SUBJECT: One-Time Federal Public Transit Funding (FCS06081) (City Wide)

RECOMMENDATION:

(a) That the Mayor and General Manager of Finance & Corporate Services (City Treasurer) be authorized and directed to enter into the attached Municipal Funding Agreement between the City of Hamilton and the Association of Municipalities of Ontario, related to the funding commitment made by the Government of Canada to the Municipality under the Federal Public Transit Fund;

(b) That the Mayor and City Clerk be authorized and directed to execute the Municipal Funding Agreement attached as Appendix “A” to Report FCS06081;

(c) That the appropriate by-law, City of Hamilton/Association of Municipalities of Ontario Federal Public Transit Funding Agreement By-Law XX-XXX attached as Appendix “B” be passed and enacted;

(d) That the 2005/06 funding under the Federal Public Transit Fund be allocated to the Transit Fleet Replacement Reserve 110030 for the purpose of the purchase and replacement of transit fleet as per Report PW06092; and

(e) That a certified copy of this by-law, as well as two copies of the Municipal Funding Agreement, be forwarded to the Associations of Municipalities of Ontario upon Council approval.

Joseph L. Rinaldo
General Manager
Finance and Corporate Services
EXECUTIVE SUMMARY:

On March 30th, 2006, the Government of Canada, the Province of Ontario, the Association of Municipalities of Ontario (AMO), and the City of Toronto signed the Agreement on the Transfer of Federal Public Transit Funds. The Agreement relates to one-time funding that the Government of Canada initially announced in June 2005 in support of Public Transit.

Report FCS06081 requests that the Municipal Funding Agreements, as well as the associated by-law, be executed so that the City of Hamilton can begin to receive its' share of the Federal Public Transit Funds.

In June of 2005, the Federal Infrastructure and Communities Minister of the government of the day announced a one-time funding of $800 million in support of municipal transit across Canada to be funded over a two-year period. $310 million of the funding was intended to support municipalities in Ontario operating public transit services.

Subsequent to the June 2005 announcement, the Government of Canada in the 2006 Federal Budget announced that subject to confirmation of year-end surpluses, the initial $310 million in one-time funding for Ontario, to be provided over a 2-year period, would increase to one-time funding of $506 million, over four years.

Total 2005/06 one-time funding for Ontario amounts to $155.2 million, of which $98.4 million is allocated to Toronto, and the balance is allocated to all other Ontario municipalities with public transit service.

Of the $56.7 million of 2005/06 funding for Ontario municipalities (other than Toronto), the City of Hamilton will be the recipient of approximately $4.9 million, based on 2004 readership numbers. Of the total Ontario allocation of $506 million, Hamilton, based on the existing allocation methodology and ridership numbers, may be the recipient of approximately $16 million in total.

In 2006, Council approved a recommendation within Report PW06092 which identified Federal Public Transit Funding of $3,813,563 for the purpose of the replacement of Transit Fleet.

<table>
<thead>
<tr>
<th>Level of One-Time Federal Public Transit Funding by Jurisdiction</th>
<th>2005/06 (millions$)</th>
<th>2006/08 Estimated (millions$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Ontario Funding</td>
<td>$155.2</td>
<td>$351</td>
</tr>
<tr>
<td>Ontario (excluding Toronto) Funding</td>
<td>$56.7</td>
<td>$128</td>
</tr>
<tr>
<td>Toronto Funding</td>
<td>$98.4</td>
<td>$223</td>
</tr>
<tr>
<td>Hamilton</td>
<td>$4.9</td>
<td>$16</td>
</tr>
</tbody>
</table>
BACKGROUND:

In May 2005, the Federal Government of the day introduced Bill C-48 and on June 1, the then Minister of State for Infrastructure and Communities and the Leader of the NDP announced that $800 million of the amount allocated in C-48, $310 million of which would be allocated to Ontario, would go to public transit over a two year period.

In December 2005, The City of Hamilton, through the Mayor’s Office, forwarded correspondence to the Prime Minister of the day requesting:

(a) That correspondence be forwarded to the Leaders of the Federal parties requesting that the one-time federal gas tax money (Bill C-66) be made permanent;

(b) That the Federal parties find the political will to preserve that funding for communities, as was promised in the budget.

In the 2006/07 Federal Budget the Federal Government announced $1.3 billion in support of public transit capital investments.

The Federal Government has made $400 million available to all provinces and territories. The Federal Government will also provide a one-time payment of $900 million to provinces and territories to be paid into a third-party trust, contingent on sufficient funds being available from the 2005-06 surplus in excess of $2 billion. The Public Transit Capital Trust is intended to support capital investments in public transit infrastructure including rapid transit, transit buses, intelligent transportation systems and other investments including high occupancy vehicle and bicycle lanes.

