King William
- \$4,600,000 Macassa

On June 10, 2019, the Board of Directors of CHH passed resolutions through Confidential Report#17029(d), as an update to Report #17029(c), respecting Roxborough Park Development Opportunity.

On July 18, 2019, the Board of Directors of CHH passed resolutions through confidential Report #18012(c) respecting 500 MacNab Tower Renewal Update.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Report FCS19068 meets the requirements of the City of Hamilton's Debt Policy, whereby Council authority is required to issue debt.

RELEVANT CONSULTATION

Legal and Risk Management Services Division, Corporate Services Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

The Recommendations in Report FCS19068 will allow the General Manager, Finance and Corporate Services, to negotiate the terms and issuance of a debenture(s) up to \$24,741,020 over several years to finance CityHousing Hamilton Corporation (CHH) projects as attached in Appendix "A" to Report FCS19068.

The Provincial Government of Ontario establishes an Annual Repayment Limit representing the maximum amount which a municipality can commit to payments for debt obligations. Before authorizing any capital project or class of work or any increase in expenditure for a previously authorized capital project or class of work that would require a long-term debt or financial obligation, the municipal treasurer shall calculate an updated limit.

Since the last Annual Repayment Limit (ARL) update, adjustments have been made to the City of Hamilton's debt including debt maturity and annual debt payments. The City's adjusted ARL is \$220,254,135 in annual debt charge which corresponds to total debt of \$2,286,162,606. In comparison, the City's Debt Policy limit is \$1,376,882,730. The City's total consolidated municipal and housing corporation outstanding debt as at December 31, 2018 was \$484,891,359 which is far below the two mandated limits.

The City of Hamilton's updated ARL is attached as Appendix "B" to Report FCS19068.

When new debt is being considered, a number of financial ratios are calculated and a comparison of some financial ratios to other municipalities is provided during the budget process. The City-internal goals on debt levels, statutory limits on debt and financial ratios related to debt were approved by Council at its meeting in October 2013 in the Debt Management Policy and Lease Financing Policy (Report FCS13074). Collectively, these financial indicators for the past five years (2014 to 2018) and estimates for 2019 are provided in Appendix "C" to Report FCS19068.

The debt-related financial indicators include the following items:

I. City-internal Goals on Debt Levels

1. Total tax and rate-supported debt as a percentage of City Own Source Revenues, not to exceed 60%, unless approved by Council. The City's debt ratios of 23.2% in 2017, 29.4% in 2018 and forecasted 24.4% for 2019 are well within the limit of 60%.

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2. Total Development Charge (DC) supported debt as a percentage of the total DC Eligible Costs for the forecast period of the latest DC Background Study, not to exceed 25%, unless approved by Council.

The City considers the limit of 25% to be an appropriate balance between two competing uses of revenues generated by development charges:

- i) to sustain and ensure adequate infrastructure (capital), services and resources to support the City's growth plans, and
- ii) to repay the debt issued for development.

The City's debt ratios of 2% in 2017, 1.4% in 2018 and forecasted 1.1% for 2019 are well within the limit of 25%

II. Statutory Limits

1. The annual debt and financial obligation limit for the City is calculated in accordance with Section 3 of Ontario Regulation 403/02 as amended. The City's debt service charges as a percentage of City Own Source Revenue of 5.1% in 2017, 4.2% in 2018 and forecasted 4.8% for 2019 are well within the limit of 25%.
2. Outstanding variable interest rate bank loan agreements and variable interest rate debentures, in total, cannot exceed 15% of the total outstanding debt of the City as set out in Ont. Reg. 276/02, s(2). The City's debt ratios are below the limit at 6.1% in 2017, 4.7% in 2018 and forecasted 4.7% for 2019 are well within the limit of 15%.

III. Financial Ratios

The debt related financial ratios will remain well within the affordability range and acceptable levels of prudent financial management. Appendix "B" to Report FCS19068 provides the results of the following ratios:

- Debt and debt service charges per capita;
- Debt service charges as a percentage of City Own Source Revenue;
- Debt service charges as a percentage of the municipal levy;
- Debt to operating revenues;
- Debt to reserves and reserve funds; and
- Cash and liquid assets to debt service; cash and liquid assets minus debt.

