

Authority: Item 13, Committee of the Whole
Report 06-018 (FCS06081)
CM: August 9, 2006

Bill No. 268

CITY OF HAMILTON

BY-LAW NO. 06-268

A By-law to Approve the Municipal Funding Agreement between the Association of Municipalities of Ontario and the City of Hamilton with Respect to Federal Public Transit Funding.

WHEREAS in the 2006/07 Federal Budget, the government answered the call of municipalities across the nation for public transit funding;

AND WHEREAS on March 30, 2006 the Government of Canada, the Government of Ontario, the City of Toronto, along with the Association of Municipalities of Ontario (AMO), signed an agreement for the transfer of Federal Public Transit Funding;

AND WHEREAS the Federal Government is expected to provide \$400 million in 2005/06 and a potential additional \$900 million over the next few years;

AND WHEREAS these funds will be allocated to 79 Ontario communities on a ridership basis;

AND WHEREAS these funds are intended to provide impacted Ontario communities with specific provisions for public transit infrastructure to primarily support environmental sustainability provisions;

AND WHEREAS the Municipal Financing Agreement sets out the terms and conditions of receiving the federal funding, including reporting requirements;

AND WHEREAS the terms and conditions for each municipality reflects the terms and conditions set out in the March 30th agreement between the Government of Canada, the Government of Ontario, the Association of Municipalities of Ontario (AMO), including eligible projects, eligible expenses etc.;

AND WHEREAS each Municipal Council is required to pass a by-law authorizing the signing of the Municipal Financing Agreement;

NOW THEREFORE the Mayor and Clerk are hereby authorized to execute this Municipal Funding Agreement for the Transfer of Federal Public Transit Funds between the Association of Municipalities of Ontario and The City of Hamilton as in Schedule A attached hereto.

Schedule A shall form part of this by-law.

PASSED and ENACTED this 13th day of September, 2006.



MAYOR



CLERK

Schedule 'A' to By-law No. 06-268

**MUNICIPAL FUNDING AGREEMENT
FOR THE TRANSFER OF FEDERAL PUBLIC TRANSIT FUNDS**

This Agreement made in duplicate as of _____ day of _____, 2006.

BETWEEN:

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
(referred to herein as "AMO")

AND:

THE CORPORATION OF City of Hamilton
(referred to herein as the "Recipient")

WHEREAS Ontario municipalities recognize that all governments must work together collaboratively and in harmony to ensure that investments in communities are strategic, purposeful and forward-looking.

WHEREAS this Agreement includes the specific provisions on the utilization of the transfer of federal funds for public transit infrastructure to primarily support environmental sustainability objectives.

WHEREAS Ontario municipalities agree that open communication with the public will best serve the right of Canadians to transparency, public accountability, and full information about the benefits of these investments in communities.

WHEREAS the Recipient wishes to enter into this Agreement in order to participate in the transfer of federal public transit funds.

WHEREAS AMO is carrying out the fund administration and coordinating role as is obligated in the Canada-Ontario-AMO-City of Toronto Agreement on the Transfer of Federal Public Transit Funds to undertake certain activities and requires Recipients to undertake activities as set out in the Agreement.

THEREFORE the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** When used in this *Agreement* (including the cover and execution pages and all of the schedules), the following terms shall have the meanings ascribed to them below unless the subject matter or context is inconsistent therewith:

"Agreement" means this *Agreement*, including the cover and execution pages and all of the schedules hereto, and all amendments made hereto in accordance with the provisions hereof.

"Annual Expenditure Report" means the written annual report to be prepared and delivered to *AMO* as set out in Section 7.1 hereto.

"Association of Municipalities of Ontario (AMO)" means a legally incorporated entity under the *Corporations Act* (Ontario).

"Audit Statement" means a written audit statement to be prepared and delivered to *AMO* as set out in Section 7.1 hereto.

