



INFORMATION REPORT

TO:	Chair and Members Public Works Committee
DATE:	December 5, 2016
SUBJECT/REPORT NO:	DARTS Governance (LS16030/PW16107) (City Wide) (Outstanding Business List)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

Council Direction:

At the May 11, 2016 City Council meeting, it was resolved that staff be directed to report to the Public Works Committee respecting the governance model for DARTS.

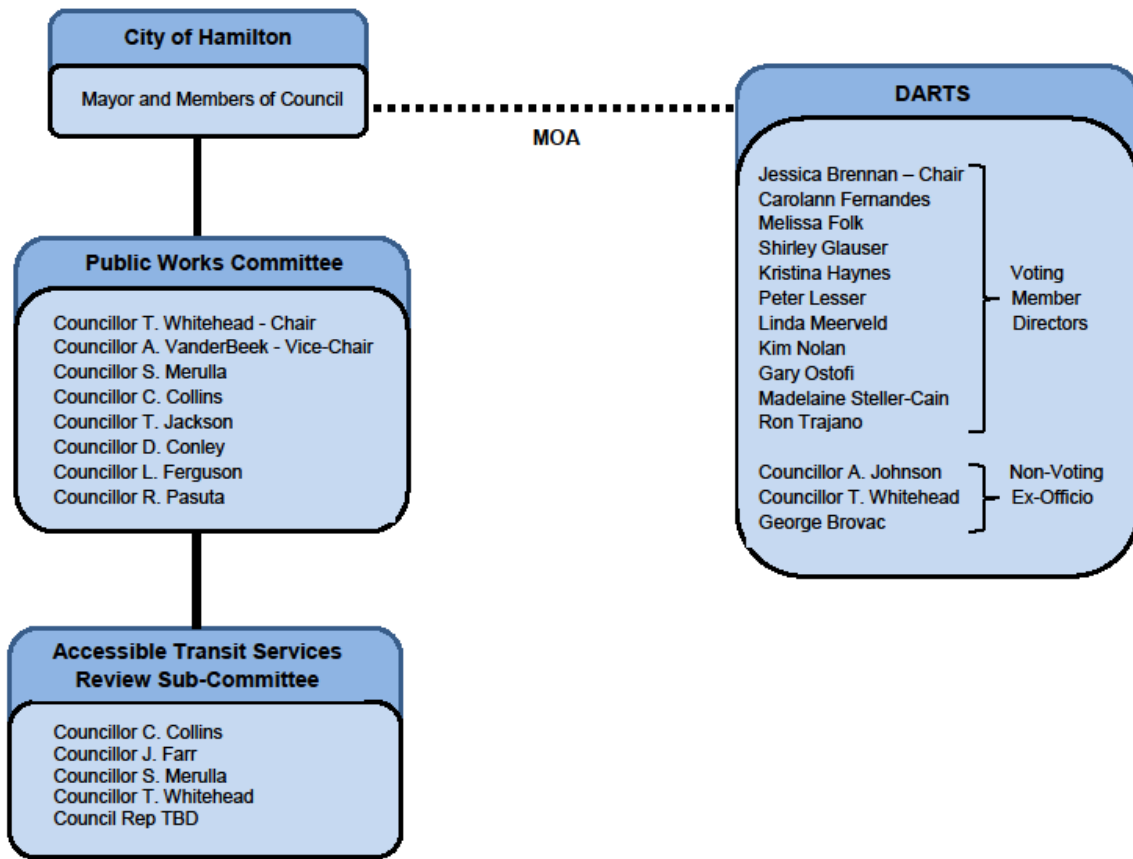
Information:

The Disabled and Aged Regional Transit System (“DARTS”) is a member-owned not-for-profit corporation. It is not a corporate affiliate of the City of Hamilton (the “City”); rather it is an arm’s length organization. Historically, the City has entered into a number of operating agreements with DARTS for the provision of accessible transit services. The relationship between the City and DARTS is graphically illustrated below:

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The most recent Master Operating Agreement (“MOA”) which articulates the relationship and expectations of each entity, between the city and DARTS was entered into on July 1, 2012. The MOA will expire on June 30, 2017, this requires the provision of 120 days’ notice. In the absence of such notice, the MOA continues on a monthly basis, until 120 days’ notice is provided by either party or the parties enter into a new agreement.