ALTERNATIVES FOR CONSIDERATION

N/A

SUBJECT: Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068) (City Wide) – Page 7 of 7

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS19068 – CityHousing Hamilton Projects Recommended for Debt Financing

Appendix “B” to Report FCS19068 – City of Hamilton Treasurer's Updated 2019 Annual Repayment Limit

Appendix “C” to Report FCS19068 – City of Hamilton Debt Policy: Ratios

MZ/dt

City of Hamilton Treasurer's Updated 2019 Annual Repayment Limit

Annual Repayment Limit - <i>effective January 1, 2019, as calculated by the Ministry of Municipal Affairs, based on 2017 Financial Information Return</i>	\$266,191,448
Annual debt service charges on total City Municipal Debt approved to date 2019 and prior years but not yet issued (\$468.0 M at 5% for 15 year term)	-\$45,088,191
Annual debt service charges on City Housing Hamilton debt approved but not yet issued and guaranteed by City of Hamilton (\$24.539 M at 5% for 30 year term)	-\$1,596,297
Annual debt service charges in 2019 resulting from 2018 debenture issue of \$110.820 M	-\$10,756,928
Annual debt service charges on debentures discharged in 2017 and 2018	\$11,802,452
Adjustment for annual debt service charges on existing City Housing Hamilton mortgages and City of Hamilton Tangible Capital Leases	-\$298,349
Updated 2019 Annual Repayment Limit	\$220,254,135
<i>(A calculation by the Treasurer representing an estimate of the maximum amount available to commit to annual debt service charges.)</i>	
Debenture amount at 5% interest rate for 15 year term (amortizer) corresponding to the annual debt service charges of \$220,254,135	\$2,286,162,606

Note: The annual debt service charges related to CHH debt in Report FCS19068 of \$24,741,020 are estimated at \$1,275,614 assuming an interest rate of 3.72% and term of 35 years.

<u>City of Hamilton Debt Policy: Ratios</u>						
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019 Estimate</u>
<u>Affordability:</u>						
Debt Per Capita	\$803.33	\$710.04	\$850.86	\$742.07	\$848.78	\$746.95
Debt Per Capita Year Over Year (% Change)	14.5%	-11.6%	19.8%	-12.8%	14.4%	-12.0%
Debt Per Household	\$1,984.55	\$1,747.00	\$2,085.23	\$1,812.52	\$2,066.38	\$1,812.72
Debt Per Household Year Over Year (% Change)	14.0%	-12.0%	19.4%	-13.1%	14.0%	-12.3%
Debt Service Charges Per Capita	\$97.50	\$112.08	\$109.93	\$120.86	\$99.34	\$114.72
Debt Service Charges Per Capita Year Over Year (% Change)	-13.8%	15.0%	-1.9%	9.9%	-17.8%	15.5%
<u>Sustainability:</u>						
Debt Service Charges(Net) As A % of City Own Source Revenue	4.4%	4.8%	4.7%	5.1%	4.2%	4.8%
Debt Service Charges(Net) As A % of the Municipal Levy	7.0%	7.7%	7.4%	8.2%	6.6%	7.5%
Debt to City Own-Source Revenue	36.0%	30.4%	36.0%	31.3%	35.9%	31.2%
Debt to Operating Revenue (Standard & Poor's)	31.0%	26.0%	31.0%	26.6%	29.3%	24.9%
Debt to Total Reserves and Reserve Funds	0.50	0.42	0.52	0.42	0.51	0.55
Cash & Liquid Assets to Debt Service Charges	1461%	1029%	1282%	1173%	1509%	1355%
Cash & Liquid Assets minus Debt	\$338,993,554	\$243,877,069	\$310,305,423	\$380,434,530	\$371,700,147	\$467,570,859
<u>Goals:</u>						
Tax & Rate Supported Debt as a % of City Own-Source Revenue <i>Maximum (60%)</i>	24.0%	20.1%	26.7%	23.2%	29.4%	24.4%
DC Supported Debt as a % of Total DC Eligible Costs <i>Maximum (25%)</i>	2.9%	2.6%	2.3%	2.0%	1.4%	1.1%
<u>Statutory Limits:</u>						
Debt Service Charges as a % of City Own-Source Revenue (ARL) <i>Limit (25%)</i>	4.4%	4.8%	4.7%	5.1%	4.2%	4.8%
Total Variable Rate Debt as a % of Outstanding Total Debt <i>Limit (15%)</i>	9.5%	9.3%	6.5%	6.1%	4.7%	4.7%



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Mayor and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	August 15, 2019
SUBJECT/REPORT NO:	Audit and Accountability Fund Transfer Payment Agreement (FCS19059(a)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	John Savoia (905) 546-2424 Ext. 7298
SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the Mayor and City Clerk be authorized and directed to sign a Transfer Payment Agreement substantially in the form and content attached as Appendix "A" to Report FCS19059(a) between the City of Hamilton and Her Majesty the Queen in right of Ontario as represented by the Minister of Municipal Affairs and Housing for the transfer of funds from the Audit and Accountability Fund, together with all necessary associated documents, in a form satisfactory to the City Solicitor and with content acceptable to the General Manager of Finance and Corporate Services;
- (b) That the By-law to Authorize the Signing of the Transfer Payment Agreement for the transfer of funds from the Audit and Accountability Fund between the Her Majesty the Queen in right of Ontario as represented by the Minister of Municipal Affairs and Housing and the City of Hamilton, attached as Appendix "B" to Report FCS19059(a), be approved;
- (c) That a certified copy of the approved by-law authorizing the signing of the Transfer Payment Agreement be forwarded to the Ministry of Municipal Affairs and Housing upon Council approval.