"Base Amount" means the total capital spending on *Public Transit Infrastructure* by the Recipient in the period January 1, 2000 to December 31, 2004 less monies raised under the *Development Charges Act, 1997* (Ontario) and received under *Infrastructure Programs*.

"Canada" means Her Majesty in Right of Canada represented by the Minister of Transport, Infrastructure and Communities as Minister Responsible for the Office of Infrastructure Canada.

"Eligible Costs" means those costs described in Schedule B attached hereto, incurred in respect of *Eligible Projects*.

"Eligible Projects" means *Public Transit Infrastructure* projects as defined in Section 4.1 hereto.

"Eligible Recipient" means:

- i. a *Municipality*, whether operating directly or indirectly through a local board (including its wholly owned corporation such as a transit agency), or its duly authorized agent that provides transit service;
- ii. a public entity that provides transit service;
- iii. a non-municipal entity, on the condition that the *Municipality* where the proposed project would be housed has indicated support for the project through a formal resolution of its council. A non-municipal entity is defined as:

- for-profit organizations, or
- non-governmental organizations, or
- not for profit organizations.

Federal and Ontario entities in the form of departments, corporations and agencies are not eligible recipients, except where an Ontario department, crown corporation or other entity provides core municipal services within the jurisdiction of the *Municipality* and the *Municipality* agrees that the province or the provincial department, crown corporation or other entity should be the recipient of the funding for an *Eligible Project*.

"Event of Default" has the meaning given to it in Section 12.1 of this *Agreement*.

"Fiscal Year" means the period beginning April 1 of a year and ending March 31 of the following year.

"Funds" mean the *Funds* made available pursuant to this *Agreement* and includes any interest earned on the said *Funds*.

"Infrastructure Program" means *Canada's* infrastructure programs in existence at the time of the execution of this *Agreement* including: The Canada Strategic Infrastructure Fund, The Border Infrastructure Fund, The Municipal Rural Infrastructure Fund, The Infrastructure Canada Program and The Gas Tax Transfer Agreement program.

"Municipal Fiscal Year" means the period beginning January 1 of a year and ending December 31 of the same year.

"Municipality" means every municipality as defined in the *Municipal Act, 2001* (Ontario).

"Outcomes Report" means a written report prepared by the *Recipient* which reports on the outputs and outcomes of the use of the *Funds* according to Section 7.2 hereto.

"Oversight Committee" means the committee established to manage the implementation of the Canada-Ontario-AMO-City of Toronto Agreement for the Transfer of Federal Gas Tax Revenues Under the New Deal for Cities and Communities.

"Parties" means *AMO* and the *Recipient*.

"Public Transit Infrastructure" means tangible capital assets in Ontario primarily for public use or benefit owned by an *Eligible Recipient* that:

- i. improve the quality of the environment and contribute to reduced greenhouse gas emissions, or clean air; and
- ii. fall within the category of projects described in section 4.1 hereto.

"Recipient" has the meaning given to it on the first page of this *Agreement*.

"Third Party" means any person, other than a *Party* to this *Agreement* that participates in the implementation of an *Eligible Project*.

"Transit Ridership Growth Plan" means a comprehensive transit strategy for increasing transit ridership in a sustainable fashion, including growth management and ridership incentives, transportation demand management, service quality improvements, transit system capacity enhancement, pricing, marketing and education initiatives required by the Province of Ontario for funding under the "Dedicated Gas Tax Funds for Public Transportation Program".

"Transit Asset Management Plan" means a ten-year municipal transit asset management plan that requires, at minimum, an inventory of existing transit fleets, a ten-year fleet plan that includes refurbishment, replacement and expansion, a maintenance plan and estimated costs and funding sources, as required of municipalities by the Province of Ontario for funding under the "Dedicated Gas Tax Funds for Public Transportation Program".

1.2. Interpretations:

Herein, etc. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this *Agreement* as a whole and not any particular schedule, article, section, paragraph or other subdivision of this *Agreement*.

Currency. Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

Statutes. Any reference to a federal or provincial statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.

