

CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Financial Planning & Policy Division

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: February 1, 2012	
SUBJECT/REPORT NO: Court Security Prisoner Transportation Program Funding Agreement (FCS12021) (City Wide)	
SUBMITTED BY: Roberto Rossini General Manager Finance and Corporate Services	PREPARED BY: John Savoia (905) 546-2424 x. 7298
SIGNATURE:	

RECOMMENDATION

That the Mayor and Clerk be authorized to execute the necessary agreement with the Province attached as Appendix "A" to Report FCS12021 to provide the City its approved allocation under the Court Security Prisoner Transportation Program administered through the Ministry of Community Safety and Correctional Services.

EXECUTIVE SUMMARY

In the fall of 2008, the Ontario government announced the upload of court security and prisoner transportation costs from municipalities beginning in 2012. The upload is proposed to be phased in over seven years under the Court Security Prisoner Transportation (CSPT) Program administered by the Ministry of Community Safety and Correctional Services.

Although the upload of court security and prisoner transportation costs is planned to be phased in over seven years, the Province has approved the level of funding for the first three years only based on information received from Police Services in a 2010 Court Security Information Survey. As such, this agreement expires at the end of 2014. Prior

to the expiry of this initial three year agreement, the Ministry has indicated that it will revisit the funding mechanism, and gather further information from stakeholders to analyze the accuracy of funding needs.

The allocation to be provided to the City over the next three years is as follows:

Calendar Year	Allocation
2012	\$ 704,948.37
2013	\$ 1,409,896.74
2014	\$ 2,114,845.11
Total	\$ 4,229,690.22

The 2012 allocation has been reflected by Hamilton Police Services through their 2012 budget submission.

The funding is conditional upon the execution of an agreement attached as Appendix “A” to Report FCS12021, between the Ministry of Community Safety and Correctional Services and the City.

Alternatives for Consideration – Not Applicable

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

Financial: The signing of the funding agreement, attached as Appendix “A” to Report FCS12021, will provide the City with funding from the Province, which has committed to upload the costs of court security and prisoner transportation over the next seven years beginning with 2012.

Staffing: None

Legal: By entering into a funding agreement, attached as Appendix “A” to Report FCS12021, with the Ministry of Community Safety and Correctional Services, the City of Hamilton will receive funding to offset court security and prisoner transportation costs that are eligible under the Court Security Prisoner Transportation (CSPT) Program subject to the various terms and conditions contained within the new agreement.

The Agreement provides for the City to indemnify the Province for claims arising out of the Agreement. As this is a funding agreement, the added risk to the City in providing this indemnity, as compared to the status quo, is minimal.

HISTORICAL BACKGROUND (Chronology of events)

In December 2011, the Ministry of Community Safety and Correctional Services advised the City that Hamilton’s allocation of Court Security Prisoner Transportation (CSPT) Program funding for the years 2012 to 2014 would be as follows:

Calendar Year	Allocation
2012	\$ 704,948.37
2013	\$ 1,409,896.74
2014	\$ 2,114,845.11
Total	\$ 4,229,690.22

The funding is conditional upon the execution of an agreement attached as Appendix “A” to Report FCS12021, between the Ministry of Community Safety and Correctional Services and the City.

Prior to the expiry of this three year Agreement, the Ministry will revisit the funding mechanism by working with affected stakeholders to gather additional data and analyzed the accuracy and currency of relative funding needs. The Province has also reiterated its commitment to phasing in the program equally over seven years to a maximum of \$125 million of funding assistance by 2018.

POLICY IMPLICATIONS

None identified.

RELEVANT CONSULTATION

City Manager’s Office – Legal Services Division has reviewed the Agreement and noted that Council must provide its approval for the execution of the Agreement.

Corporate Services Department – Treasury Services, Risk Management Section has provided the required documentation providing evidence of the City’s general liability insurance in the amount of \$5 million, indemnifying the Ministry of Community Safety and Correctional Services, as per Article 11 of the Agreement.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Under the Court Security Prisoner Transportation (CSPT) Program, the Ministry of Community Safety and Correctional Services allocated funding based on each

municipality's share of the total court security and prisoner transportation costs, as confirmed in the 2010 Court Security Information Survey.

