

CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Financial Planning & Policy Division

To: Mayor and Members General Issues Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: October 16, 2013	
SUBJECT/REPORT NO: City of Hamilton/Ministry of Transportation 2012/13 Dedicated Gas Tax Funding Agreement (FCS13076) (City Wide)	
SUBMITTED BY: Mike Zegarac Acting General Manager Finance & Corporate Services	PREPARED BY: Craig Webb (905) 546-2424 Ext. 1870
SIGNATURE: 	

RECOMMENDATION:

- (a) That the Mayor and General Manager, Finance & Corporate Services be authorized and directed to enter into an Agreement between the City of Hamilton and the Province of Ontario, related to the funding commitment made by the Province of Ontario to the Municipality under the Dedicated Gas Tax Funds For Hamilton's Public Transportation Program;
- (b) That the Mayor and General Manager, Finance & Corporate Services be authorized and directed to execute the Letter of Agreement attached as Appendix "A" to Report FCS13076;
- (c) That the By-law attached as Appendix "C" to Report FCS13076 authorizing and directing the Mayor and General Manager, Finance & Corporate Services to sign a Letter of Agreement between the City of Hamilton and the Province of Ontario with respect to funding under the Dedicated Gas Tax Funds for Public Transportation Program, be passed;

- (d) That, upon being passed, a certified copy of the By-law, together with a signed Letter of Agreement, be forwarded to the Ministry of Transportation.

EXECUTIVE SUMMARY

The attached by-law, accompanying agreement, guidelines and requirements are provided as a condition of the transfer of funding, provided by the Province of Ontario to the City of Hamilton under the dedicated gas tax funds for public transportation program. Under the terms and conditions of the attached agreement, a by-law is required to authorize the Mayor and General Manager, Finance & Corporate Services to sign the *“Letter of Agreement between Her Majesty the Queen in Right of the Province of Ontario, Represented by the Minister of Transportation for the Province of Ontario and the City of Hamilton related to Funding Provided by the Province of Ontario to the Municipality under the Dedicated Gas Tax Funds for Public Transportation Program”*.

Municipalities receiving dedicated gas tax funds must meet the requirements set out in the “2012/2013 Guidelines and Requirements”, attached as Appendix “B” to Report FCS13076.

Alternatives for Consideration – Not Applicable.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: Ratification of the Letter of Agreement is a condition of the City of Hamilton becoming eligible for an estimated \$10,675,279 in provincial funding in 2013 which is a modest decrease over the previous year’s allocation of \$10,737,539.

Staffing: None.

Legal: The enacting of the supporting by-law, per Appendix “C” to Report FCS13076, is a requirement to receive funding under the Dedicated Gas Tax Funds for Public Transportation Program.

HISTORICAL BACKGROUND

The Province of Ontario, under the Dedicated Gas Tax Funds for the Public Transportation Program, has agreed to provide funding in the amount of \$10,675,279 to the City of Hamilton, in accordance with and subject to the terms set out in the attached Letter of Agreement (forms part of the authorizing By-law attached as Appendix “A” to report FCS13076) and the 2012/2013 Guidelines and Requirements (attached as

Appendix “B” to report FCS13076). The Province of Ontario, under the above-noted program, will provide two (2) cents of the existing provincial gas tax to municipalities to support public transportation. In this, the ninth year of the program, that is \$324 million in funding.

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

None.

RELEVANT CONSULTATION

None.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Under the Dedicated Gas Tax Funds for the Public Transportation Program, funding allocated is based on 70% transit ridership and 30% municipal population.

The funding received is deposited into a dedicated reserve that is used to fund the expansion of public transit in terms of capital infrastructure and operating budget funding related to levels of service. The following table provides a summary of the reserve since its establishment:

Transit Gas Tax Reserve 112204					
	2004-2009	2010	2011	2012	Projected 2013
BEGINNING BALANCE	\$ -	\$ 20,222,391	\$ 20,502,825	\$ 24,504,662	\$ 25,707,603
REVENUES:					
Investment Income	\$ 1,817,860	\$ 353,134	\$ 466,006	\$ 542,398	\$ 708,577
Gas Tax Revenue	\$ 51,006,508	\$ 10,647,871	\$ 10,887,525	\$ 10,737,539	\$ 10,675,279
	\$ 52,824,368	\$ 11,001,005	\$ 11,353,531	\$ 11,279,937	\$ 11,383,856
EXPENDITURES:					
To Transit Operating Fund	\$ 20,197,208	\$ 3,994,676	\$ 5,576,209	\$ 8,825,105	\$ 10,983,730
Capital Requirements	\$ 12,404,770	\$ 6,125,895	\$ 1,775,484	\$ 1,251,892	\$ 3,789,416
	\$ 32,601,978	\$ 10,120,571	\$ 7,351,693	\$ 10,076,997	\$ 14,773,146
ENDING BALANCE	\$ 20,222,391	\$ 21,102,825	\$ 24,504,662	\$ 25,707,603	\$ 22,318,313

ALTERNATIVES FOR CONSIDERATION

None.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.4 Improve the City's transportation system to support multi-modal mobility and encourage inter-regional connections.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

- 3.1 Engage in a range of inter-governmental relations (IGR) work that will advance partnerships and projects that benefit the City of Hamilton.