Gender, singular, etc. Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.

2. **TERM OF AGREEMENT**

2.1. **Term.** Subject to any extension or termination of this *Agreement* or the survival of any of the provisions of this *Agreement* pursuant to the provisions contained herein, this *Agreement* shall be in effect from the date set out on the first page of this *Agreement*, up to and including March 31, 2015.

2.2. **Notice.** Any Party may terminate this Agreement on thirty (30) days written notice.

2.3. **End of Funds.** Notwithstanding anything in this *Agreement* and regardless of the *Eligible Project's* state of completion, *AMO* shall not be obligated to provide *Funds* under this *Agreement* beyond those identified in Schedule A attached hereto.

3. **RECIPIENT REQUIREMENTS**

3.1. The *Recipient* agrees to undertake and:

- a. submit to *AMO* the completed *Transit Ridership Growth Plan* and a *Transit Asset Management Plan* as required by the province under the "Dedicated Gas Tax Funds for Public Transportation Program" by December 1, 2006.
- b. ensure that the *Funds* will result in net incremental capital spending on *Public Transit Infrastructure*;
- c. ensure that there is no reduction in capital funding provided by municipalities for *Public Transit Infrastructure*. In the case of *Recipients* that are *Municipalities* in excess of 100,000 in population, ensure that over the period of April 1, 2005 to March 31, 2010 the *Recipient's* capital spending on *Public Transit Infrastructure* will not fall below its *Base Amount*;
- d. ensure any of its contracts for the supply of services or materials to implement its responsibilities under this *Agreement* will be awarded in a way that is transparent, competitive, consistent with value for money principles and pursuant to its adopted procurement policy;
- e. in the case where a *Municipality* wishes to utilize these *Funds* for *Eligible Projects* to enhance the security of its infrastructure, the *Municipality* must provide evidence that these *Eligible Projects*

- satisfy the applicable conditions and requirements including cost sharing, stacking and limits to federal participation imposed by Transport Canada for such federally funded security projects, including those established under Transport Canada's Passenger Rail and Mass Transit Security Contribution Program; and,
- f. where projects result in emissions reductions that can earn offset credits (as per the Offsets System being proposed by the Government of Canada), the municipality shall attribute the appropriate share of the ownership to *Canada* (based *Canada's* contribution to the total project funding).

4. ELIGIBLE PROJECTS

- 4.1. **Eligible Projects.** *Public Transit Infrastructure* projects include the following examples:
- i. Rapid Transit Infrastructure light rail, heavy rail additions, subways, transit stations, park and ride facilities, grade separated bus lanes and rail lines;
 - ii. Rolling Stock: buses (including hybrids, diesel, natural gas, and fuel cell buses), light and heavy rail cars, trolleys, ferries;
 - iii. Intelligent Transport System (ITS): fare collection, passenger information, maintenance, propulsion and communications technologies, transit priority signalling, passenger and traffic information and transit operation systems, including technology that enhance safety and security of operations;
 - iv. Related Capital Infrastructure: transit queue-jumpers and High Occupancy Vehicle (HOV) lanes, storage and maintenance facilities, terminals, bus loading bays and road rehabilitation for bus-lanes only;
 - v. Active transportation infrastructure: bike lanes; and,
 - vi. Para transit: rolling stock, fixed capital assets and systems.

5. ELIGIBLE COSTS

- 5.1. **Eligible Costs.** In order for cost to be eligible for *Funds* pursuant to this *Agreement* the cost must be in accordance with Schedule B.
- 5.2. **Discretion of *Canada*.** Subject to Section 5.1, the eligibility of any items not listed in Schedule B to this *Agreement* is solely the discretion of *Canada*.

5.3. Reasonable Access. The *Recipient* shall permit *Canada* reasonable access to all records relating to all *Eligible Projects* that have received *Funds*.