The Province has committed to uploading these costs, with \$704,948.37 in 2012 (which represents 1/7th recovery), and increasing by equal increments annually until full cost recovery is achieved in 2018. The amounts will be adjusted in 2015 as necessary to ensure the accuracy of funding needs. The City's current phase-in allocations of approximately \$700,000 per year, suggests that the uploading benefit to the City will approach \$5 million by 2018.

The 2012 Hamilton Police Services Operating Budget does incorporate the 2012 CSPT funding allocation noted above.

ALTERNATIVES FOR CONSIDERATION

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

Not Applicable.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ◆ Financially Sustainable City by 2020
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Intergovernmental Relationships

- ◆ Influence federal and provincial policy development to benefit Hamilton
- ◆ Acquire greater share of Provincial and Federal grants (including those that meet specific needs)
- ◆ Maintain effective relationships with other public agencies

APPENDICES / SCHEDULES

Appendix "A" – Agreement between the City of Hamilton and the Ministry of Community Safety and Correctional Services

THE AGREEMENT effective as of the 1st day of January, 2012.

B E T W E E N:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as
represented by the Minister of Community Safety and
Correctional Services**

(the “Ministry”)

- and -

**City of Hamilton
(the “Recipient”)**

WHEREAS:

- A.** The Ministry has established the Court Security Prisoner Transportation (CSPT) Program (the “Program”) to assist municipalities in offsetting their costs of providing CSPT services in their jurisdictions;

AND WHEREAS:

- B.** The Recipient is a municipality which provides security for court premises during hours of court operations and security of persons attending court; and transports prisoners and custodial minors (i.e., persons between twelve and seventeen years of age) between correctional institutions, custodial facilities and court locations for the purposes of court attendance;
- C.** Funding will be provided based on the municipality’s relative share of the total provincial court security-related costs, as confirmed in the 2010 Court Security Information Survey.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

ARTICLE 1 -- INTERPRETATION AND DEFINITIONS

1.1 *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 background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) “include”, “includes” and “including” shall not denote an exhaustive list.

1.2 **Definitions.** In the Agreement, the following terms shall have the following meanings:

“Agreement” means this agreement entered into between the Ministry and the Recipient and includes all of the schedules listed in section 28.1 and any amending agreement entered into pursuant to section 34.2.

“BPSAA” means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.

“Court Security and Prisoner Transportation Services” means the services and activities eligible for funding, as set out in Schedule “B”.

“Expiry Date” means December 31, 2014.

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

“Event of Default” has the meaning ascribed to it in section 14.1.

“Force Majeure” has the meaning ascribed to it in Article 26.

“Funding Period” means: the period commencing on the Effective Date and ending on the Expiry Date.

“Funding Year” means any of Funding Years 1, 2 or 3.

“Funding Year 1” means January 1, 2012 through December 31, 2012.

“Funding Year 2” means January 1, 2013 through December 31, 2013.

“Funding Year 3” means January 1, 2014 through December 31, 2014.

“**Funds**” means the money the Ministry 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 \$704,948.37 for Funding Year 1, \$1,409,896.74 for Funding Year 2 and \$2,114,845.11 for Funding Year 3.

“**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, and includes any such period or periods of time by which the Ministry considers it reasonable to extend that time.

“**Parties**” means the Ministry and the Recipient and “**Party**” means either one of them.

“**Project**” means the undertaking described in Schedule “A”.

“**Project Completion Date**” means the date for completion of the Project, as set out in section 3.1.

“**Report**” means the report described in Schedule “C”.

“**Timelines**” means the dates and times set out in Schedule “A”.

ARTICLE 2 -- REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 **General.** The Recipient represents, warrants and covenants that:

- (a) it is a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has the experience and expertise necessary to carry out the Project;
and
- (c) unless otherwise provided for in the Agreement, any information the Recipient provided to the Ministry in support of its request for funds was true and complete at the time the Recipient provided it.

- 2.2 **Execution of Agreement.** The Recipient represents and warrants that:
- (a) it has the full power and authority to enter into the Agreement; and
 - (b) it has taken all necessary actions to authorize the execution of the Agreement.
- 2.3 **Governance.** The Recipient represents, warrants and covenants that upon execution and for the period during which the Agreement is in effect, it:
- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
 - (b) procedures to ensure the ongoing effective functioning of the Recipient;
 - (c) decision-making mechanisms;
 - (d) procedures to provide for the prudent and effective management of the Funds;
 - (e) procedures to enable the successful completion of the Project;
 - (f) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
 - (g) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
 - (h) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.
- 2.4 **Supporting Documentation.** Upon request, the Recipient shall provide the Ministry with proof of the matters referred to in this Article 2.