APPENDICES / SCHEDULES

Appendix "A" – Letter of Agreement between the City of Hamilton and the Province of Ontario

Appendix "B" – 2012/2013 Guidelines and Requirements

Appendix "C" – 2013 City of Hamilton/Ministry of Transportation Gas Tax Funding Agreement By-law

Ministry of
Transportation

Office of the Minister

Ferguson Block, 3rd Floor
77 Wellesley St. West
Toronto, Ontario
M7A 1Z8
(416) 327-9200
www.mto.gov.on.ca

Ministère des
Transports

Bureau du ministre

Édifice Ferguson, 3^e étage
77, rue Wellesley ouest
Toronto (Ontario)
M7A 1ZA
(416) 327-9200
www.mto.gov.on.ca



July 8, 2013

His Worship Bob Bratina
Mayor
City of Hamilton
2nd Floor
71 Main Street West
Hamilton ON L8P 4Y5

Dear Mayor Bratina,

RE: Letter of Agreement between Her Majesty the Queen in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario (the "Ministry") and the City of Hamilton (the "Municipality") Related to Funding Provided by the Province of Ontario (the "Province") to the Municipality under the Dedicated Gas Tax Funds for Public Transportation Program (this "Letter of Agreement")

This Letter of Agreement sets out the terms and conditions for the use of dedicated gas tax funds by municipalities for public transportation.

As the Province desires to increase public transportation ridership to support the development of strong communities, the Ministry maintains a Dedicated Gas Tax Funds for Public Transportation Program (the "Program"), under which two cents of the existing provincial gas tax will be provided to municipalities for public transportation expenditures.

Any funding to the Municipality by the Ministry will be provided in accordance with the terms and conditions set out in this Letter of Agreement and the enclosed Dedicated Gas Tax Funds for Public Transportation Program Guidelines and Requirements (the "guidelines and requirements").

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In consideration of the mutual covenants and agreements contained in this Letter of Agreement and the guidelines and requirements, which have been reviewed and are understood by the Municipality and are hereby incorporated by reference, the Ministry and the Municipality covenant and agree as follows:

1. To support increased public transportation ridership in the Municipality, and in recognition of the Municipality's need for predictable and sustainable funding to support investments in the renewal and expansion of public transportation systems, the Ministry agrees to provide funding to the Municipality under the Program in an amount up to \$10,675,279 in accordance with, and subject to, the terms set out in this Letter of Agreement, and the guidelines and requirements, with \$5,337,640 payable on receipt of this signed Letter of Agreement and related authorizing municipal by-law, and any remaining payment(s) payable thereafter.
2. Despite Section 1, the Municipality understands and agrees that any amount payable under this Letter of Agreement may be subject, at the Ministry's discretion, to adjustment to reflect final gas tax receipts and any other adjustments as set out in the guidelines and requirements, including those related to annual appropriations or dedication, as applicable, of funds by the Legislative Assembly of Ontario.
3. If the Municipality receives dedicated gas tax funds on behalf of any other municipality, and the other municipality has agreed to the Municipality collecting the dedicated gas tax funds on its behalf, the Municipality shall provide, upon request and in compliance with the requirements set out in the guidelines and requirements, any applicable municipal by-law and legal agreement between the Municipality and the other municipality providing for such arrangement to the Ministry prior to the payment of any dedicated gas tax funds by the Ministry under this Letter of Agreement.
4. The Municipality shall deposit the funds received under this Letter of Agreement in a dedicated gas tax funds reserve account, and use such funds only in accordance with the guidelines and requirements.

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5. The Municipality shall adhere to the reporting and accountability measures set out in the guidelines and requirements, and shall provide all requested documents to the Ministry.
6. The Municipality understands and agrees that the funding provided under this Letter of Agreement represents the full extent of the Ministry's and Province's financial contribution under the Program, and that no additional funds will be provided by either the Ministry or the Province for such purposes to the Municipality for the 2012/2013 Program year.
7. The Ministry may terminate this Letter of Agreement at any time, without cause, upon giving at least sixty (60) days written notice to the Municipality. If the Ministry terminates this Letter of Agreement without cause, it may cancel all further dedicated gas tax funds payments. Where the Ministry has terminated this Letter of Agreement under this Section, the Ministry may, after determining the Municipality's reasonable costs to terminate any binding agreement for any eligible public transportation service acquired, or to be acquired, with dedicated gas tax funds provided under this Letter of Agreement, provide the Municipality with additional funding to offset, in whole or in part, such costs. The additional funding may be provided only if there is an appropriation for this purpose, and in no event shall the additional funding result in the total funding under this Letter of Agreement exceeding the amount specified under Section 1.
8. If the Legislature fails to appropriate sufficient funds for the Program, the Ministry may terminate this Letter of Agreement immediately by giving written notice to the Municipality. In such instance, the Ministry may cancel all further dedicated gas tax fund payments.
9. Any provisions, including those in the guidelines and requirements, which by their nature are intended to survive the termination or expiration of this Letter of Agreement, shall survive its termination or expiration.
10. The Municipality hereby consents to the execution by the Ministry of this Letter of Agreement by means of an electronic signature.