On May 11, 2016, it was resolved as follows:

That staff be directed to report to the Public Works Committee respecting the governance model for DARTS.

The following is provided in response to the above direction.

Governance

Under the current DARTS governance, the City is afforded three non-voting, ex-officio seats on the DARTS Board, being two members of Council and the General Manager of Public Works or their designate. Additionally, the Accessible Transportation Services (ATS) committee was re-established on February 26, 2016 to monitor the delivery of accessible transit.

Although DARTS is an arm's-length contractor with the City, its relationship with the City is not one of a typical service provider. The City has historically supplemented DARTS' budgetary variances and DARTS relies on the City for most of its revenue in a fiscal year. In 2016, the City approved approximately \$16.6 million to provide 639,721 specialized customer trips.

As an arm's length not-for-profit entity, DARTS is able to contract with a different union than the City for transit services. DARTS is unionized under CUPE, Local 5167, while unionized workers for the City's Transit Division are members of ATU, Local 107. The difference in compensation between drivers under CUPE (Local 5167) and ATU (Local 107) is significant. By comparison, the provision of these same services through the existing Transit resources would have an operational impact in excess of approximately \$1.0 million annually.

Within the DARTS' corporate structure, the only influence the City may exert over the DARTS' board of directors is through the MOA. Any further change to the DARTS' Board would require the consent of the DARTS and in particular its current Board members. Discussions throughout the development of this report suggest there is no desire of the board members to make changes to the current model. Additionally, and of great importance to the City, is that any change to the Board of Directors of DARTS would very likely trigger related employer issues. Options for changes to governance are discussed further below.

Notably, DARTS has set up the DARTS Foundation, which is a charitable organization within the DARTS corporate family. The DARTS Foundation's mandate is to raise money to purchase buses that would be transferred to the City for use by DARTS, as well as other transport projects. To date however, no buses have been purchased by the DARTS Foundation and transferred to the City. The City currently has a Memorandum of Understanding with the DARTS Foundation that stipulates, among other things, that if DARTS were indeed wound up, the funds within the DARTS Foundation would be used for other charitable endeavours.

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Operational Background

DARTS operates through a combination of providing services through contracts with a third party-provider and by using its own drivers. Ambulatory customers, for example, may be serviced through DARTS or through a taxi company. DARTS has contracted with one taxi company (Veterans Transportation). Veterans Transportation provides on an average weekday 40 non accessible van runs and 11 accessible van runs. DARTS provides on an average weekday 40 non accessible vans 50 accessible buses and 3 accessible van runs.

The buses that DARTS operate are City property, while all other van and accessible vans are leased. Similarly, DARTS is responsible for the maintenance of their vehicles, while Veterans Transportation leases their vans and is responsible for the maintenance of their vehicles.

DARTS' mandate is to provide the service in the most efficient and effective manner. City staff review the performance of DARTS on a monthly basis to ensure adherence to this mandate. However, in some years the City has had to approve additional funds to cover any variance from the budget (e.g. fuel or maintenance expenses, or providing more trips than were budgeted). As a not-for-profit organization, DARTS maintains no reserves to deal with budget variances. Hence, as part of the MOA, the City funds the expense variance. Effectively, if the City did not fund the variance, DARTS would not be able to provide accessible transit services.

At the March 9, 2016 Council meeting Accessible Transportation Services (ATS) staff was directed to undertake a number of items:

- Aggressively expand the accessible and non-accessible van fleet, and correspondingly reduce the bus fleet at a rate and in a manner approved by the General Manager of Public Works with a targeted budget reduction of \$1 million by the end of 2016.
- Develop a plan with DARTS that will ensure the full realization of potential savings, prior to the renewal/extension of the DARTS contract (expires June 30, 2017).
- Report back to the General Issues Committee quarterly, commencing at the end of the second quarter of 2016, on the progress of the recommendations contained in the Accessible Transportation Services Review (Report PW16015).

Data gathered over the first half of 2016 illustrates that DARTS is on target to meet the one million dollar budget reduction. DARTS has been able to mitigate operating expenses by transferring trips from buses to accessible vans and conventional vans. ATS and DARTS staff are in the process of developing a plan that will ensure the full

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realization of potential savings (\$1.5 million in 2017), prior to any renewal/extension of the DARTS contract.