**SUBJECT: Audit and Accountability Fund Transfer Payment Agreement
(FCS19059(a)) (City Wide) – Page 2 of 4**

EXECUTIVE SUMMARY

Council, at its June 12, 2019 meeting, directed staff to provide options for potential application to the Audit and Accountability Fund (Fund), that fall within the criteria of the program guidelines, with an associated cost of up to \$250,000.

The Province announced, on May 21, 2019, the creation of the \$7.35 M Fund for large urban municipalities and school boards in Ontario “to help municipalities become more efficient and modernize service delivery while protecting front line jobs.” The Fund is a conditional grant program available to 39 large urban municipalities and 10 school boards across the province.

To be eligible for this funding, the Province expects a review of municipal expenditures to find efficiencies. The Province has outlined three forms a review project could take including:

- A line-by-line review of the municipality’s entire budget;
- A review of service delivery and modernization opportunities;
- A review of administrative processes to reduce costs.

Given the parameters / options of the program, on June 26, 2019, Council approved that the City explore an Expression of Interest under “a review of service delivery and modernization opportunities” stream specifically, a third-party review of the City’s use of external consultants and contractors. The Review will examine feasible and innovative service delivery options where external consultants and contractors are utilized extensively. The Review will focus on the overall service performance in relation to approved service standards. The outcome of the Review will be to identify sustainable long-term service delivery efficiencies and associated cost savings.

The reporting requirement of this Fund is extremely short with a final report by the third-party to be posted publicly by November 30, 2019 and therefore, the City will need to single source a third-party consultant to complete this work to meet the provincial timelines.

On August 8, 2019, the City was notified that it will receive funding of up to \$250 K towards the Review of Use of External Contractors and Consultants (refer to Appendix “C” to Report FCS19059(a)). A condition of the Fund is for the City to enter into a Transfer Payment Agreement (refer to Appendix “A” to Report FCS19059(a)) and the enactment of a by-law authorizing it to sign a Transfer Funding Agreement (TPA) with the Ministry of Municipal Affairs and Housing (refer to Appendix “B” to Report FCS19059(a)).

Alternatives for Consideration – N/A

OUR Vision: To be the best place to raise a child and age successfully.

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OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Audit and Accountability Fund Transfer Payment Agreement
(FCS19059(a)) (City Wide) – Page 3 of 4**

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Execution of the TPA will allow the City to become eligible to receive up to \$250 K in funding from the Audit and Accountability Fund.

Staffing: The Review will be conducted by a third-party consultant with the assistance of City staff, where required. It is not expected to dedicate staff for this purpose.

Legal: The attached by-law (Appendix “B” to Report FCS19059(a)) authorizing the signing of the TPA, along with a signed copy of the TPA, is required to be submitted to the Ministry of Municipal Affairs and Housing for the City to receive funds under the TPA.

HISTORICAL BACKGROUND

On May 21, 2019, the Premier announced the creation of the Audit and Accountability Fund (Fund) for the 39 large urban municipalities and 10 school boards in Ontario. The City received a follow up letter on May 29 from Laurie LeBlanc, Deputy Minister in Municipal Affairs and Housing with the program eligibility and requirements for next steps.

The Fund is a conditional grant program under which large urban municipalities can apply to undertake expenditure reviews with the goal of finding efficiencies. For a municipality to be eligible for funding under the Fund, the proposed review project must:

1. Review municipal expenditures to find efficiencies. The review project could take a number of forms including:
 - A line-by-line review of the municipality’s entire budget;
 - A review of service delivery and modernization opportunities;
 - A review of administrative processes to reduce costs.
2. Result in a final report by the independent third-party reviewer that provides specific and actionable recommendations for cost savings and improved efficiencies.
3. Be completed by November 30, 2019. Municipal applicants will be required to post publicly the independent third-party report that outlines the analysis, findings and actionable recommendations by November 30, 2019.

On June 27, 2019, staff submitted an Expression of Interest to the Ministry of Municipal Affairs and Housing as required in the Fund’s guidelines after receiving Council approval on June 26, 2019.

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**SUBJECT: Audit and Accountability Fund Transfer Payment Agreement
(FCS19059(a)) (City Wide) – Page 4 of 4**

On August 8, 2019, the City was notified by the Ministry of Municipal Affairs and Housing that it will receive funding of up to \$250 K towards the Review of Use of External Contractors and Consultants (refer to Appendix “C” to Report FCS19059(a)). A condition of the Fund is for the City to enter into a Transfer Payment Agreement (refer to Appendix “A” to Report FCS19059(a)) and the enactment of a by-law authorizing it to sign a Transfer Funding Agreement (TPA) with the Ministry of Municipal Affairs and Housing (refer to Appendix “B” to Report FCS19059(a)).