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If the Municipality is satisfied with and accepts the terms and conditions of this Letter of Agreement, please secure the required signatures for the four enclosed copies of this Letter of Agreement and return two fully signed copies to:

Ministry of Transportation
Division Services and Program Management Office
27th Floor, Suite # 2702
777 Bay Street,
Toronto, Ontario
M7A 2J8

Once the Ministry has received the signed copies, the last signature of which shall be the effective date of this Letter of Agreement, together with a copy of the authorizing municipal by-law, the Ministry will make arrangements for the payment of the dedicated gas tax funds to the Municipality.

Yours sincerely,



Glen Murray
Minister of Transportation

I have read and understand the terms of this Letter of Agreement, as set out above, and by signing below I am signifying the Municipality's consent to be bound by these terms.

The Corporation of the City of Hamilton

Per: _____ Date: _____
Mayor

Per: _____ Date: _____
Chief Financial Officer/Treasurer



MINISTRY OF TRANSPORTATION

**Dedicated Gas Tax Funds For
Public Transportation Program**

2012/2013 Guidelines and Requirements

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DEDICATED GAS TAX FUNDS FOR PUBLIC TRANSPORTATION PROGRAM

2012/2013 GUIDELINES & REQUIREMENTS

1. DEFINITIONS

When used in these guidelines and requirements, the words set out below that import the singular include the plural and vice versa:

“baseline spending” means a municipality’s spending level, which equals the average municipal own spending on public transportation for the years 2001 to 2003 and includes a rate of 2% per year for inflation. For new transit systems that were not operational from 2001 to 2003, the baseline will be determined at the Ministry’s discretion, until the municipality has three years of operation, whereby the first three years of municipal spending will be averaged and a rate of 2% per year for inflation will be applied.

“Canadian content policy” means the Canadian Content for Transit Vehicle Procurement Policy attached to these guidelines and requirements as Appendix B: Canadian Content Policy.

“dedicated gas tax funds” means the money provided by the Ministry to a municipality to be used strictly towards eligible expenditures that are reasonable, in the opinion of the Ministry, and related directly to the provision of public transportation services, and “dedicated gas tax funding” has the same meaning.

“dedicated gas tax funds reserve account” means an interest bearing account set up by a municipality, under its name and in a Canadian financial institution, where dedicated gas tax funds are deposited and tracked separately from any other funds.

“eligible expenditures” means expenditures made by a municipality in direct support of public transportation operating or capital costs in accordance with Article 3 of these guidelines and requirements.

“guidelines and requirements” means these guidelines and requirements entitled “Dedicated Gas Tax Funds for Public Transportation Program – 2012/2013 Guidelines and Requirements”, including Appendices A and B to these guidelines and requirements, which the Ministry may amend from time to time.

“host municipality” means a host municipality as defined in Section 5.2.

“indemnified parties” means each of the following and their directors, officers, advisors, agents, appointees and employees: Her Majesty the Queen in right of Ontario and the members of the Executive Council of Ontario.

"letter of agreement" means an agreement entered into between the Ministry and a municipality, including a host municipality, that sets out the terms and conditions under which the Ministry agrees to provide dedicated gas tax funds to the municipality, including those under these guidelines and requirements, and any amendments to the letter of agreement.

"losses" means liabilities, costs, damages and expenses (including legal, expert and consulting fees).

"major refurbishment" means: (a) for a subway car, light rail car, streetcar or trolley bus, the refurbishment where the life cycle is extended a minimum of six years beyond the designed life cycle set out by the manufacturer; and (b) for a bus thirty feet in length or over, the refurbishment where the life cycle of the bus at a minimum age of nine years is extended for a minimum of six years.

"Ministry" and "Minister", respectively, means the Ministry of Transportation which is responsible for the administration of the Program and the Minister responsible for the Ministry.

"municipal own spending on public transportation" means the funds a municipality contributes towards public transportation expenditures, including funds it contributes for operating and capital expenditures, total operating revenue and local public donations.

"personnel" includes the directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors of a municipality.

"proceeding" includes actions, claims, demands and lawsuits.

"Program" means the Dedicated Gas Tax Funds for Public Transportation Program set up by the Ministry to provide municipalities with dedicated gas tax funds subject to, and in accordance with, these guidelines and requirements.

