SUBJECT: City of Hamilton/Ministry of Transportation Dedicated Gas Tax Funding Agreement (FCS09057) (City Wide)

RECOMMENDATION:

a) That the Mayor and City Treasurer 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 City Treasurer be authorized and directed to execute the Letter of Agreement attached as Appendix “A” to Report FCS09057;

c) That the appropriate by-law, City of Hamilton/Ministry of Transportation Dedicated Gas Tax Funding Agreement By-Law, attached as Appendix “C”, be passed and enacted; and

d) That, upon Council approval, a certified copy of this by-law be forwarded to the Ministry of Transportation.

Antonio D. Tollis
Acting General Manager
Finance & Corporate Services
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 City Treasurer 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 “2008/2009 Guidelines and Requirements”, attached as Appendix “B”.

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 $11,119,297 to the City of Hamilton, in accordance with and subject to the terms set out in the attached Letter of Agreement (refer to Appendix “A” of report FCS09057) and the 2008/2009 Guidelines and Requirements (refer to Appendix “B” of report FCS09057). The Province of Ontario, under the above-noted program, will provide two (2) cents of the existing provincial gas tax, estimated at $321 million to eighty-nine (89) public transit systems representing one hundred and eleven (111) municipalities to support public transportation.

The above identified level of funding represents the 2008/09 period.

ANALYSIS/RATIONALE:

The province is implementing an allocation based on 70% transit ridership and 30% municipal population. Fully implemented 70% of $321 million ($225 million) will be distributed to municipalities based on public transit ridership levels. Thirty percent (30%) of $324 million ($96 million) will be distributed on the basis of 2001 population levels.

ALTERNATIVES FOR CONSIDERATION:

There are no alternative considerations.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:
Ratification of the Agreement results in the City of Hamilton becoming eligible for an estimated $11.1 million in provincial funding in 2009.

**POLICIES AFFECTING PROPOSAL:**
Letter of Agreement, attached as Appendix “A” to report FCS09057.

**RELEVANT CONSULTATION:**
Public Works – Transit.

**CITY STRATEGIC COMMITMENT:**
By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes  ☐ No
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.

Environmental Well-Being is enhanced.  ☑ Yes  ☐ No
A sustainable transportation network provides many options for people and goods movement; vehicle-dependency is reduced.

Economic Well-Being is enhanced.  ☑ Yes  ☐ No
The economic base is diversified.

Does the option you are recommending create value across all three bottom lines?
☑ Yes  ☐ No
The proposed by-law recognizes the need for additional funding for municipalities from higher levels of government.

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☐ Yes  ☑ No
April 3, 2009

His Worship Fred Eisenberger
Mayor
The City of Hamilton
77 James Street N., Suite 400
Hamilton, Ontario
L8R 2K3

Dear Mayor Eisenberger:

RE: Letter of Agreement between Her Majesty the Queen in right of the Province of Ontario, represented by the Ministry 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 continue increasing public transportation ridership to support the development of strong communities, the Ministry is maintaining the Dedicated Gas Tax Funds for Public Transportation Program (the "program") under which two (2) 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 Dedicated Gas Tax Funds for Public Transportation Program – 2008/2009 Guidelines and Requirements (the "guidelines and requirements").

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 $11,119,297 in accordance with and subject to the terms set out in this Letter of Agreement and the guidelines and requirements, with $5,559,649 payable on receipt of this signed Letter of Agreement and related authorizing municipal by-law, and remaining quarterly payments thereafter beginning in January, 2009.
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 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, 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.

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 years 2008/2009.

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 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 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.
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 together with a copy of the authorizing municipal by-law, the Ministry will make arrangements for the payment of the dedicated provincial gas tax funds to the Municipality.

Yours sincerely,

Jim Bradley  
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

2008/2009 Guidelines and Requirements
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DEDICATED GAS TAX FUNDS FOR PUBLIC TRANSPORTATION PROGRAM

2008/2009 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.

"Canadian content policy" means the Canadian Content for Transit Vehicle Procurement Policy which is attached as Appendix B (Canadian Content Policy) to these guidelines and requirements.

"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, to keep dedicated gas tax funds separate and apart from either municipal or any other funds, or both, and which funds are to be used strictly towards public transportation-related eligible expenditures.

"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 – 2008/2009 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 Her Majesty the Queen in right of Ontario, her Ministers, directors, officers, agents, appointees and employees.