5.4. Retention of Receipts. The *Recipient* shall retain all evidence (such as invoices, receipts, etc.) of payments related to *Eligible Costs* and such supporting documentation must be available to *Canada* when requested and maintained by the *Recipient* for audit purposes until March 31, 2018.

6. FUNDS

6.1. Use of Funds. The *Recipient* acknowledges and agrees the *Funds* are intended for and shall be used only for *Eligible Costs* in respect of *Eligible Projects*.

6.2. Schedule of payout of Funds. The *Recipient* has agreed that all *Funds* are to be transferred by AMO electronically to the *Recipient* once this *Agreement* has been signed. More specifically on the basis set out in Schedule A.

6.3. Reserve Account. The *Recipient* is permitted to carry over unexpended *Funds* from the year received into subsequent years in a reserve account. The *Recipient* shall ensure:

- a. Any investment of unexpended *Funds* be in accordance with Ontario law and the *Recipient's* investment policy; and,
- b. Any interest earned on *Funds* be only applied to *Eligible Costs* on *Eligible Projects* or to eligible administration costs on the basis set out in Schedule B.

6.4. Funds advanced. Subject to section 6.5 if *Funds* advanced by AMO to the *Recipient* are not paid by the *Recipient* in respect of *Eligible Costs* by March 31, 2010 the *Funds* shall be deemed to constitute a debt to AMO, and unless otherwise agreed in writing in advance with *Canada*, AMO shall take steps to recover the unspent *Funds*.

6.5. Expenditure of Funds. The *Recipient* shall expend all *Funds* by March 31, 2010.

6.6. GST. The use of *Funds* is based on the net amount of goods and services tax to be paid by the *Recipient* pursuant to the *Excise Tax Act* (Canada), net of any applicable rebates.

6.7. Limit on *Canada's* Financial Commitments. The *Recipient* may use *Funds* to pay up to one hundred percent (100%) of *Eligible Costs* of an *Eligible Project*. However, if the *Recipient* is receiving money under an *Infrastructure Program* in respect of an *Eligible Project* to which the *Recipient* wishes to apply *Funds*, the maximum federal contribution limitation set out in any *Infrastructure Program* contribution agreement made in respect of that *Eligible Project* shall continue to apply.

6.8. Insufficient funds provided by *Canada*. If *Canada* does not provide sufficient funds to continue the *Funds* for any *Fiscal Year* during which this *Agreement* is in effect, *AMO* may terminate this *Agreement* in accordance with the terms specified in Section 2.2 of this *Agreement*.

7. REPORTING REQUIREMENTS

7.1. Annual Expenditure Report. The *Recipient* shall report in the form in Schedule C hereto due by March 31st following the *Municipal Fiscal Year* on:

- a. the amounts received from *AMO* under this *Agreement* in respect of the previous *Municipal Fiscal Year* ;
- b. amounts paid by the *Recipient* in aggregate for *Eligible Projects*;
- c. amounts held at year end by the *Recipient* in aggregate, including interest, to pay for *Eligible Projects*;
- d. indicate in a narrative the progress that the *Recipient* has made in meeting its commitments and contributions;
- e. a listing of all *Eligible Projects* that have been funded, indicating the location, investment category, amount of *Funds*, nature of the investment and expected outcomes, as identified in Schedule D; and,
- f. an annual *Audit Statement* prepared by the *Recipient's* auditor in accordance with section 5815 of the Canadian Institute of Chartered Accountants Handbook - Special Reports — Audit Reports on Compliance With Agreements, Statutes and Regulations, providing assurance that the terms of the *Agreement* have been adhered to and *Funds* received by the *Recipient* have been spent in accordance with the *Agreement*.

7.2. Outcomes Report. The *Recipient* shall account in writing for outcomes achieved as a result of the *Funds* through an *Outcomes Report* to be submitted to *AMO* and to be made available publicly in a manner consistent with financial reporting under the *Municipal Act, 2001 S.O. 2001 c.25*.