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

N/A

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

N/A

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS19059(a) – Ontario Transfer (Audit and Accountability Fund) Transfer Payment Agreement

Appendix “B” to Report FCS19059(a) – City of Hamilton By-law To Authorize the Signing of a Transfer Payment Agreement for the Transfer of Audit and Accountability Funds

Appendix “C” to Report FCS19059(a) – August 8, 2019 Letter from Minister of Municipal Affairs and Housing

JS/dt

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT is effective as of the _____ day of _____, 20____

B E T W E E N :

**Her Majesty the Queen in right of Ontario
as represented by the Minister of Municipal Affairs and
Housing**

(the “**Province**”)

- and -

City of Hamilton

(the “**Recipient**”)

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Province and the Recipient agree as follows:

1.0 ENTIRE AGREEMENT

1.1 The agreement, together with:

Schedule “A” - General Terms and Conditions
Schedule “B” - Project Specific Information and Additional Provisions
Schedule “C” - Project
Schedule “D” - Budget
Schedule “E” - Payment Plan
Schedule “F” - Reports, and
any amending agreement entered into as provided for in section 4.1,

constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

2.0 CONFLICT OR INCONSISTENCY

2.1 **Conflict or Inconsistency.** In the event of a conflict or inconsistency between the Additional Provisions and the provisions in Schedule "A", the following rules will apply:

- (a) the Parties will interpret any Additional Provisions in so far as possible, in a way that preserves the intention of the Parties as expressed in Schedule "A"; and
- (b) where it is not possible to interpret the Additional Provisions in a way that is consistent with the provisions in Schedule "A", the Additional Provisions will prevail over the provisions in Schedule "A" to the extent of the inconsistency.

3.0 COUNTERPARTS

3.1 The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

4.0 AMENDING THE AGREEMENT

4.1 The Agreement may only be amended by a written agreement duly executed by the Parties.

5.0 ACKNOWLEDGEMENT

5.1 The Recipient acknowledges that:

- (a) by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the *Broader Public Sector Accountability Act, 2010* (Ontario), the *Public Sector Salary Disclosure Act, 1996* (Ontario), and the *Auditor General Act* (Ontario);
- (b) Her Majesty the Queen in right of Ontario has issued expenses, perquisites, and procurement directives and guidelines pursuant to the *Broader Public Sector Accountability Act, 2010* (Ontario);
- (c) the Funds are:
 - (i) to assist the Recipient to carry out the Project and not to provide goods or services to the Province;
 - (ii) funding for the purposes of the *Public Sector Salary Disclosure Act, 1996* (Ontario);
- (d) the Province is not responsible for carrying out the Project; and

- (e) the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by Minister of Municipal
Affairs and Housing**

Date

Name: The Honourable Steve Clark
Title: Minister of Municipal Affairs and Housing

City of Hamilton

Date

Name:
Title:

I have authority to bind the Recipient.

Date

Name:
Title:

I have authority to bind the Recipient.

SCHEDULE "A" GENERAL TERMS AND CONDITIONS

A1.0 INTERPRETATION AND DEFINITIONS

A1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency will be in Canadian dollars and currency; and
- (e) "include", "includes" and "including" denote that the subsequent list is not exhaustive.

A1.2 **Definitions.** In the Agreement, the following terms will have the following meanings:

"Additional Provisions" means the terms and conditions set out in Schedule "B".

"Agreement" means this agreement entered into between the Province and the Recipient, all of the schedules listed in section 1.1, and any amending agreement entered into pursuant to section 4.1.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"Effective Date" means the date set out at the top of the Agreement.

"Event of Default" has the meaning ascribed to it in section A13.1.

"Expiry Date" means the expiry date set out in Schedule "B".

"Funding Year" means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31; and

- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Indemnified Parties" means Her Majesty the Queen in right of Ontario, Her ministers, agents, appointees, and employees.

"Maximum Funds" means the maximum Funds set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Notice Period" means the period of time within which the Recipient is required to remedy an Event of Default pursuant to section A13.3(b), and includes any such period or periods of time by which the Province extends that time in accordance with section A13.4.

"Parties" means the Province and the Recipient.

"Party" means either the Province or the Recipient.

"Project" means the undertaking described in Schedule "C".

"Reports" means the reports described in Schedule "F".

A2.0 REPRESENTATIONS, WARRANTIES, AND COVENANTS

A2.1 General. The Recipient represents, warrants, and covenants that:

- (a) it has, and will continue to have, the experience and expertise necessary to carry out the Project;
- (b) it is in compliance with, and will continue to comply with, all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules, and by-laws related to any aspect of the Project, the Funds, or both; and
- (c) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and will continue to be true and complete.

A2.2 Execution of Agreement. The Recipient represents and warrants that it has:

- (a) the full power and authority to enter into the Agreement; and

- (b) taken all necessary actions to authorize the execution of the Agreement, including passing a municipal by-law authorizing the Recipient to enter into the Agreement.