"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.
“major refurbishment” means: (a) for a rapid transit vehicle, streetcar or trolley, the refurbishment where the life cycle of a rapid transit vehicle is extended a minimum of six years beyond the designed life cycle set out by the manufacturer of such vehicles; and (b) for a bus thirty feet in length or over, the refurbishment where the life cycle of a 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 who is responsible for the administration of the Dedicated Gas Tax Funds for Public Transportation 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.

“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 between GTA municipalities 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 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 street car, bus or trolley bus used for public transportation.

“rapid transit vehicle” refers to subway car or light rail car 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 2008 Reporting Form; 2) Dedicated Gas Tax Program – Transit 2008 Conventional Transit Reporting Form; and 3) Dedicated Gas Tax Program – Transit 2008 Specialized Transit Reporting Form.

“transit vehicle” means either a public transportation vehicle or rapid transit vehicle.
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 will assist 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 amounting to $156 million for public transportation. Gas tax funds were increased to 1.5 cents/litre or $232 million as of October 2005, and to 2 cents/litre as of October 2006 at $313 million. This year the new allocation of funding for 89 public transit systems representing 111 municipalities will amount to about $321 million. The annual amount will be 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 2008/2009, only municipalities that have submitted their 2007 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 a specific commitment from the municipality to annual funding support will be required prior to October 1, 2009, when the dedicated gas tax funds allocation for the municipality is revised. After the new system has been implemented, dedicated gas tax funding may then be available, at the discretion of the Ministry, beginning the last quarter of 2009 and into 2010.

A municipality receiving dedicated gas tax funds must ensure that all funds received are used exclusively towards the provision of public transportation services.
Public transportation services for which dedicated gas tax funds 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 or regulations, all municipal by-laws and any other orders, rules, or by-laws related to the public transportation services. More specifically, all public transportation services must be fully accessible in accordance with the requirements set out under the Ontarians with Disabilities Act, 2001, S.O. 2001, c. 32, as amended, and those under the Vehicles for the Transportation of Physically Disabled Passengers, R.R.O. 1990, Reg. 629, passed under the Highway Traffic Act, R.S.O. 1990, c. H-8, as amended. In addition to the above, the acquisition of transit vehicles must comply with the Canadian content policy requirements.

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

Unless the Ministry otherwise approves in writing, in 2008/2009, gas tax revenues 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) Eligibility Requirements for All Dedicated Gas Tax Funds Received in 2008/2009 and Beyond

- Dedicated gas tax funds 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 that provide improvements to transit 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.

- For municipalities that provide only specialized transit, transit strategies 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) For GTA Municipalities: Regions of Durham, Halton, Peel Region, York, and Cities of Hamilton and Toronto

- Prior to the release of any dedicated gas tax funds, these municipalities will be required to:
  - participate in the Presto Fare System project and, as participants, will be required to meet their financial obligations for the project; and
where municipalities are required to provide one-third of capital expansion costs for GO Transit expansion, demonstrate that they have met that requirement.

The eligibility requirements for dedicated gas tax funds will be determined in accordance with applicable government policies and guidelines, including the Canadian content policy. The eligibility of 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 appropriations of such funds by the Legislative Assembly of Ontario, 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 $321 million ($225 million) will be distributed to municipalities on the basis of their public transportation ridership levels. Thirty percent (30%) of $321 million ($96 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 (the “CUTA fact book”). The Ministry used the 2007 ridership data from the 2007 “CUTA fact book” for the above calculation. Where a municipality’s
ridership data have not been collected nor reproduced in the 2007 CUTA fact book, the Ministry used the 2007 transit ridership data received from the municipality.

The 2007 estimated population data based on 2006 population census figures were not available from Statistics Canada for this year’s gas tax allocation process. As a result, the Ministry used the 2007 population data estimates based on the 2001 population census figures received from the Ministry of Finance to calculate the 2008/2009 gas tax allocations. The 2009/2010 gas tax allocations will be calculated using 2008 population estimates based on the 2006 census. This revision in the population component of the gas tax formula may cause some adjustments to the 2009/2010 allocations based on use of 2006 census data as the new baseline for population projections.

Dedicated gas tax funds provided to each municipality in 2008/2009 are not to exceed, based on 2007 municipal public transportation spending data set out in the CUTA fact book, 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: 1) the letter of agreement, provided by the Ministry to the municipality, signed by the head of the municipal council and chief financial officer; and 2) a copy of a municipal by-law permitting the municipality to enter into the letter of agreement.