- a. The *Outcomes Report* will report in writing on the cumulative investments made, in a manner to be provided by *AMO*, including information on the degree to which these investments have actually contributed to the objectives of cleaner air and reduced greenhouse gas emissions.

8. OTHER REQUIREMENTS

- 8.1. **Public Sector Accounting Board.** The *Recipient* acknowledges and agrees that prior to March 31, 2010, the *Recipient* will adopt and use the accounting rules of the Public Sector Accounting Board, in accordance with provincial regulations.

9. RECORDS AND AUDIT

- 9.1. **Accounting Principles.** All accounting terms not otherwise defined herein have the meanings assigned to them; all calculations will be made and all financial data to be submitted will be prepared in accordance with generally accepted accounting principles (GAAP) in effect in Ontario. GAAP will include, without limitation, those principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants or any successor institute, applied on a consistent basis.
- 9.2. **Separate Records.** The *Recipient* shall maintain separate records and documentation for the *Funds* and keep all records including invoices, statements, receipts and vouchers in respect of *Eligible Projects* that *Funds* are paid in respect of until March 31, 2018. Upon reasonable notice, the *Recipient* shall submit all records and documentation relating to the *Funds* to *Canada* for inspection or audit.
- 9.3. **External Auditor.** *Canada* may request, upon written notification and *AMO* has agreed, to complete and provide to *Canada* an audit of *Eligible Project*. *AMO* shall require the assistance of an external auditor to carry out an audit of the material referred to in Section 9.2 of this *Agreement*. If so, the *Recipient* shall, upon request, retain an external auditor acceptable to *Canada* and *AMO* at the *Recipient's* sole expense. The *Recipient* shall ensure that any auditor who conducts an audit pursuant to this section of this *Agreement* or otherwise, provides a copy of the audit report to *AMO* and *Canada* at the same time that the audit report is given to the *Recipient*.

10. INSURANCE AND INDEMNITY

10.1.**Insurance.** The *Recipient* shall put in effect and maintain in full force and effect or cause to be put into effect and maintained for the period during which this *Agreement* is in effect all the necessary insurance that would be considered appropriate for a prudent *Recipient* of this type undertaking a project similar to the *Eligible Projects*, including, where appropriate and without limitation, property, construction and errors and omissions insurance and identifies *Canada* and *AMO* as additional insured for the purposes of the *Eligible Projects* only.

10.2.**Certificates of Insurance.** Throughout the term of this *Agreement*, the *Recipient* shall provide *AMO* with a valid certificate of insurance that confirms the requirements of Section 10.1.

10.3.**AMO and Canada not liable.** In no event shall *AMO* and *Canada* be liable for:

- a. Any bodily injury, death or property damages to the *Recipient*, its employees, agents or consultants or for any claim, demand or action by any *Third Party* against the *Recipient*, its employees, agents or consultants, arising out of or in any way related to this *Agreement*; nor
- b. Any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the *Recipient*, its employees, agents or consultants arising out of any or in any way related to this *Agreement*.

10.4.**Recipient to Indemnify.** The *Recipient* agrees to indemnify and hold harmless *Canada* and *AMO*, its officers, servants, employees or agents, from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

- a. the *Recipient's Eligible Projects*;
- b. the performance of this *Agreement* or the breach of any term or condition of this *Agreement* by the *Recipient*, its officers, employees and agents, or by a *Third Party*, its officers, employees, or agents;
- c. the performance of this *Agreement* or the breach of any term or condition of this *Agreement* by the *Recipient*, its officers, employees and agents, or by a *Third Party*, its officers, employees, or agents.

- d. the design, construction, operation, maintenance and repair of any part of all *Eligible Projects*; and
- e. any omission or other wilful or negligent act of the *Recipient* or *Third Party* and their respective employees, officers, or agents.

10.5.Exception. Except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings related to the act or negligence of an officer, employee, or agent of *AMO* or *Canada* in the performance of his or her duties.