A2.3 **Governance.** The Recipient represents, warrants, and covenants that it has, will maintain in writing, and will follow:

- (a) procedures to enable the Recipient to manage Funds prudently and effectively;
- (b) procedures to enable the Recipient to complete the Project successfully;
- (c) procedures to enable the Recipient to identify risks to the completion of the Project and strategies to address the identified risks, all in a timely manner;
- (d) procedures to enable the preparation and submission of all Reports required pursuant to Article A7.0; and
- (e) procedures to enable the Recipient to address such other matters as the Recipient considers necessary to enable the Recipient to carry out its obligations under the Agreement.

A2.4 **Supporting Proof.** Upon the request of the Province, the Recipient will provide the Province with proof of the matters referred to in Article A2.0.

A3.0 TERM OF THE AGREEMENT

A3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date unless terminated earlier pursuant to Article A11.0, Article A12.0, or Article A13.0.

A4.0 FUNDS AND CARRYING OUT THE PROJECT

A4.1 **Funds Provided.** The Province will:

- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Project;
- (b) provide the Funds to the Recipient in accordance with the payment plan attached to the Agreement as Schedule "E"; and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.

A4.2 Limitation on Payment of Funds. Despite section A4.1:

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides evidence satisfactory to the Province that the Recipient's council has authorized the execution of this Agreement by the Recipient by municipal by-law;
- (b) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the certificates of insurance or other proof as the Province may request pursuant to section A10.2;
- (c) the Province is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project;
- (d) the Province may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Province's assessment of the information the Recipient provides to the Province pursuant to section A7.1; or
- (e) if, pursuant to the *Financial Administration Act (Ontario)*, the Province does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Province is not obligated to make any such payment, and, as a consequence, the Province may:
 - (i) reduce the amount of Funds and, in consultation with the Recipient, change the Project; or
 - (ii) terminate the Agreement pursuant to section A12.1.

A4.3 Use of Funds and Carry Out the Project. The Recipient will do all of the following:

- (a) carry out the Project in accordance with the Agreement;
- (b) use the Funds only for the purpose of carrying out the Project;
- (c) spend the Funds only in accordance with the Budget;
- (d) not use the Funds to cover any cost that has or will be funded or reimbursed by one or more of any third party, ministry, agency, or organization of the Government of Ontario.

A4.4 Interest Bearing Account. If the Province provides Funds before the Recipient's immediate need for the Funds, the Recipient will place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

A4.5 Interest. If the Recipient earns any interest on the Funds, the Province may:

- (a) deduct an amount equal to the interest from any further instalments of Funds; or
- (b) demand from the Recipient the payment of an amount equal to the interest.

A4.6 **Rebates, Credits, and Refunds.** The Ministry will calculate Funds based on the actual costs to the Recipient to carry out the Project, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit, or refund.

A5.0 **RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS**

A5.1 **Acquisition.** If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

A5.2 **Disposal.** The Recipient will not, without the Province's prior written consent, sell, lease, or otherwise dispose of any asset purchased or created with the Funds or for which Funds were provided, the cost of which exceeded the amount as provided for in Schedule "B" at the time of purchase.

A6.0 **CONFLICT OF INTEREST**

A6.1 **No Conflict of Interest.** The Recipient will carry out the Project and use the Funds without an actual, potential, or perceived conflict of interest.

A6.2 **Conflict of Interest Includes.** For the purposes of Article A6.0, a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships, or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased, and impartial judgment relating to the Project, the use of the Funds, or both.

A6.3 **Disclosure to Province.** The Recipient will:

- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential, or perceived conflict of interest; and
- (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

A7.0 REPORTS, ACCOUNTING, AND REVIEW

A7.1 Preparation and Submission. The Recipient will:

- (a) submit to the Province at the address referred to in section A17.1, all Reports in accordance with the timelines and content requirements as provided for in Schedule "F", or in a form as specified by the Province from time to time;
- (b) submit to the Province at the address referred to in section A17.1, any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

A7.2 Record Maintenance. The Recipient will keep and maintain:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

A7.3 Inspection. The Province, any authorized representative, or any independent auditor identified by the Province may, at the Province's expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, any authorized representative, or any independent auditor identified by the Province may take one or more of the following actions:

- (a) inspect and copy the records and documents referred to in section A7.2;
- (b) remove any copies made pursuant to section A7.3(a) from the Recipient's premises; and
- (c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds, the Project, or both.

A7.4 Disclosure. To assist in respect of the rights provided for in section A7.3, the Recipient will disclose any information requested by the Province, any authorized representatives, or any independent auditor identified by the Province, and will do so in the form requested by the Province, any authorized

representative, or any independent auditor identified by the Province, as the case may be.

A7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

A7.6 **Auditor General.** The Province's rights under Article A7.0 are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient will:

- (a) acknowledge the support of the Province for the Project; and
- (b) ensure that the acknowledgement referred to in section A8.1(a) is in a form and manner as directed by the Province.