ARTICLE 3 -- TERM OF THE AGREEMENT

- 3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on the Expiry Date of December 31 2014, unless terminated earlier pursuant to Articles 12, 13 or 14.

ARTICLE 4 -- FUNDS AND CARRYING OUT THE PROJECT

4.1 ***Funds Provided.*** The Ministry shall:

- (a) provide the Recipient Funds up to the Maximum Funds for the purpose of carrying out the Project;
- (b) provide the Funds directly to the Recipient through transfer payments in accordance with the payment schedule attached to the Agreement as Schedule "A"; 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.

4.2 ***Limitation on Payment of Funds.*** Despite section 4.1:

- (a) the Ministry is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as provided for in section 11.2;
- (b) the Ministry is not obligated to provide Funds until it is satisfied with the Financial Reports;
- (c) the Ministry may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Ministry's assessment of the information provided by the Recipient pursuant to section 7.1; and
- (d) if the Recipient identifies that the Funds for the Funding Year are not expected to be used for the funding purposes, the Ministry may reallocate the Funds to other municipalities; and
- (e) if, pursuant to the provisions of the Financial Administration Act (Ontario), the Ministry does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Ministry is not obligated to make any such payment, and, as a consequence, the Ministry may:
 - (i) reduce the amount of the Funds and, in consultation with the Recipient, change the Project; or

(ii) terminate the Agreement pursuant to section 13.1.

4.3 ***Use of Funds and Project.*** The Recipient shall:

(a) carry out the Project:

(i) in accordance with the terms and conditions of the Agreement;
and

(ii) in compliance 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;

(b) use the Funds only for the purpose of carrying out the Project.

4.4 ***No Changes.*** The Recipient shall not make any changes to the Project, the Timelines and/or the Funds without the prior written consent of the Ministry.

4.5 ***Interest Bearing Account.*** If the Ministry provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

4.6 ***Interest.*** If the Recipient earns any interest on the Funds:

(a) the Ministry may deduct an amount equal to the interest from any further instalments of Funds; or

(b) the Recipient shall pay an amount equal to the interest to the Ministry as directed by the Ministry.

4.7 ***Maximum Funds.*** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.

4.8 ***Rebates, Credits and Refunds.*** The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the actual costs to the Recipient, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

ARTICLE 5 -- ACQUISITION OF GOODS AND SERVICES

- 5.1 **Acquisition.** Subject to section 31.1, if the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a process that promotes the best value for money.

ARTICLE 6 -- CONFLICT OF INTEREST

- 6.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.
- 6.2 **Conflict of Interest Includes.** For the purposes of this Article, 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 and the use of the Funds.

- 6.3 **Disclosure to Ministry.** The Recipient shall:
- (a) disclose to the Ministry, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
 - (b) comply with any terms and conditions that the Ministry may prescribe as a result of the disclosure.

ARTICLE 7 -- REPORTING, ACCOUNTING AND REVIEW

- 7.1 **Preparation and Submission.** The Recipient shall:
- (a) submit to the Ministry at the address provided in section 18.1, Reports, as set out in Schedule C, in accordance with the Timelines and requirements set out in Schedule A.
 - (b) submit to the Ministry at the address provided in section 18.1, any other reports as may be requested by the Ministry in accordance with the Timelines and content requirements specified by the Ministry;

- (c) ensure that all Reports and other reports are completed to the satisfaction of the Ministry; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

7.2 **Record Maintenance.** The Recipient shall 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.

7.3 **Inspection.** The Ministry, its authorized representatives or an independent auditor identified by the Ministry may, at its own 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 expenditure of the Funds and, for these purposes, the Ministry, its authorized representatives or an independent auditor identified by the Ministry may:

- (a) inspect and copy the records and documents referred to in section 7.2; and
- (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or the Project.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient shall disclose any information requested by the Ministry, its authorized representatives or an independent auditor identified by the Ministry, and shall do so in a form requested by the Ministry, its authorized representatives or an independent auditor identified by the Ministry, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement shall be construed so as to give the Ministry any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Ministry's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

ARTICLE 8 – CREDIT AND PUBLICITY

- 8.1 ***Acknowledge Support.*** Unless otherwise directed by the Ministry, the Recipient shall, in a form approved by the Ministry, acknowledge the support of the Ministry in any publication of any kind, written or oral, relating to the Project, including for greater certainty, press releases, published reports, radio and television programs and public meetings, using the following standard:

“This Project has been made possible by a grant from the Ministry of Community Safety and Correctional Services.”