11. TRANSFER AND OPERATION OF *PUBLIC TRANSIT INFRASTRUCTURE*

11.1.Retain Title. The *Recipient* shall retain title to, and ownership of, the *Public Transit Infrastructure* resulting from the *Eligible Project* for at least ten (10) years after the *Eligible Project* completion.

11.2.Repayment. Any time within ten (10) years from the date of completion of the *Eligible Project*, the *Recipient* sells, leases, encumbers or otherwise disposes of, directly or indirectly, any asset constructed, rehabilitated or improved, in whole or in part, with funds contributed by *Canada* under the terms of this *Agreement*, other than to *Canada*, Ontario, a *Municipality*, or a Crown corporation of Ontario that is the latter's agent for the purpose of implementing this *Agreement*, the *Recipient* shall repay *Canada* on demand, a proportionate amount of the funds contributed by *Canada*, as follows:

Where Eligible Project asset is sold, leased, encumbered or disposed of:	Repayment of contribution (in current dollars)
Within 2 Years after Eligible Project completion	100%
Between 2 and 5 Years after Eligible Project completion	55%
Between 5 and 10 Years after Eligible Project completion	10%

11.3.Notice. The *Recipient* shall advise *Canada* and *AMO* in writing 120 days in advance and at any time during the ten (10) years following the completion of an *Eligible Project* if any asset constructed, rehabilitated, or improved in whole or in part with *Funds* is sold, discharged or alienated in any way other than to *Canada*.

12. DEFAULT AND TERMINATION

12.1. **Event of Default.** *AMO* may declare in writing that an event of default has occurred when the *Recipient* has not complied with any condition, undertaking or material term in this *Agreement*. *AMO* will not declare in writing that an event of default has occurred unless it has consulted with the *Recipient*. Each and every one of the following events is a potential "Event of Default":

- a. Failure by the *Recipient* to deliver an *Annual Expenditure Report*, *Audit Report* or the *Outcomes Report*.
- b. Delivery of an *Annual Expenditure Report* or *Audit Report* that discloses non-compliance with any condition, undertaking or material term in this *Agreement*.
- c. Failure to submit to *AMO* certificates of insurance as required in section 10.2 of this *Agreement*.

12.2. **Waiver.** *AMO* may withdraw *Event of Default* if the *Recipient*, within thirty (30) days of receipt of the notice, either corrects the condition or event or demonstrates, to the satisfaction of *AMO* that it has taken such steps as are necessary to correct the condition.

12.3. **Remedies on default.** If *AMO* declares that an *Event of Default* has occurred, after thirty (30) days of declaration, it may immediately exercise one of the following remedies:

- a. In the case of default under Subsection 12.1 a., terminate or suspend its obligation to pay the *Funds*. If *AMO* suspends payment, it may pay suspended funds if *AMO* is satisfied that the default has been cured.
- b. In the case of any other default, *AMO* will suspend its obligation to pay *Funds* related to the event of default pending *AMO's* satisfaction that the default has been cured.

13. CONFLICT OF INTEREST

13.1. **No conflict of interest.** No member of the House of Commons, the Senate of Canada, the Legislature of the Province of Ontario or *AMO* Board of Directors will be admitted to any share or part of any contract made pursuant to this *Agreement* or to any benefit arising therefrom.

14. NOTICE

14.1. Notice. Any notice, information or document provided for under this *Agreement* will be effectively given if delivered or sent by letter, postage or other charges prepaid, or by facsimile or email. Any notice that is delivered will have been received on delivery; and any notice mailed shall be deemed to have been received on the eighth (8) calendar day following the day on which it was mailed.

14.2. Representatives. The individuals identified in Section 14.3 of this *Agreement*, in the first instance, act as *AMO's* or the *Recipient's*, as the case may be, representative for the purpose of implementing this *Agreement*.