"PRESTO Fare System" means the public transportation integrated fare collection system for the Greater Toronto and Hamilton area ("GTHA"), and any other municipality that may be added from time to time, to support more seamless use by public transportation customers and the collection of public transportation fares.

"public transportation" means any service for which a fare is charged for transporting the public by vehicles operated by or on behalf of a municipality or local board as defined in the *Municipal Affairs Act*, R.S.O. 1990, c. M. 46, as amended, or under an agreement between a municipality or local board, and a person, firm or corporation, and includes special transportation facilities for the physically disabled, but does not include transportation by special purpose facilities, such as school buses or ambulances.

"public transportation vehicle" refers to a streetcar, bus, subway car, light rail car or trolley bus used for public transportation.

"reporting forms" means the following forms attached as Appendix A (Reporting Forms) to these guidelines and requirements: 1) Dedicated Gas Tax Funds for Public Transportation

2012 Reporting Form (i.e. form MT-O-16); 2) Dedicated Gas Tax Program – Transit 2012 Conventional Transit Reporting Form (i.e. form MT-O-17); and 3) Dedicated Gas Tax Program – Transit 2012 Specialized Transit Reporting Form (i.e., form MT-O-18).

"subcontractor" means any contractor of a municipality or any of its subcontractors at any tier of subcontracting.

2. INTRODUCTION

The Province has a vision for a stronger Ontario built around strong communities, a vibrant economy and healthier, more liveable cities with increased access to public transportation, reduced commute times and cleaner air for all Ontarians. By providing a portion of the gas tax for public transportation, the Province assists municipalities to become more self-sustaining in that regard.

As of October 2004, the Province provided 1 cent/litre of gas tax funds to Ontario municipalities, increasing as of October 2005 to 1.5 cents/litre, and since October 2006 has consistently provided 2 cents/litre annually. This year, the new allocation of funding for 96 public transit systems representing 130 municipalities will amount to \$324 million. The annual Program funding amount is subject to change based on actual gas tax revenues.

The Program is an important element of the ongoing relationship between the Province and Ontario municipalities. Municipalities receiving dedicated gas tax funds must meet the requirements set out in these guidelines and requirements.

3. GENERAL ELIGIBILITY REQUIREMENTS AND CONDITIONS

The purpose of the Program is to provide dedicated gas tax funds to Ontario municipalities to ensure that local public transportation services continue, and to increase overall ridership through the expansion of public transportation capital infrastructure and levels of service. To be eligible to receive dedicated gas tax funds a municipality must contribute financially towards their public transportation services.

For 2012/2013, only municipalities that have submitted their 2011 annual data survey to the Canadian Urban Transit Association (CUTA) will be eligible to receive dedicated gas tax funds, unless otherwise approved by the Ministry.

Subject to the provision of a municipal by-law indicating its intent to provide public transportation services, a municipality that is not currently providing public transportation services, but decides to begin providing such services, may be eligible for funding. Notification of the municipality's intent to provide public transportation services and specific commitment to annually fund such public transportation services will be required prior to October 1, 2013. After the new public transportation services have been implemented, dedicated gas tax funding may then be available, at the Ministry's sole discretion.

A municipality receiving dedicated gas tax funds must ensure that all funds received and any related interest are used exclusively towards the provision of public transportation services and, unless otherwise approved by the Ministry, disbursement of dedicated gas tax funds and any related interest must be net of any rebate, credit or refund, for which it has received, will receive, or is eligible to receive.

Public transportation services for which dedicated gas tax funds and any related interest are provided must be acquired or provided in accordance with the terms and conditions set out in a letter of agreement, and in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws applicable to any aspect of the public transportation services. For greater clarity, all public transportation services and public transportation vehicles must be fully accessible in accordance with the requirements set out under the following statutes and regulations, as may be amended from time to time: the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 and the *Integrated Accessibility Standards*, O. Reg. 191/11 made under that Act; and the *Highway Traffic Act*, R.S.O. 1990, c. H.8 and the *Accessible Vehicles*, R.R.O. 1990, Reg. 629 made under that Act. In addition to the above, the acquisition of public transportation vehicles must comply with the Canadian content policy requirements.

The Ministry may withhold payment of dedicated gas tax funds until the reporting requirements under Section 9.4 are met.

Unless the Ministry otherwise approves in writing, in 2012/2013, gas tax revenues and any related interest can only be used to support municipal public transportation expenditures above a municipality's baseline spending and not to reduce or replace current levels of municipal public transportation funding. External audit and financial reporting costs are not eligible expenditures to which dedicated gas tax funding can be applied or the Ministry may reimburse.