- 8.2 ***Prior Written Approval.*** The Recipient agrees to obtain prior written approval from the Ministry before using any Government of Ontario or Ministry logo or symbol in any communications including press releases, published reports, television programs, public or private meetings, or in any other type of promotional material, relating to the Project or this Agreement.
- 8.3 ***Publication.*** The Recipient shall indicate, in any of its publications, of any kind, relating to the Project, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Ministry.

ARTICLE 9 -- FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

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

ARTICLE 10 -- INDEMNITY

- 10.1 ***Indemnification.*** The Recipient hereby agrees to 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 Ministry.

ARTICLE 11 -- INSURANCE

- 11.1 ***Recipient's Insurance.*** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, 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 five million dollars (\$5,000,000) per occurrence. The policy shall 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, termination or material change.
- 11.2 ***Proof of Insurance.*** The Recipient shall provide the Ministry with certificates of insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the Ministry, the Recipient shall make available to the Ministry a copy of each insurance policy.

ARTICLE 12 -- TERMINATION ON NOTICE

- 12.1 ***Termination on Notice.*** The Ministry may terminate the Agreement at any time upon giving at least sixty (60) days Notice to the Recipient.
- 12.2 ***Consequences of Termination on Notice by the Ministry.*** If the Ministry terminates the Agreement pursuant to section 12.1, the Ministry may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or

- (c) determine the reasonable costs for the Recipient to wind down the Project, and:
 - (i) permit the Recipient to offset the costs determined pursuant to section 12.2(c), against the amount owing pursuant to section 12.2(b); and/or
 - (ii) subject to section 4.7, provide Funds to the Recipient to cover the costs determined pursuant to section 12.2(c).

ARTICLE 13 -- TERMINATION WHERE NO APPROPRIATION

- 13.1 **Termination Where No Appropriation.** If, as provided for in section 4.2(d), the Ministry does not receive the necessary appropriation from the Ontario Legislature for any payment the Ministry is to make pursuant to the Agreement, the Ministry may terminate the Agreement immediately by giving Notice to the Recipient.
- 13.2 **Consequences of Termination Where No Appropriation.** If the Ministry terminates the Agreement pursuant to section 13.1, the Ministry may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
 - (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 13.2(b).
- 13.3 **No Additional Funds.** For purposes of clarity, if the costs determined pursuant to section 13.2(c) exceed the Funds remaining in the possession or under the control of the Recipient, the Ministry shall not provide additional Funds to the Recipient.

ARTICLE 14 -- EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

- 14.1 **Events of Default.** Each of the following events shall constitute an Event of Default:

- (a) in the opinion of the Ministry, 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; and/or
 - (iii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
- (b) the Recipient's operations, or its organizational structure, changes such that it no longer meets one or more of the applicable eligibility requirements of the program under which the Ministry provides the Funds;
- (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
- (d) the Recipient ceases to operate; and
- (e) an event of Force Majeure that continues for a period of 60 days or more.

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

- (a) initiate any action the Ministry 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 Ministry determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel all further installments of Funds;

- (f) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand the repayment of an amount equal to any Funds the Ministry provided to the Recipient; and/or
- (i) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

14.3 ***Opportunity to Remedy.*** If, in accordance with section 14.2(b), the Ministry provides the Recipient with an opportunity to remedy the Event of Default, the Ministry shall provide Notice to the Recipient of:

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

14.4 ***Recipient not Remediating.*** If the Ministry has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Ministry 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 Ministry,

the Ministry may extend the Notice Period, or initiate any one or more of the actions provided for in sections 14.2(a), (c), (d), (e), (f), (g), (h) and (i).

14.5 ***When Termination Effective.*** Termination under this Article shall take effect as set out in the Notice.

ARTICLE 15 -- FUNDS AT THE END OF A FUNDING YEAR

15.1 ***Funds at the End of a Funding Year.*** Without limiting any rights of the Ministry under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year, the Ministry may:

- (a) demand the return of the unspent Funds; or
- (b) adjust the amount of any further instalments of Funds accordingly.