Options

As a result of discussion during the May 2016 meeting of committee staff conclude that committee seeks to understand what options exist for governance of DARTS and/or for alternative delivery methods for the service currently provided by DARTS. The following is a brief discussion of each option. It is recommended that should Council wish to pursue any of these options, that staff be directed to report back with detailed costing for each option.

Option #1: Replacing the Board

Under this scenario, the current Board of Directors of DARTS would be replaced in whole or in part possibly by the Mayor and/or a number of Members of Council.

As discussed above, DARTS and the DARTS Board of Directors is not a subsidiary of the City. As such, the City has no mechanism to replace the Board of Directors as of right, and would have to rely on the voluntary consent of the current DARTS Board for them to be replaced. During the development of this report it was appeared that the current members of the Board were not supportive of moving in this direction.

Even if there was consent, by having the Mayor and/or Members of Council as voting Directors of DARTS, there is a significant risk that one of the City's bargaining units could exert jurisdiction over DARTS, as a related employer of the City. If this were to transpire, hourly rates to DARTS operators would likely increase.

Option #2: Status Quo

The current relationship between the City and DARTS is only by way of the contractual obligations through the MOA. The City, for clarity, does not have an ownership interest in DARTS, nor does the City have the ability to cause corporate changes, except as expressly provided by contract.

If the City were to maintain the status quo, the City could attempt to negotiate a new operating agreement with DARTS, with similar terms and conditions as the existing MOA. The mandate to reduce costs via the use of non-accessible and accessible vans and other means could continue.

However, under this option, the City would not gain any more control over the governance of DARTS.

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Option #3: New Operating Agreement

Given that the MOA is set to expire on June 30, 2017, the City has an opportunity to re-negotiate the MOA on different terms than prior agreements. Although the current volunteer member-directors could not be eliminated from the Board of Directors of DARTS through a new operating agreement, such a new agreement could include changes to governance and to operational over-sights, such as a greater number of ex-officio non-voting Directors from the City, or informational reporting directly to City Council or a committee or sub-committee.

More discussion and negotiations with DARTS would be required, if this were the direction the City intended to pursue.

Option #4: General Public Procurement

Under this option, the City could issue a request for proposal or similar document to contract for accessible transit services from a third-party provider. DARTS would be able to bid in the procurement process, but there is no guarantee that DARTS would be the successful proponent.

Notably, in report PW16015 it was already stated that if DARTS did not meet stipulated financial targets by the end of 2016, the City may engage in a general request for proposal. DARTS is currently on-track to meet its financial targets, according to its report for the second quarter of 2016.

Furthermore, if, under this option, DARTS were not the successful proponent, it is likely that its operations would need to be wound up. This could have a cost to the City. Additionally, the DARTS Foundation would likely need to be wound up as well, and its assets would be used for other charitable purposes.

It would take a number of months to develop the proper procurement documents. There is no expectation that the City would have any representation of the Board of Directors of the successful proponent under this scenario. However, we would also expect to have more clarity on costs, if this option were pursued, i.e. as with other contracts, we would have a contractor take on the risks of operational variances.

Option #5: In-house Model

Under this model, the responsibility for accessible transit would become a responsibility of the Transit Division of Public Works. The City would have direct supervision over accessible transit, as it would any of its other operations.

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The City would determine the services that would be contracted out, and which ones would be performed in-house.

However, there is a significant risk that one of the City's bargaining units could exert jurisdiction over in-house accessible transit as a related or successor employer. The effects of this would include an increase in hourly wages to driver/operators. The cost of hiring transit workers as members of the City's current union would have a significant and ongoing impact on the cost of transit operations. Additionally, there would be costs associated with winding up DARTS. As such, this option could only be accommodated with an increased budget for accessible services.

Option #6: City Subsidiary Model

The City could create a new municipal services corporation with the mandate to deliver accessible transit. Under this model, the Mayor and/or Members of Council could sit on the Board of Directors. However, creating a new municipal services corporation is a complex and lengthy process that entails creating a business case study and public consultation.

Although there is less risk that a municipal services corporation would be considered a successor or related employer of the City than in Option #5 (*In-house Model*) above, there is no guarantee that the costs associated with the In-House Model could be avoided. These costs include: (a) increased operational costs due to increased hourly wages for driver/operators; and (b) the potential costs of winding up DARTS. Additionally, there would be costs associated with establishing a new municipal services corporation.

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