(a) Requirements for All Dedicated Gas Tax Funds Received in 2012/2013 and Beyond

- Dedicated gas tax funds and any related interest will need to be spent on:
 - Public transportation capital expenditures that promote increased transit ridership, and are above a municipality's baseline spending;
 - Public transportation operating expenditures that are above a municipality's baseline spending;
 - Capital expenditures for the replacement of any public transportation vehicles that are above a municipality's baseline spending;
 - Capital expenditures that provide improvements to public transportation security and passenger safety, and are above a municipality's baseline spending; and
 - Major refurbishment on any fully accessible, or to be made fully accessible, public transportation vehicle, and are above a municipality's baseline spending.

- For municipalities that provide only specialized transit, transit initiatives that may not initially result in ridership growth but will provide increased accessibility can be considered as eligible expenditures if approved in writing by the Ministry prior to implementation.

(b) Additional Requirements for the following Municipalities: Regions of Durham and York, the Cities of Brampton, Burlington, Hamilton, Mississauga, Ottawa and Toronto, and the Town of Oakville.

Prior to the release of any dedicated gas tax funds, the municipalities listed under (b) above will, in addition to any other requirements in this Article 3, be required to:

- Participate in the PRESTO Fare System project and, as participants, will be required to meet their financial obligations for that project.

(c) Additional Requirements for GTA Municipalities: Regions of Durham, Halton, Peel and York, and Cities of Hamilton and Toronto.

Prior to the release of any dedicated gas tax funds, the municipalities listed under (c) above will, in addition to any other requirements in this Article 3, be required to:

- Demonstrate that they have met their responsibility for the payment of the growth and expansion capital costs of Metrolinx pursuant to the *Amendment to Greater Toronto Services Board By-law No. 40*, O. Reg. 446/04, made under the *Metrolinx Act, 2006*, S.O. 2006, c. 16.

The eligibility requirements for dedicated gas tax funds will be determined in accordance with these guidelines, including the Canadian content policy. The eligibility for any dedicated gas tax funds is at the sole discretion of the Ministry. Where a municipality relies on receiving dedicated gas tax funds for expenditure, a municipality should consider consulting with Ministry staff when in doubt as to whether such expenditure is eligible for dedicated gas tax funds prior to making or committing to make it.

4. APPROPRIATION BY THE LEGISLATIVE ASSEMBLY

Despite anything else to the contrary, the annual provincial funding for the Program and payment of any dedicated gas tax funds under the Program is subject to annual appropriation or dedication, as applicable, of such funds by the Legislative Assembly of Ontario or otherwise, and funds made available by a municipality for that purpose.

5. GENERAL PROGRAM ALLOCATION METHODOLOGY AND PAYMENT PROCESS

5.1 General Program Allocation Methodology

Based on consultation with municipalities, public transportation operators and stakeholders, the Province recognizes the varying needs of public transportation in Ontario municipalities, including those related to large established public transportation systems and communities with different growth rates and levels of public transportation service. Consistent with the above, the Province has established an allocation formula based on a combination of ridership and population. This formula balances the needs of large established public transportation systems, the growth needs of rapidly growing municipalities, and the needs of smaller municipalities that provide public transportation services.

The Province is implementing an allocation based on 70% transit ridership and 30% municipal population. Fully implemented, 70% of \$324 million (\$226.8 million) will be distributed to municipalities on the basis of their public transportation ridership levels. Thirty percent (30%) of \$324 million (\$97.2 million) will be distributed on the basis of population levels. Public transportation ridership will include the totals of both conventional and specialized public transportation services.

Both ridership and population figures are updated and revised annually for use in the calculation of dedicated gas tax funds.

CUTA annually collects and reproduces, on behalf of the Ministry, transit ridership data in its Ontario Urban Transit Fact Book and its Ontario Specialized Transit Services Fact Book (the "CUTA Fact Books"). The Ministry used the 2011 ridership data from the 2011 CUTA Fact Books for the above calculation. Where a municipality's ridership data have not been collected nor reproduced in the 2011 CUTA Fact Books, the Ministry used the 2011 transit ridership data received from the municipality.

The 2012/2013 gas tax allocations were calculated using 2011 population estimates derived from the 2006 census data.

Dedicated gas tax funds provided to each municipality in 2012/2013 are not to exceed, based on the 2011 municipal public transportation spending data set out in the CUTA Fact Books, 75% of municipal own spending on public transportation. The Ministry may re-allocate, in support of increasing public transportation ridership, any amounts of moneys dedicated for, but that remains undistributed through, the Program.

The Ministry may undertake an annual review of the dedicated gas tax allocation methodology and eligibility requirements to ensure these funds support the desired outcome of increased public transportation ridership. Municipal public transportation spending will be reviewed on an annual basis to determine if the limits of the dedicated gas tax funds need to be applied where the gas tax allocation may exceed 75% of municipal own spending on public transportation.

5.2 Payment Process

The Minister will advise each municipality, on an annual basis, of the amount of dedicated gas tax funds it is eligible to receive. The Minister will send a letter of agreement to each municipality that provides public transportation services. The letter of agreement will set out the terms and conditions upon which the dedicated gas tax funds will be released to the municipality, and by which the municipality will have to agree to be bound.