ARTICLE 16 -- FUNDS UPON EXPIRY

16.1 **Funds upon Expiry.** The Recipient shall, upon expiry of the Agreement, return to the Ministry any Funds remaining in its possession or under its control.

ARTICLE 17 -- REPAYMENT

17.1 **Debt Due.** If:

- (a) the Ministry demands the payment of any Funds or any other money from the Recipient; or
- (b) the Recipient owes any Funds or any other money to the Ministry, whether or not their return or repayment has been demanded by the Ministry,

such Funds or other money shall be deemed to be a debt due and owing to the Ministry by the Recipient, and the Recipient shall pay or return the amount to the Ministry immediately, unless the Ministry directs otherwise.

17.2 **Interest Rate.** The Ministry 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.

17.3 **Payment of Money to Ministry.** The Recipient shall pay any money owing to the Ministry by cheque payable to the "Ontario Minister of Finance" and mailed to the Ministry at the address provided in section 18.1.

ARTICLE 18 -- NOTICE

- 18.1 **Notice in Writing.** Notices and communications shall be in writing and shall be delivered by email, postage-prepaid mail, personal delivery or fax, and shall be addressed to the Ministry Contact and the Recipient, respectively, as set out below, or as either Party later designates to the other by Notice:

<p>To the Ministry:</p> <p>External Relations Branch Public Safety Division Ministry of Community Safety and Correctional Services 12th Floor, 25 Grosvenor Street Toronto ON M7A 2H3</p> <p>Attention: Mr. Oscar Mosquera Manager, Program Development Section</p> <p>Fax: 416-314-3092 E-mail: Oscar.Mosquera@ontario.ca</p>	<p>To the Recipient:</p> <p>City of Hamilton Hamilton City Hall 71 Main Street West Hamilton ON L8P 4Y5</p> <p>Attention: Mr. Chris Murray City Manager (Acting)</p> <p>Fax: 905-546-2095 Email: cmurray@hamilton.ca</p>
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- 18.2 **Notice Given.** Notice shall be deemed to have been received:
- (a) in the case of postage-prepaid mail, seven days after a Party mails the Notice; or
 - (b) in the case of email, personal delivery or fax, at the time the other Party receives the Notice.
- 18.3 **Postal Disruption.** Despite section 18.2(a), in the event of a postal disruption:
- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
 - (b) the Party giving Notice shall provide Notice by email, personal delivery or by fax.

ARTICLE 19 -- CONSENT BY MINISTRY

- 19.1 **Consent.** The Ministry may impose any terms and/or conditions on any consent the Ministry may grant pursuant to the Agreement.

ARTICLE 20 -- SEVERABILITY OF PROVISIONS

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

ARTICLE 21 -- WAIVER

- 21.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 22 -- INDEPENDENT PARTIES

- 22.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Ministry, and the Recipient shall not take any actions that could establish or imply such a relationship.

ARTICLE 23 -- ASSIGNMENT OF AGREEMENT OR FUNDS

- 23.1 **No Assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the Ministry.
- 23.2 **Agreement to Extend.** All rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

ARTICLE 24 -- GOVERNING LAW

- 24.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Ministry of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.

- 24.2 **BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

ARTICLE 25 -- FURTHER ASSURANCES

- 25.1 **Agreement into Effect.** The Recipient shall 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.

ARTICLE 26 -- CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 26.1 **Force Majeure.** Subject to section 26.3, Force Majeure means an event that:

- (a) is beyond the reasonable control of a Party; and
- (b) makes a Party's performance of its obligations under the Agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances.

- 26.2 **Force Majeure Includes.** Force Majeure includes:

- (a) infectious diseases, war, riots and civil disorder;
- (b) storm, flood, earthquake and other severely adverse weather conditions;
- (c) lawful act by a public authority; and
- (d) strikes, lockouts and other labour actions,

if such events meet the test set out in section 26.1.

- 26.3 **Force Majeure Shall Not Include.** Force Majeure shall not include:

- (a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees; or
- (b) any event that a diligent Party could reasonably have been expected to:
 - (i) take into account at the time of the execution of the Agreement; and

- (ii) avoid or overcome in the carrying out of its obligations under the Agreement.