A8.2 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

A9.0 INDEMNITY

A9.1 **Indemnification.** The Recipient will indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages, and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits, or other proceedings, by whomever made, sustained, incurred, brought, or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Indemnified Parties.

A10.0 INSURANCE

A10.1 **Recipient's Insurance.** The Recipient represents, warrants, and covenants that it has, and will maintain, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury, and property damage, to an inclusive limit of not less than the amount provided for in Schedule "B" per occurrence. The insurance policy will include the following:

- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under,

or otherwise in connection with, the Agreement;

- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30-day written notice of cancellation.

A10.2 Proof of Insurance. The Recipient will:

- (a) provide to the Province, either:
 - (i) certificates of insurance that confirm the insurance coverage as provided for in section A10.1; or
 - (ii) other proof that confirms the insurance coverage as provided for in section A10.1; and
- (b) upon the request of the Province, provide to the Province a copy of any insurance policy.

A11.0 TERMINATION ON NOTICE

A11.1 Termination on Notice. The Province may terminate the Agreement at any time without liability, penalty, or costs upon giving at least 30 days' Notice to the Recipient.

A11.2 Consequences of Termination on Notice by the Province. If the Province terminates the Agreement pursuant to section A11.1, the Province may take one or more of the following actions:

- (a) cancel further instalments of Funds;
- (b) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient; and
- (c) determine the reasonable costs for the Recipient to wind down the Project, and do either or both of the following:
 - (i) permit the Recipient to offset such costs against the amount the Recipient owes pursuant to section A11.2(b); and
 - (ii) subject to section A4.1(a), provide Funds to the Recipient to cover such costs.

A12.0 TERMINATION WHERE NO APPROPRIATION

A12.1 Termination Where No Appropriation. If, as provided for in section A4.2(e), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make pursuant to the

Agreement, the Province may terminate the Agreement immediately without liability, penalty, or costs by giving Notice to the Recipient.

A12.2 Consequences of Termination Where No Appropriation. If the Province terminates the Agreement pursuant to section A12.1, the Province may take one or more of the following actions:

- (a) cancel further instalments of Funds;
- (b) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient; and
- (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section A12.2(b).

A12.3 No Additional Funds. If, pursuant to section A12.2(c), the Province determines that the costs to wind down the Project exceed the Funds remaining in the possession or under the control of the Recipient, the Province will not provide additional Funds to the Recipient.

A13.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT

A13.1 Events of Default. Each of the following events will constitute an Event of Default:

- (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant, or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) carry out the Project;
 - (ii) use or spend Funds; or
 - (iii) provide, in accordance with section A7.1, Reports or such other reports as may have been requested pursuant to section A7.1(b);
- (b) the Recipient's operations, its financial condition, or its organizational structure, changes such that it no longer meets one or more of the eligibility requirements of the program under which the Province provides the Funds;
- (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or a creditor makes an application for an order adjudging the Recipient bankrupt, or applies for the appointment of a receiver; or

- (d) the Recipient ceases to operate.

A13.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Province determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel further instalments of Funds;
- (f) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand from the Recipient the payment of an amount equal to any Funds the Province provided to the Recipient; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

A13.3 **Opportunity to Remedy.** If, in accordance with section A13.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will give Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

A13.4 **Recipient not Remediating.** If the Province provided the Recipient with an opportunity to remedy the Event of Default pursuant to section A13.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or

- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections A13.2(a), (c), (d), (e), (f), (g), (h), and (i).

A13.5 When Termination Effective. Termination under Article will take effect as provided for in the Notice.

A14.0 FUNDS AT THE END OF A FUNDING YEAR

A14.1 Funds at the End of a Funding Year. Without limiting any rights of the Province under Article A13.0, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Province may take one or both of the following actions:

- (a) demand from the Recipient payment of the unspent Funds; and
- (b) adjust the amount of any further instalments of Funds accordingly.

A15.0 FUNDS UPON EXPIRY

A15.1 Funds Upon Expiry. The Recipient will, upon expiry of the Agreement, pay to the Province any Funds remaining in its possession or under its control.

A16.0 DEBT DUE AND PAYMENT

A16.1 Payment of Overpayment. If at any time the Province provides Funds in excess of the amount to which the Recipient is entitled under the Agreement, the Province may:

- (a) deduct an amount equal to the excess Funds from any further instalments of Funds; or
- (b) demand that the Recipient pay an amount equal to the excess Funds to the Province.

A16.2 Debt Due. If, pursuant to the Agreement:

- (a) the Province demands from the Recipient the payment of any Funds or an amount equal to any Funds; or
- (b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not the Province has demanded their payment,

such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay the amount to the Province immediately, unless the Province directs otherwise.