14.3. Addresses for Notice. Further to Section 14.1 of this *Agreement*, notice can be given at the following addresses:

a. If to *AMO*:

Executive Director
Federal Public Transit Funds Agreement
Association of Municipalities of Ontario
393 University Avenue, Suite 1701
Toronto ON M5G 1E6

Telephone: (416) 971-9856
Facsimile: (416) 971-6191

b. If to the *Recipient*:

Glenn Peace
City Manager
City of Hamilton
71 Main St. W.
Hamilton, ON L8P 4Y5

Telephone: (905) 540-5420
Facsimile: (905) 546-2095

15. MISCELLANEOUS

- 15.1.**Severability.** If for any reason a provision of this *Agreement* that is not a fundamental term is found to be or becomes invalid or unenforceable, in whole or in part, it will be deemed to be severable and will be deleted from this *Agreement*, but all the other terms and conditions of this *Agreement* will continue to be valid and enforceable.
- 15.2.**No waiver.** The failure of *AMO* to insist in one or more instances on performance by the *Recipient* of any of the terms or conditions of this *Agreement* shall not be construed as a waiver of *AMO*'s right to require further performance of any such terms or conditions, and the obligations of the *Recipient* with respect to such performance shall continue in full force and effect.
- 15.3.**Governing Law.** This *Agreement* shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
- 15.4.**AMO and Recipient independent.** Nothing in this *Agreement* and no action by the *Parties* will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose with *Canada* or *AMO* whatsoever.
- 15.5.**No Authority to Represent.** Nothing in this *Agreement* is to be construed as authorizing one *Party* to contract for or to incur any obligation on behalf of the other or to act as agent for the other. Nothing in this *Agreement* is to be construed as authorizing any *Recipient* or any *Third Party* to contract for or to incur any obligation on behalf of either *Party* or to act as agent for either *Party*.
- 15.6.**Debts Due to AMO.** Any amount owed to *Canada* under this *Agreement* will constitute a debt due to *AMO*, which the *Recipient* will reimburse forthwith, on demand, to *AMO*.
- 15.7.**Priority.** In the event of a conflict, the part of this *Agreement* that precedes the signature of the *Parties* will take precedence over the Schedules.

16. SCHEDULES

16.1. This *Agreement*, including:

Schedule A	Schedule of Fund Payments
Schedule B	<i>Eligible Costs</i>
Schedule C	<i>Annual Expenditure Report</i>
Schedule D	Outcome Indicators
Schedule E	Communications

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

17. SIGNATURES

IN WITNESS WHEREOF, *AMO* and the *Recipient* have respectively executed, sealed and delivered this *Agreement* on the date set out on the front page.

RECIPIENT'S NAME: THE CORPORATION OF City of Hamilton

By:

**Affix
Corporate
Seal**

Name:
Title:

Date

Name:
Title:

Date

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO

By:

**Affix
Corporate
Seal**

Title: Executive Director

Date

In the presence of:

Witness
Name:
Title:

Date

**SCHEDULE A
SCHEDULE OF FUND PAYMENTS**

RECIPIENT'S NAME: THE CORPORATION OF City of Hamilton

AMO will allocate the *Funds* to *Recipients* based exclusively on ridership, using 2004 data produced by the Canadian Urban Transit Association and accepted by the Ministry of Transportation of Ontario for the allocation of Ontario's "Dedicated Gas Tax Funds for Public Transportation Program".

<i>Fiscal Year</i>	<i>Funds Payment</i>
2005/06	4,949,064.00

SCHEDULE B

ELIGIBLE COSTS

Eligible Project Costs

1. *Eligible Costs* are all direct costs which are in *Canada's* opinion:
 - a. properly and reasonably incurred and paid by the *Recipient* and no other person; and
 - b. paid under a contract for goods and services necessary for the implementation of an *Eligible Project*.
2. *Eligible costs* may include only the following:
 - a. the capital costs of acquiring, constructing, renovating or rehabilitating a tangible capital asset and any debt financing charges related thereto;
 - b. the fees paid to professionals, technical personnel, consultants and contractors specifically engaged to undertake the surveying, design, engineering, manufacturing or construction of a project infrastructure asset and related facilities and structures; and,
 - c. the costs of environmental assessments, monitoring, and follow-up programs as required by the *Canadian Environmental Assessment Act*; or a provincial equivalent.
3. Administration Costs
 - a. That portion of *Funds* representing interest earned may be used to pay for administration costs related to the implementation of the *Agreement*.