<table>
<thead>
<tr>
<th>Province</th>
<th>Transit Payment (Bill C-66)</th>
<th>Public Transit Capital Trust</th>
<th>Total (millions of dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newfoundland and Labrador</td>
<td>6.5</td>
<td>14.1</td>
<td>20.6</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>1.7</td>
<td>3.8</td>
<td>5.5</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>11.7</td>
<td>25.8</td>
<td>37.5</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>9.4</td>
<td>20.7</td>
<td>30.1</td>
</tr>
<tr>
<td>Quebec</td>
<td>94.4</td>
<td>210.8</td>
<td>305.1</td>
</tr>
<tr>
<td>Ontario</td>
<td>155.2</td>
<td>351.5</td>
<td>506.8</td>
</tr>
<tr>
<td>Manitoba</td>
<td>14.7</td>
<td>32.6</td>
<td>47.2</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>12.5</td>
<td>27.2</td>
<td>39.6</td>
</tr>
<tr>
<td>Alberta</td>
<td>40.1</td>
<td>91.3</td>
<td>131.5</td>
</tr>
<tr>
<td>British Columbia</td>
<td>52.5</td>
<td>119.3</td>
<td>171.8</td>
</tr>
<tr>
<td>Yukon</td>
<td>0.4</td>
<td>0.9</td>
<td>1.3</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>0.5</td>
<td>1.2</td>
<td>1.7</td>
</tr>
<tr>
<td>Nunavut</td>
<td>0.4</td>
<td>0.8</td>
<td>1.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>400</strong></td>
<td><strong>900</strong></td>
<td><strong>1,300</strong></td>
</tr>
</tbody>
</table>

Note: Totals may not add due to rounding.
The distribution of funds to provinces and territories is based on an equal per capita basis. The distribution of funds in Ontario is based on a ridership basis, in the case of municipalities that offer public transit.

**ANALYSIS/RATIONALE:**

Not Applicable

**ALTERNATIVES FOR CONSIDERATION:**

There are no alternative considerations.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Ratification of the Municipal Funding Agreement results in the City of Hamilton becoming eligible for $4.9 million in 2006, and a potential further approximately $11 million over the next 2 to 3 years.

**POLICIES AFFECTING PROPOSAL:**

Municipal Funding Agreement, attached as Appendix A.
City of Hamilton By-law XXX, attached as Appendix B.

**RELEVANT CONSULTATION:**

Public Works - Transit Division
Transit Committee

**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
Partnerships are promoted.

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
Investment in Hamilton is enhanced and supported.
Does the option you are recommending create value across all three bottom lines?
☑ Yes □ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
□ Yes ☑ No
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 willful 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:

<table>
<thead>
<tr>
<th>Where Eligible Project asset is sold, leased, encumbered or disposed of:</th>
<th>Repayment of contribution (in current dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 2 Years after Eligible Project completion</td>
<td>100%</td>
</tr>
<tr>
<td>Between 2 and 5 Years after Eligible Project completion</td>
<td>55%</td>
</tr>
<tr>
<td>Between 5 and 10 Years after Eligible Project completion</td>
<td>10%</td>
</tr>
</tbody>
</table>

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**  *Eligible Costs*
- **Schedule C**  *Annual Expenditure Report*
- **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:

Name: ___________________________ Date: ___________________________
Title: ___________________________

Name: ___________________________ Date: ___________________________
Title: ___________________________

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO

By:

Title: Executive Director Date: ___________________________

In the presence of:

Witness Name: ___________________________ Date: ___________________________
Title: ___________________________
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”.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Funds Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005/06</td>
<td>4,949,064.00</td>
</tr>
</tbody>
</table>
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;
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

<table>
<thead>
<tr>
<th></th>
<th>Annual $</th>
<th>Cumulative $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gross Capital Expenditures</strong></td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>(January 1, 2000 to December 31, 2004 for Public Transit Infrastructure only)</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td><strong>LESS</strong> (for the same period):</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Development Charges</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Senior Government Funding</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Other Non-Municipal Sources</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td><strong>Base Amount</strong></td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td><strong>Opening Balance of Unspent Funding</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Received from AMO</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Interest Earned</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>LESS: Expenditures on Eligible Projects</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Closing Balance of Unspent Funding</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>
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.
CITY OF HAMILTON

BY-LAW NO. 06-XXX

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 xxth day of August, 2006.

______________________  ___________________
MAYOR     CLERK