- A16.3 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- A16.4 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province as provided for in Schedule "B".
- A16.5 **Fails to Pay.** Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to pay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

A17.0 NOTICE

- A17.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery, or fax, and will be addressed to the Province and the Recipient respectively as provided for Schedule "B", or as either Party later designates to the other by Notice.
- A17.2 **Notice Given.** Notice will be deemed to have been given:
- (a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or
 - (b) in the case of email, personal delivery, or fax, one Business Day after the Notice is delivered.
- A17.3 **Postal Disruption.** Despite section A17.2(a), in the event of a postal disruption:
- (a) Notice by postage-prepaid mail will not be deemed to be given; and
 - (b) the Party giving Notice will give Notice by email, personal delivery, or fax.

A18.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

- A18.1 **Consent.** When the Province provides its consent pursuant to the Agreement, it may impose any terms and conditions on such consent and the Recipient will comply with such terms and conditions.

A19.0 SEVERABILITY OF PROVISIONS

- A19.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

A20.0 WAIVER

A20.1 **Waiver Request.** Either Party may, in accordance with the Notice provision set out in Article A17.0, ask the other Party to waive an obligation under the Agreement.

A20.2 **Waiver Applies.** Any waiver a Party grants in response to a request made pursuant to section A20.1 will:

- (a) be valid only if the Party granting the waiver provides it in writing; and
- (b) apply only to the specific obligation referred to in the waiver.

A21.0 INDEPENDENT PARTIES

A21.1 **Parties Independent.** The Recipient is not an agent, joint venturer, partner, or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

A22.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A22.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A22.2 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors, and permitted assigns.

A23.0 GOVERNING LAW

A23.1 **Governing Law.** The Agreement and the rights, obligations, and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

A24.0 FURTHER ASSURANCES

A24.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

A25.0 JOINT AND SEVERAL LIABILITY

A25.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

A26.0 RIGHTS AND REMEDIES CUMULATIVE

A26.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

A27.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A27.1 **Other Agreements.** If the Recipient:

- (a) has failed to comply with any term, condition, or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies (a "**Failure**");
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

the Province may suspend the payment of Funds for such period as the Province determines appropriate.

A28.0 SURVIVAL

A28.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0, Article 3.0, Article A1.0 and any other applicable definitions, section A2.1(a), sections A4.2(e), A4.5, section A5.2, section A7.1 (to the extent that the Recipient has not provided the Reports or other reports as may have been requested to the satisfaction of the Province), sections A7.2, A7.3, A7.4, A7.5, A7.6, Article A8.0, Article A9.0, section A11.2, sections A12.2, A12.3, sections A13.1, A13.2(d), (e), (f), (g) and (h), Article A15.0, Article A16.0, Article A17.0, Article A19.0, section A22.2, Article A23.0, Article A25.0, Article A26.0, Article A27.0 and Article A28.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"
PROJECT SPECIFIC INFORMATION AND ADDITIONAL PROVISIONS

Maximum Funds	\$250,000.00
Expiry Date	January 31, 2020
Amount for the purposes of section A5.2 (Disposal) of Schedule "A"	\$5,000.00
Insurance	\$ 2,000,000
Contact information for the purposes of Notice to the Province	<p>Name: Helen Collins</p> <p>Position: Manager, Municipal Programs and Outreach Unit</p> <p>Address: 777 Bay Street, Toronto, Ontario M5G 2E5, 16th Floor</p> <p>Fax: 416-585-7292</p> <p>Email: helen.collins@ontario.ca</p>
Contact information for the purposes of Notice to the Recipient	<p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Fax:</p> <p>Email:</p>
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	<p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Fax:</p> <p>Email:</p>

Additional Provisions:

B1 Section 4.3 of Schedule "A" is amended by adding the following sections:

- (e) use the Funds only for the purpose of reimbursement for the actual

amount paid to the independent third-party reviewer in accordance with the Project; and,

- (f) Not use the Funds for the purpose of paying the salaries of the Recipient's employees.

**SCHEDULE "C"
PROJECT**

Objectives
The objective of the Project is to evaluate the Recipient's reliance on external consultants and contractors, assess knowledge transfer to Recipient staff, and identify service delivery alternatives and efficiency opportunities.
Description
<p>The Recipient will retain an independent third-party reviewer to analyze financial and performance related data on the Recipient's use of external consultants and contractors. The review will examine feasible and innovative service delivery options where external consultants and contractors are utilized extensively. The review will focus on the overall service performance in relation to approved service standards.</p> <p>Areas identified for specific review include:</p> <ul style="list-style-type: none">• Development Charge Process• Growth Management• Hamilton Water <p><u>Independent Third-Party Reviewer's Report</u></p> <p>The Recipient will retain the independent third-party reviewer to compile the findings and recommendations in the Independent Third-Party Reviewer's Report. The Recipient will submit the report to the Province and publish the report on the Recipient's publicly accessible website by November 30, 2019.</p> <p>The report will summarize the reviewer's findings and identify specific, actionable recommendations based on the analysis and findings that aim to identify cost savings and improved efficiencies.</p>