The Ministry may, on a quarterly basis (or other basis, as the Ministry may decide from time to time), make payments of dedicated gas tax funds only after receipt of the following documents: i) the letter of agreement, provided by the Ministry to the municipality, signed by the head of the municipal council and chief financial officer/treasurer; and ii) a copy of a municipal by-law permitting the municipality to enter into the letter of agreement.

Any amount of dedicated gas tax funds provided to the municipality under the Program will be subject to the remedies set out under Article 8. In addition, any dedicated gas tax funds the Ministry provides to a municipality and any related interest, including those kept by the municipality in a dedicated gas tax funds reserve account, will have to be used by the municipality exclusively towards public transportation services and in accordance with the requirements set out in these guidelines and requirements, including those related to eligibility and related conditions, acquisition and disposition, accountability, records, audit and reporting, and liability and indemnity requirements. The above will apply to funds received during the term of a letter of agreement, and will survive such term.

If a municipality agrees to provide public transportation services (a "host municipality") for another municipality, the Ministry, at its sole discretion, may only provide the host municipality with dedicated gas tax funds. Prior to the Ministry making any payment of dedicated gas tax funds to the host municipality, the host municipality and the municipality on whose behalf the host municipality is providing transportation services will be required to provide the Ministry with copies of their respective by-laws designating the host municipality as a public transportation service provider for the municipality or authorizing the host municipality to provide public transportation services to the municipality. The host municipality will be required to enter into a dedicated gas tax funds letter of agreement with the Ministry and be in compliance with the terms and conditions set out in these guidelines and requirements.

6. DEDICATED GAS TAX FUNDS RESERVE ACCOUNT AND INTEREST

6.1 Dedicated Gas Tax Funds Reserve Account

Dedicated gas tax funds must be used only towards public transportation service eligible expenditures. A municipality receiving dedicated gas tax funds prior to the municipality having paid for any eligible expenditures, in accordance with these guidelines and requirements, must keep such dedicated gas tax funds, and all interest earned on such funds, in a dedicated gas tax funds reserve account. Gas tax funds received must be reported annually, using the reporting forms, on a cash basis.

6.2 Interest

Interest on funds deposited in a dedicated gas tax funds reserve account must accrue on any carryover funds over the course of the Program reporting period. A municipality must calculate interest on its average annual balance of funds. The interest must also be reported annually, using the reporting forms and can only be applied towards public transportation services eligible expenditures.

7. ACQUISITION AND DISPOSITION OF SUPPLIES, MATERIALS, EQUIPMENT, AND SERVICES

If a municipality acquires supplies, materials, equipment or services with dedicated gas tax funds, it must do so through a process that promotes the best value (with due regard for economy, efficiency and effectiveness) for the dedicated gas tax funds it spends.

The municipality must report to the Ministry in writing any funds accrued from the sale, lease or disposal of assets purchased with dedicated gas tax funds, and return such funds to a dedicated gas tax funds reserve account (see Article 6).

8. ADJUSTMENT, WITHHOLDING AND REPAYMENT OF DEDICATED GAS TAX FUNDS AND OTHER REMEDIES

If, once the Ministry and a municipality have entered into a letter of agreement and in the opinion of the Ministry, the municipality: i) fails to comply with any of the requirements set out in the letter of agreement, including these guidelines and requirements; ii) uses any of the dedicated gas tax funds or any related interest, for a purpose not authorized without the prior written consent of the Ministry; iii) provides erroneous or misleading information; iv) fails to provide information, including requested audit information, to the Ministry for any reason whatsoever; or v) is unable to provide or acquire or has discontinued the provision or acquisition of public transportation services for which dedicated gas tax funds have been provided, or it is not reasonable for the municipality to continue to provide or acquire public transportation services for which such funds have been provided ("event of default"), the Ministry may, unless the Ministry provides the municipality with written notice of an opportunity to correct the event of default: i) immediately terminate the letter of agreement; ii) suspend dedicated gas tax funding for such period as the Ministry determines appropriate; iii) reduce the amount of any dedicated gas tax funds; and/or iv) initiate any action the Ministry considers necessary to ensure the successful provision or acquisition by the municipality of any public transportation services, including capital assets, in accordance with the terms of the letter of agreement.

Where the Ministry gives the municipality an opportunity to correct an event of default by giving it notice of the particulars of the event of default and the date by which the municipality is required to remedy it, and: i) the municipality does not remedy the event of default by the date specified in the notice; ii) it becomes apparent to the Ministry that the municipality cannot completely remedy the event of default by the date specified in the notice; or iii) the

municipality is not proceeding to remedy the event of default in a way that is satisfactory to the Ministry, the Ministry may initiate any of the remedies for event of default available to it under this Article.