Ineligible Project Costs

4. Costs related to the following items are ineligible costs:
 - a. *Eligible Project* costs incurred before May 18, 2005 or paid after March 31, 2010;
 - b. services or works that are normally provided by the *Recipient*;
 - c. salaries and other employment benefits of any employees of the *Recipient*;
 - d. a *Recipient's* overhead costs, its direct or indirect operating or administrative costs, and more specifically its costs related to planning, engineering, architecture, supervision, management and other activities normally carried out by its applicant's staff;
 - e. costs of feasibility and planning studies for individual *Eligible Projects*;
 - f. taxes for which the *Recipient* is eligible for a tax rebate and all other costs eligible for rebates;
 - g. costs of land or any interest therein, and related costs;
 - h. cost of leasing of equipment by the *Recipient*;

Federal Public Transit Funds

- i. routine repair and maintenance costs;
- j. legal fees;
- k. administrative costs incurred by the *Recipient* as a result of implementing this *Agreement*, subject to Section 3 of Schedule B above; and
- l. audit and evaluation costs.

SCHEDULE C
ANNUAL EXPENDITURE REPORT

	Annual \$	Cumulative \$
Gross Capital Expenditures (January 1, 2000 to December 31, 2004 for Public Transit Infrastructure only)	0.00	
LESS: (for the same period):		
Development Charges	0.00	
Senior Government Funding	0.00	
Other Non-Municipal Sources	0.00	
Base Amount	0.00	
Opening Balance of Unspent Funding	0.00	0.00
Received from AMO	0.00	0.00
Interest Earned	0.00	0.00
LESS: Expenditures on Eligible Projects	0.00	0.00
Closing Balance of Unspent Funding	0.00	0.00

SCHEDULE C
ANNUAL EXPENDITURE REPORT (cont'd)

PROGRESS REPORT:

PROJECT DETAILS:

i.e. Project title, location, investment category, amount of *Funds*, nature of the investment and expected outcomes.

SCHEDULE D OUTCOME INDICATORS

The impact of the use of the *Funds* will be measured through a set of core indicators, to be developed by the *Oversight Committee* and linked to the following outcomes and outputs:

Outcomes:

- a) Cleaner Air: *[DETERMINE INDICATOR]*
- b) Lower Greenhouse Gas Emissions (GHGs): *[DETERMINE INDICATOR]*

Outputs:

- a) Public Transit Infrastructure: *[DETERMINE INDICATOR]*

SCHEDULE E COMMUNICATIONS

The *Recipient* shall:

- a. ensure all communications by the *Recipient* referring to projects funded under this *Agreement* will clearly recognize Canada's investments;
- b. ensure permanent signage at the location of projects receiving investments under this *Agreement*, prominently identifying the Government of Canada's investment and including the Canada wordmark. Where there is no fixed location for signage, such as a transit vehicle, a prominent marker will recognize the Government of Canada's contribution. All signage/plaques will be located in such a way as to be clearly visible to users, visitors and/or passersby;
- c. regularly report to the public on the outcomes of the investments entered into under this *Agreement*, including through the *Outcomes Reports* described in this *Agreement*;
- d. ensure the timing of public events shall be sufficient to allow for all orders of government to plan their involvement. The *Recipient* shall provide a minimum of 21 days notice of an event or announcement;
- e. unless otherwise arranged, the *Recipient* shall pay their own costs associated with their communications activities;
- f. receive appropriate recognition in communications materials; and,
- g. joint communications material and signage will reflect Government of Canada communications policy, including the *Official Languages Act* (Canada), and federal-provincial/territorial identity graphics guidelines.