SCHEDULE "D"
BUDGET

Item	Amount
Reimbursement for payments to independent third-party reviewer	Up to \$250,000

SCHEDULE "E"
PAYMENT PLAN

Milestone	Scheduled Payment
<ul style="list-style-type: none">• Submission of Independent Third-Party Reviewer's Report to the Province• Publishing of Independent Third-Party Reviewer's Report• Submission of Final Report to the Province	Up to \$250,000 no more than thirty (30) days after the Province's approval of the Final Report

**SCHEDULE "F"
REPORTS**

Name of Report	Reporting Due Date
1. Final Report	December 13, 2019

Report Details

1. Final Report

The Recipient will submit a Final Report to the Province by December 13, 2019.

The Final Report will set out the Recipient's actual expenditures for the independent third-party reviewer for the project. Supporting documentation, such as invoices or receipts, showing actual costs incurred will be included as part of the Final Report.

The Final Report will include a statement indicating the percentage of the service delivery expenditures reviewed under the project which were identified as potential cost savings in the Independent Third-Party Reviewer's Report, which will be the performance measure for the Project.

The Recipient will use the reporting template provided by the Province prior to the reporting deadline in order to submit the Final Report to the Province.

Authority: Item , Audit, Finance and
Administration Committee
Report
CM: Date

Bill No.

CITY OF HAMILTON

BY-LAW NO. 19-

**To Authorize the Signing of a Transfer Payment Agreement for the Transfer of
Audit and Accountability Funds between Her Majesty the
Queen in right of Ontario as represented by the Minister of Municipal Affairs and
Housing and the City of Hamilton and the City of Hamilton**

WHEREAS the Council of the City of Hamilton wishes to enter into a Transfer Payment Agreement in order to participate in the Audit and Accountability Fund;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. The Mayor and City Clerk are hereby authorized to execute a Transfer Payment Agreement for the Transfer of Audit and Accountability Funds between Her Majesty the Queen in right of Ontario as represented by the Minister of Municipal Affairs and Housing and the City of Hamilton, in a form satisfactory to the City Solicitor and with content acceptable to the General Manager of Finance and Corporate Services.
2. This by-law shall come into force on the day it is passed.

PASSED this day of , 2019.

F. Eisenberger
MAYOR

A. Holland
CLERK

**Ministry of
Municipal Affairs
and Housing**

Office of the Minister

777 Bay Street, 17th Floor
Toronto ON M5G 2E5
Tel.: 416 585-7000

**Ministère des
Affaires municipales
et du Logement**

Bureau du ministre

777, rue Bay, 17^e étage
Toronto ON M5G 2E5
Tél. : 416 585-7000



Ontario

MIN-2019-003914

August 8, 2019

Your Worship
Mayor Fred Eisenberger
City of Hamilton
mayor@hamilton.ca

Dear Mayor Fred Eisenberger,

Thank you for your submission to the *Audit and Accountability Fund* and for your commitment to demonstrating value for money.

I am pleased to inform you that the Government of Ontario will provide funding of up to \$250,000.00 towards the Review of Use of External Contractors and Consultants for the cost of an independent third-party reviewer to deliver a final report with specific and actionable recommendations for cost-savings by November 30, 2019.

In the 2019 Ontario Budget, *Protecting What Matters Most*, our government put forward a plan to achieve savings of four cents on the dollar to set Ontario on the path to a sustainable government. As an important part of this plan, our government is committed to assisting large urban municipalities in doing their part to become more efficient. The work the *Audit and Accountability Fund* will support in your municipality is an important step toward achieving that goal.

A transfer payment agreement is required to provide funding for this work. I have enclosed a transfer payment agreement for this project for your review and signing.

Ministry staff will work with your staff to finalize the transfer payment agreement and work through details of funding implementation. Should you have any questions, please feel free to contact Marcia Wallace, Assistant Deputy Minister at marcia.wallace@ontario.ca.

I would like to offer my congratulations on this funding approval under the *Audit and Accountability Fund* and extend my best wishes as you work to improve service delivery and administrative efficiency in your municipality.

Sincerely,



Steve Clark
Minister

c. Janette Smith
City Manager, City of Hamilton

CITY OF HAMILTON

NOTICE OF MOTION

Audit, Finance & Administration Committee: August 15, 2019

MOVED BY COUNCILLOR B. CLARK.....

Transit Program Initiative

WHEREAS, the City of Hamilton has experienced extraordinary price increases for new buses while participating through the Transit Program Initiative, a program of Metrolinx.

WHEREAS, the City's transit strategy calls for an expansion of the transit fleet in support of the BLAST network

THEREFORE, BE IT RESOLVED:

That staff be directed to report back on the quantitative and qualitative benefits, as well as deficiencies/short-comings of participating in the Transit Program Initiative.