Upon termination of the letter of agreement pursuant to this Article, the Ministry may:

- i) Cancel all further dedicated gas tax fund payments;
- ii) Demand the repayment of any dedicated gas tax funds remaining in the possession or under the control of the municipality; and/or,
- iii) Demand the repayment of an amount equal to any dedicated gas tax funds or any related interest that the municipality used for purposes not agreed upon by the Ministry.

In regards to paragraph iii) above, the Minister may not demand repayment of an aggregate amount greater than the dedicated gas tax funds that were received by the municipality.

Upon the Minister providing a municipality a written demand for repayment of dedicated gas tax funds, the amount of the demand shall constitute a debt due to the Crown of the Province of Ontario and may be recovered as such under applicable law including, without limitation, the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, ("FAA"). In addition to any remedy the Crown may have under the FAA, the Ministry may decide to withhold or adjust the amount of any current or future dedicated gas tax funding, or any other funding program, that may be provided to the municipality in an amount equal to such debt or have the amount of such debt deducted from financial assistance payable on any other project(s) of the municipality under any other initiative in which the Ministry is involved (either current or future).

A municipality must inform the Ministry of any contribution received from any source whatsoever towards costs related to the Program. Unless the Minister directs otherwise, the amount of such contribution will be deducted from any amount of dedicated gas tax funding the Minister may provide to the municipality.

Any decision made by the Minister regarding funding under the Program is final.

9. ACCOUNTABILITY, RECORDS, AUDIT AND REPORTING REQUIREMENTS

9.1 Accountability

A municipality receiving dedicated gas tax funds must use such funds, and any interest earned on such funds, exclusively towards public transportation service eligible expenditures and in accordance with these guidelines and requirements. The municipality will not be allowed to use dedicated gas tax funds and related interest to offset other municipal expenditures.

9.2 Records

A municipality receiving dedicated gas tax funds must keep and maintain separate records and documentation related to any dedicated gas tax funds and any related interest, including invoices and any other financially-related documents relating to the provision or acquisition of

public transportation services for which dedicated gas tax funds and any related interest have been used. The records and documentation must be kept and maintained in accordance with generally accepted accounting principles. Records containing confidential information must be kept in accordance with all applicable legislation. No provision of these guidelines and requirements shall be construed so as to give the Ministry any control whatsoever over the municipality's records.

9.3 Audit

A municipality receiving dedicated gas tax funds may be subject to audit. The Ministry may, at its sole discretion, audit or have audited by any third party, any records and documentation of the municipality related to any public transportation services provided or acquired with dedicated gas tax funds and any related interest, and such funds. Such audit may require the Ministry, at the municipality's expense (except as provided in the Canadian content policy), to retain external auditors. In addition, the Auditor General may, pursuant to the *Auditor General Act*, R.S.O. 1990, c. A. 35, as amended, audit the accounts and records of the municipality relating to any expenditure of dedicated gas tax funds.

In addition to any adjustments the Ministry may make to dedicated gas tax funding under these guidelines and requirements, the Ministry may, upon recommendation in an audit report, adjust future dedicated gas tax fund payments or other payments the Province may make to the municipality under any other program.

9.4 Reporting

Accuracy in the calculation and reporting of municipal transit ridership and dedicated gas tax funds and any related interest is paramount. When calculating ridership, municipalities have to use one of the acceptable best practices identified in the 2008 Ontario Ridership Data Collection Review Report published jointly by CUTA and iTrans Consultants (retained by CUTA).

A municipality will be accountable to use dedicated gas tax funds and any related interest towards public transportation expenditures that meet the Program eligibility requirements. Each municipality will be required to report on how dedicated gas tax funds and any related interest are spent on an annual basis, including the provision of its Canadian content declaration form(s), in accordance with the Canadian content policy, for any public transportation vehicle funded with dedicated gas tax funds.

For the purpose of the above reporting, municipalities will be required to use the reporting forms which have been developed in consultation with municipal public transportation stakeholders, and submit these reporting forms to the Ministry prior to July 8, 2013.

10. COMMUNICATIONS

A municipality will be required to give a minimum of thirty (30) days written notice to the Ministry regarding any planned local dedicated gas tax funding communication and/or recognition event. The municipality will also be required to provide the Ministry with detailed information regarding such communication and/or event.

The Ministry and a municipality receiving dedicated gas tax funds will, at all times, remain independent of each other and will not represent themselves to be the agent, joint venturer, partner or employee of the other. Neither the municipality nor the Ministry will be allowed to make representations or take actions which could establish or imply any apparent relationship of agency, joint venture, partnership or employment. In addition, neither the municipality nor the Ministry will be bound in any manner whatsoever by any agreements, warranties or representations made by any of them to any other person or entity, with respect to any other action of the other.

If the municipality publishes any material of any kind, written or oral, relating to public transportation services provided or acquired with dedicated gas tax funds, the municipality will indicate in the material that the views expressed in the material are the views of the municipality and do not necessarily reflect those of the Ministry.