26.4 ***Failure to Fulfil Obligations.*** Subject to section 14.1(e), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

ARTICLE 27 -- SURVIVAL

27.1 ***Survival.*** The provisions in Article 1, any other applicable definitions, sections 4.6(b), 7.1 (to the extent that the Recipient has not provided the Reports, respecting the Reports required after the Funding Period in accordance with the Due Dates set out in Schedule A, or other reports as may be requested by the Ministry to the satisfaction of the Ministry), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2(d), (e), (f), (g) and (h), Articles 16, 17, 18, 20, 24, 27, 28, 29, 30, 31 and 32, 33 and 34, 35 Schedule A, and all applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

ARTICLE 28 -- SCHEDULES

28.1 ***Schedules.*** The Agreement includes the following schedules:

- (a) Schedule "A" – Terms of Reference;
- (b) Schedule "B" – Court Security and Prisoner Transportation Services and Activities Eligible for Funding
- (c) Schedule "C" – Annual Financial Report;

ARTICLE 29 -- FURTHER FUNDS

29.1 ***Further Funds.*** It is agreed and understood that the provision of the Funds in no way commits or obligates the Ministry to provide other or additional payments now or in the future.

ARTICLE 30 -- INSPECTION

30.1 **Inspection.** The Ministry reserves the right to inspect any aspect of the Project at any time.

ARTICLE 31 -- MANAGEMENT BOARD/TREASURY BOARD APPROVAL

31.1 **Management Board Approval.** This Agreement may be subject to approval by the Management Board/Treasury Board Secretariat of the Government of Ontario.

ARTICLE 32 -- JOINT AND SEVERAL LIABILITY

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

ARTICLE 33 -- RIGHTS AND REMEDIES CUMULATIVE

33.1 **Rights and Remedies Cumulative.** The rights and remedies of the Ministry 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.

ARTICLE 34 -- ENTIRE AGREEMENT

34.1 **Entire Agreement.** The Agreement 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.

34.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

Article 35 -- FAILURE TO COMPLY WITH OTHER AGREEMENTS

35.1 **Other Agreements.** If the Recipient:

- (a) has failed to comply (a "Failure") with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or a Crown agency;

- (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 Ministry may suspend the payment of Funds for such period as the Ministry determines appropriate.

THE PARTIES HAVE EXECUTED THE AGREEMENT ON THE DATES SET OUT BELOW.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Community Safety and Correctional Services

per:

Date

Authorized Signatory for the Ministry
Name:
Position:

City of Hamilton

per:

Date

Authorized Signatory for the Recipient
Name:
Position:

Witness

Print Witness Name

SCHEDULE "A"**TERMS OF REFERENCE****1) PROJECT DESCRIPTION**

The Ministry has established the Program to provide Funds to assist municipalities in offsetting their costs of providing CSPT services in their jurisdictions.

Funding will be provided based on each municipality's relative share of the total provincial court security-related costs, as confirmed in the 2010 Court Security Information Survey.

The Recipient will provide security of persons taking part in or attending court proceedings, and provide security of the premises during the hours that judges and members of the public are normally present. Further, the Recipient will transport prisoners and custodial minors (i.e., 12-17 years old) between correctional institutions and/or custodial facilities and court locations for the purposes of attending trial;

2) PAYMENT AND REPORTING SCHEDULE**Funding Year 1 – January 1, 2012 to December 31, 2012:**

- A. First instalment: \$176,237.09 will be paid on receipt of the executed Agreement.
- B. Second instalment: \$528,711.28 will be paid to the Recipient in April, by the end of the month.

Funding Year 2 – January 1, 2013 to December 31, 2013:

- A. First instalment: \$352,474.19 will be paid to the Recipient in January, by the end of the month.
- B. Second instalment: \$1,057,422.55 will be paid to the Recipient following the Ministry's approval of Schedule C for Funding Year 1 – which must be received by the Ministry by **April 15, 2013**.

Funding Year 3 – January 1, 2014 to December 31, 2014:

- A. First instalment: \$528,711.28 will be paid to the Recipient in January, by the end of the month.
- B. Second instalment: \$1,586,133.83 will be paid to the Recipient following the Ministry's approval of Schedule C for Funding Year 2 – which must be received by the Ministry by April 15, 2014.
- C. The Recipient must submit Schedule C for Funding Year 3 to the Ministry by April 15, 2015.

