**EXECUTIVE SUMMARY**

Prior to amalgamation, the Corporation of the City of Hamilton entered into a Customer Agreement (CA) with IBM that covered all Services and Products that were procured from IBM. This CA was put into effect in 1992 under the Purchasing By-Law, which existed at that time. Any procurement from IBM, at this point in time, would be the result of a Tender, RFQ or RFP based on the existing Purchasing By-Law and our current terms and conditions.

This CA was extended on July 2, 1998, and also on October 14, 1998. To the best of the City’s Legal Services Division’s knowledge, this CA terminated in December, 1998.

As the City has no record of the Council approval (if any) relating to the CA, nor any indication of a delegation of authority with respect to the CA, the City’s Legal Services
Division must assume that the only City representatives who can formally terminate the CA would be those individuals who hold the positions reflected in the executed CA i.e., the Mayor and City Clerk. In order for the Mayor and City Clerk to be authorized to terminate this CA, they must receive direction from Council. Hence, this report needs to be brought to Council in order to formally recognize the CA and authorize termination of same.

Alternatives for Consideration – N/A.

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

Financial: None.
Staffing: None.
Legal: None.

**HISTORICAL BACKGROUND** (Chronology of events)

Prior to amalgamation, the Corporation of the City of Hamilton entered into a CA with IBM covering all Services and Products that were procured from IBM. This CA was put into effect in 1992 under the Purchasing By-Law which existed at that time. Any procurement from IBM, at this point in time, would be the result of a Tender, RFQ or RFP based on the existing Purchasing By-Law and our current terms and conditions.

This CA was written with no termination date; however, the CA contains a provision, under section 1.21 Ending this Agreement, allowing the City to terminate as follows:

"When both your and our commitments concerning all of your Products and Services have expired or have been ended, you may end this Agreement by giving us written notice".

Despite the very broad definitions of Products and Services, presumably all commitments relating to applicable Products and Services have ended. To the best of the City’s Legal Services Division’s knowledge, based on information provided by the City Clerk’s Division, this CA with IBM has not been relied on since 1997, whereby it is specifically referenced in a Master Lease Agreement for personal computer equipment dated May 14, 1997, between (the former) The Corporation of the City of Hamilton and IBM Canada Ltd., as follows:
“AND WHEREAS IBM submitted an IBM Customer Agreement which was executed by the City on January 13, 1992, (the “ICA”) a copy of which is attached as Schedule “B”;

This CA was extended twice, on July 2, 1998, and again on October 14, 1998. To the best of the City’s Legal Services Division’s knowledge, this CA terminated in December, 1998.

As the City has no record of the Council approval (if any) relating to the CA, nor any indication of a delegation of authority with respect to the CA, the City’s Legal Services Division must assume that the only City representatives who can formally terminate the CA would be those individuals who hold the positions reflected in the executed CA, i.e., the Mayor and City Clerk. In order for the Mayor and City Clerk to be authorized to terminate this CA, they must receive direction from Council. Hence, a report needs to be addressed by Council in order to formally recognize the CA and authorize the termination of same.

POLICY IMPLICATIONS


RELEVANT CONSULTATION

City Manager’s Office, Legal Services Division. Corporate Services, City Clerk’s Division.

ANALYSIS / RATIONALE FOR RECOMMENDATION

This CA was initiated in 1992 for equipment which was owned at the time. No evidence can be established that this CA was approved by Council and there is currently no equipment covered by this CA and, therefore, termination of this CA is being recommended.
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork

ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


N/A

APPENDICES / SCHEDULES

N/A