Any amount 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, 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 some municipalities agree for one of them to receive dedicated gas tax funds on their behalf (a "host municipality"), dedicated gas tax funds will be flowed directly to the "host municipality". The Ministry, at its sole discretion, may provide such funds to the host municipality. Prior to the Ministry making any payment of dedicated gas tax funds to the host municipality, all of the municipalities that have agreed in the Ministry doing so will be required to provide the Ministry with copies of their respective by-laws designating the municipality or, as applicable, accepting to act as the host 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 provided, prior to the municipality having paid for any eligible expenditure, in accordance with these guidelines and requirements, must keep such dedicated gas tax funds, including all interest earned, in a dedicated gas tax funds reserve account.

6.2 Interest

Interest on funds deposited in a dedicated gas tax funds reserve account must accrue on any carryover funds at the appropriate Chums One Rate for an equivalent term. 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 should 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, including 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 section the Ministry may: i) cancel all further dedicated gas tax fund payments; ii) demand the repayment of any dedicated gas tax funds, including any related interest, remaining in the possession or under the control of the municipality; and/or iii) demand the repayment of an amount, including any related interest, equal to any dedicated gas tax funds the municipality used for purposes not agreed upon by the Ministry.

Any money due by a municipality in relation to the dedicated gas tax funds is a debt due to the Crown of the province of Ontario under the Financial Administration Act, R.S.O. 1990, c. F.12, as amended, ("FAA") and, 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 Dedicated Gas Tax Funds for Public Transportation 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 for a period of seven years from the date of the termination of a letter of agreement separate records and documentation related to any dedicated gas tax funds, including invoices and any other financially-related documents relating to the provision or acquisition of public transportation services for which dedicated gas tax funds 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.

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 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 is paramount. When calculating ridership municipalities have to use one of the acceptable best practices identified in the 2007 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 towards public transportation expenditures that meet the dedicated gas tax program eligibility requirements. Each municipality will be required to report on how dedicated gas tax funds are spent on an annual basis, including the provision of Canadian content declaration form, in accordance with the Canadian content policy, for any buses funded with gas tax funds.

For the purpose of the above reporting, municipalities will be required to use the reporting forms (attached as Appendix A), which have been developed in consultation with municipal public transportation stakeholders, and submit these reporting forms to the Ministry prior to April 30, 2009.

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 or 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 transit buses 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 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 under the program is responsible, in whole and in part, for anything that may arise, directly or indirectly, in relation to the provision or acquisition of public transportation services, including any 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, as a condition of receiving dedicated gas tax funds, a municipality must warrant and agree that under no circumstance will the municipality enter into any contract or commitment in the name or on behalf of the Ministry, and the municipality must acknowledge that it is not, through the program or otherwise, granted any right or authority to assume or create any obligation or responsibility, expressed or implied, in the name or on behalf of the Ministry or to bind the Ministry in any manner whatsoever.

Furthermore, a municipality receiving dedicated gas tax funds must agree 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, (collectively, "Claims") by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way arising out of or in
connection with anything done or omitted to be done by the municipality, its contractors or any other municipality on behalf of which the municipality receives dedicated gas tax funds or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors arising out of or in connection with the provision or acquisition of public transportation services, including capital assets, with dedicated gas tax funds or the letter of agreement. The municipality must further agree to indemnify and hold harmless the indemnified parties for any incidental, indirect, special or consequential damages, or loss of use, revenue or profit by any person, entity or organization, including, without limitation, the Ministry, claimed or resulting from such Claims.

A municipality receiving dedicated gas tax funds must acquire, provide and maintain, at its own expense, and require the same from its contractors and any other municipality on behalf of which it receives dedicated gas tax funds, appropriate insurance in order to protect itself and the Ministry and support the indemnification, as set out above, provided to the Ministry.

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) 585-7152.

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

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

Facsimile: (416) 585-7132
CITY OF HAMILTON

BY-LAW NO. __________

To Authorize the Execution 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 City of Hamilton is entitled to enter into an agreement to provide services under a program established and administered by the Province of Ontario pursuant to Section 22 subsection (1) of the Municipal Act, 2001;

AND 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. That Council hereby authorizes the Mayor and Treasurer to sign an agreement between the City of Hamilton and her Majesty the Queen in right of Ontario, as represented by the Minister of Transportation, pursuant to the terms and conditions set out in as per the attachment hereto and forming part of this bylaw.
2. That this bylaw shall come into effect upon its passing; and

3. That this bylaw may be cited for all purposes as “City of Hamilton/Ministry of Transportation Dedicated Gas Tax for Funding Agreement Bylaw XX-XXX

PASSED and ENACTED this day of May, 2009.

________________________________________  ________________________________________
MAYOR                                      CLERK