SCHEDULE "B"**CSPT SERVICES AND ACTIVITIES ELIGIBLE FOR FUNDING****A. COURT SECURITY includes:**

1. Facility Perimeter Security
Costs associated with external and/or internal police presence during regular or non-regular hours to secure the perimeter of the facility, to respond to a specific threat or for high-profile matters.
2. Courtroom Security
Costs associated with the presence of police staff in the courtroom to ensure the safety and security of the proceedings and attendees.
3. General Courthouse Security Presence
Costs associated with the use of screening stations staffed by police services to screen all public visitors to the courthouse, including the use of magnetometers and x-ray machines, and police staff assigned to perform roving patrols of the court facility.
4. Prisoner Movement in Courthouse
Costs associated with monitoring the movement of prisoners between holding cells and other areas within the courthouse.
5. Prisoner Guarding in Holding Cells
Costs associated with guarding and monitoring of prisoners brought to court for trial and held in courthouse holding cells (where applicable).
6. Prisoner Feeding
Costs associated with the provision of meals to prisoners required while in the custody of local police services for the purpose of attending court.

B. PRISONER TRANSPORTATION includes:

1. Prisoner Transport
Costs associated with the movement of prisoners between correctional institutions and court locations for the purposes of attending trial.
2. Prisoner Transport - Youth
Costs associated with the movement of custodial minors (i.e. 12-17 years old) between correctional and/or custodial facilities and court locations for the purposes of attending trial.

***PRISONER includes:** Persons being held in custody as a result of provincial or federal offence proceedings, including persons under immigration detention.

C. TRAINING, EQUIPMENT AND RECRUITING includes:

1. Training that is relevant to court security and prisoner transportation only.
2. Equipment that is unique to the member's deployment within court security and prisoner transportation and does not include equipment that would be utilized if the member was deployed in any other capacity within the police service.
3. Recruiting that is relevant to the staffing of court security and prisoner transportation only. Costs may include advertising for applicants, physical fitness and/or psychological testing, applicant screening, interviews or any other related human resources expense.

COURT SECURITY AND PRISONER TRANSPORTATION do NOT include:

1. Court Administration

Costs associated with performing court administrative duties including the scheduling of staff for daily deployment, the service of legal documents, the preparation/maintenance of Crown Brief materials, the entry of data into court information systems, preparing or swearing/affirming legal documentation, scheduling of court appearances or other duties of a related nature.

SCHEDULE "C"

ANNUAL FINANCIAL REPORT

REPORTING MUNICIPALITY:			
CONTACT INFORMATION:			
Salutation:	First Name:	Last Name:	Title:
Tel:	Ext:	Fax:	Email:
Address:			
City:		Postal Code:	
LOCAL POLICE SERVICE:			
Name of Municipal or Regional Police Service or OPP Detachment:			
ANNUAL EXPENDITURE SUMMARY:			
PLEASE REVIEW THE ATTACHED GUIDELINES BEFORE COMPLETING THE FOLLOWING SECTION. THE GUIDELINES WILL PROVIDE DETAILS ON SERVICES AND ACTIVITIES ELIGIBLE FOR FUNDING.			
Funding Year _ Allocation (January 1, 201_ to December 31, 201_):			
COURT SECURITY COSTS			
a) Total gross annual court security costs:			
b) Total annual payments provided to other municipalities for court security:			
c) Total annual payments received from other municipalities for court security:			
d) Total annual payments received from other funding sources for court security:			
e) Total net annual court security costs (a + b - c - d):			
PRISONER TRANSPORTATION COSTS			
f) Total gross annual prisoner transportation costs:			
g) Total annual payments provided to other municipalities for prisoner transportation:			
h) Total annual payments received from other municipalities for prisoner transportation:			
i) Total annual payments received from other funding sources for prisoner transportation:			
j) Total net annual prisoner transportation costs (f + g - h - i):			
Total Net Annual Court Security and Prisoner Transportation Costs (e + j):			
Variance (Allocation - Total Net Annual Costs):			
SIGNATURE OF AUTHORIZED OFFICIAL:			
<i>I, hereby certify that the information provided in the Annual Financial Report is true and correct and is in agreement with the books and records of the municipality and its consolidated entities.</i>			
Title:		Print Name:	
Signature:		Date:	