11. CONFLICT OF INTEREST

A municipality receiving dedicated gas tax funds and its contractors and any of their respective advisors, partners, directors, officers, employees, agents and volunteers must carry out the acquisition of public transportation vehicles and services and use the dedicated gas tax funds without a conflict of interest (actually or potentially in the sole opinion of the Ministry) with the terms and conditions set out in these guidelines and requirements.

A conflict of interest includes any circumstances where the municipality or its contractors or any of their respective advisors, partners, directors, officers, employees, agents and volunteers has outside commitments, relationships or financial interests that could, or could be seen to, interfere with its/her/his objective, unbiased and impartial judgment relating to the provision or acquisition of public transportation vehicles and services and the use of dedicated gas tax funds.

A municipality will 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 comply with any terms and conditions that the Ministry may subsequently impose as a result of the disclosure.

12. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

All applications submitted to the Ministry are subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended (the "Act"). The Act provides

every person with a right of access to information in the custody or under the control of the Ministry, subject to a limited set of exemptions.

Municipalities are advised that the names of municipalities receiving dedicated gas tax funds, the amount of funds provided, and the purpose for which dedicated gas tax funds are provided is information the Ministry makes available to the public.

13. LIABILITIES AND INDEMNITIES

A municipality receiving dedicated gas tax funds must agree that it is responsible for anything that may arise, directly or indirectly, in connection with the Program, including without limitation the provision and acquisition of public transportation vehicles, services and capital assets with dedicated gas tax funds. The Ministry's involvement under the Program is for the sole purpose of, and is limited to, the provision of dedicated gas tax funds. As such and as a condition of receiving dedicated gas tax funds, a municipality must agree that, through the Program or otherwise, it has no power or authority to bind the Ministry or to assume or create any obligation or responsibility, express or implied, on behalf of the Ministry. Furthermore, the municipality must not hold itself out as an agent, partner or employee of the Ministry. For greater certainty, nothing in the letter of agreement, including these guidelines and requirements, has the effect of creating an employment, partnership or agency relationship between the Ministry and the municipality.

Furthermore, a municipality receiving dedicated gas tax funds must agree to indemnify and hold harmless the indemnified parties from and against all losses and proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with anything done or omitted to be done by the municipality or any municipality on behalf of which the municipality receives dedicated gas tax funds, or any or their respective personnel, arising out of or in connection with the Program, including, without limitation, the provision or acquisition of public transportation vehicles, services or capital assets with dedicated gas tax funds, or the letter of agreement, unless solely caused by the negligence or willful misconduct of the Ministry.

A municipality receiving dedicated gas tax funds is responsible for its own insurance and must carry, at its own expense, and require the same from its subcontractors and any municipality on behalf of which it receives dedicated gas tax funds, all the necessary and appropriate insurance that a prudent municipality in similar circumstances would maintain in order to protect itself and the Ministry and support the indemnification, as set out above, provided to the Ministry. For greater certainty, the municipality is not covered by the Province of Ontario's insurance program and no protection will be afforded to the municipality by the Government of Ontario for any losses or proceedings that may arise out of the Program or letter of agreement.

For greater certainty, the rights and remedies of the Ministry under a letter of 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.

14. WHERE TO APPLY AND REQUEST OR PROVIDE INFORMATION

Any questions regarding the Program are to be directed to the Ministry Division Services and Program Management Office either by phone at (416) 585-7129 or facsimile at (416) 585-7132.

All forms, agreements and supporting documentation must be forwarded to the following address:

**Ministry of Transportation
Division Services and Program Management Office
27th Floor, Suite #2702
777 Bay Street
Toronto, ON
M7A 2J8**

APPENDIX A: REPORTING FORMS

APPENDIX B: CANADIAN CONTENT POLICY

Authority: Item , Name of Committee
Report
CM: Date

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

To Authorize the Signing of an Agreement between the City of Hamilton and the Ministry of Transportation Related to Funding Provided Under the Dedicated Gas Tax Funds for Public Transportation Program.

WHEREAS the Council of the City of Hamilton deems it advisable to enter into an agreement with Her Majesty the Queen in right of Ontario, as represented by the Minister of Transportation related to funding provided by the Province of Ontario to the Municipality under the Dedicated Gas Tax Funds for Public Transportation Program;

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

1. The Mayor and General Manager, Finance & Corporate Services are authorized and directed to sign the Letter of Agreement between the City of Hamilton and Her Majesty the Queen in right of Ontario, as represented by the Minister of Transportation which is attached Schedule A and forms part of this By-law.
2. This By-law may be cited for all purposes as the 2013 City of Hamilton/Ministry of Transportation Gas Tax Funding Agreement Bylaw.
3. This By-law is deemed to have come into force on _____, 2013.

PASSED this _____ day of _____, 2013.

Bob Bratina
MAYOR

Rose Caterini
CLERK