SUBJECT: Fair Wage Policy for Construction Trades Review (HUR05016/FCS05098) (City Wide)

RECOMMENDATION:

(a) That the revised Fair Wage Policy (FWP) as set out in Appendix "A" attached to Report HUR05016/FCS05098, be adopted;

(b) That the Fair Wage Schedule 2006, as attached to Report HUR05016/FCS05098 as Appendix "B", be adopted;

(c) That the appropriate City staff be authorized and directed to take the necessary actions to implement the revised Fair Wage Policy and Schedule 2006;

(d) That Appendix B become public information once Council approval is received;

(e) That the Fair Wage Policy item be removed from the Outstanding Business List of the Corporate Administration Committee.

_____________________________  _____________________________
Catherine Graham, General Manager  Joseph L. Rinaldo, General Manager
Human Resources                  Finance & Corporate Services
EXECUTIVE SUMMARY:

The purpose of the review undertaken by staff was to assess the City’s Fair Wage Policy and Wage Schedule, in an effort to confirm governance and accountability within the Policy and to both update the Wage Schedule from the current 1998 rates and develop a more sustainable method by which such updates could be completed in the future.

Based on extensive consultation with external parties, the exploration of better linkages between Corporate Services and Human Resources, and an exhaustive review of Federal, Provincial and other municipal Fair Wage Policies, this report recommends changes to the Fair Wage Policy and Wage Schedule. The review and associated revisions are intended to create a more supportive strategy for future compliance with the Fair Wage Policy and provide for regular, sustainable updates to the Wage Schedule.

The Wage Schedule itself was in essence, a set of negotiations between Labour Relations and representatives of local organized labour within the construction sector, resulting in a fair and relatively comparative outcome consistent with other jurisdictions’ Fair Wage Policies, taking into account the interests of the City, contractors and labour.

The resulting Wage Schedule represents approximately a two per cent (2%) yearly increase over the same year period since the last Wage Schedule of 1998.

The inclusion of a percentage in lieu of benefits with the Wage Schedule represents a substantial cost increase. However, the City pays a portion of its own workforce twelve per cent (12%) in lieu of benefits and pension. Further, the benefits paid in each of the external collective agreements goes well beyond health benefits and includes training, tools, apprenticeship, licensing and other similar “benefits”.

In conclusion, it is respectfully submitted that this amended Fair Wage Policy and Wage Schedule clearly and concisely sets out the requirements for those parties bidding, and if accepted, working on City construction projects falling within the purview of the Policy. It better ensures a level playing field, compliance and the sustainability of the Wage Schedule. Responsibility for compliance remains the responsibility of the Corporate Services Department, and the ongoing data collection and maintenance of the Wage Schedule becoming the responsibility of the Labour Relations Division of the Human Resources Department.

BACKGROUND:

The Fair Wage Policy has deep roots within the City of Hamilton, with some version of the policy in existence since at least the early 1970’s. The City of Hamilton’s Fair Wage Policy and Wage Schedule was adopted to ensure that the building trade contractors for the former City of Hamilton paid their workers a “fair wage” for the work performed and to ensure that workers are not exploited or discriminated against. Approximately two years ago the City undertook a review of both the Fair Wage Policy and the Wage Schedule.
In June 2003, the Corporate Finance Department presented, and Council approved, report FCS03112 – Fair Wage Policy that amended the Fair Wage Policy to reflect the restructuring for the amalgamated City of Hamilton.

Of specific interest throughout this review were amendments to the Fair Wage Policy with the intent of strengthening enforcement, dealing with non-compliance, and the feasibility of determining contractor compliance.

An important component of the review was to consult with the related construction industry. Further, the City was required to discuss roles and responsibilities between various departments and divisions. To that end, Corporate Services and Human Resources have worked jointly with one another and over the past two years have engaged in a fairly extensive consultation with external interested parties.

As many of the workers employed through City contracts live and work in the City, the Policy ensures that workers are paid a wage enabling them to afford to live in the City, while at the same time recognising the need to compromise between the wage differential of organized and unorganized labour, the need to create a level playing field in competitions for City contracts and to enhance the reputation of the City as being an ethical and fair employer/contractor.

The key elements of the Policy state that:

- A contractor shall comply with the *Occupational Health and Safety Act*.
- A contractor shall pay workers wages and benefits, or payment in lieu of benefits in accordance with the Fair Wage Schedule.
- A contractor shall keep accurate payroll records and provide such records for review by the City when requested.
- If a contractor does not pay workers in accordance with the Wage Schedule, the City shall immediately require compliance.
- The costs of a City inspection, audit, or other action shall be assessed to the contractor, when determined to be in non-compliance.
- The Policy applies equally to both contractors and sub-contractors.
- A contractor may be disqualified for bidding for any City contract if a contravention was noted twice within a five (5) year period.
- The City may withhold the amount of funds by which a contractor has been determined to be in non-compliance.

Two changes were made to the non-wage and benefit portion of the Policy, which are highlighted below:

- The Procedures section of the Policy now includes the provision for the City to use a Contractor’s Workplace Safety and Insurance Board (WSIB) experience rating as a means to assist in the evaluation for award of a construction contract.
The Complaints process of the Policy has been amended to address the concerns of the fiscal responsibility of a complainant. The policy now allows for an initial review of the complaint, so that the complainant can be advised of the likely cost of the investigation of the complaint. At this time, the complainant has the opportunity to cancel their request or proceed with complaint.

Concerns have been expressed that notwithstanding the provisions of the Policy and efforts of the City to ensure it, compliance was not occurring. Accordingly, a new approach to deal with any and all concerns that may develop in future has been adopted. The City has in the policy committed to quarterly meetings with labour and contractors to address the aforementioned concerns, if any arise.

It has also been suggested throughout the consultative process, that the City should enforce the requirements of the Occupational Health and Safety Act. The City does not have the resources or the mandate to enforce such legislative requirements and such complaints should be directed to the responsible agencies. It is the contractors'/sub-contractors’ responsibility to comply with all relevant laws, including the Occupational and Health and Safety Act. Further, neither the Policy nor Wage Schedule set out overtime rates of pay, shift premium minimums or maximums, hours or work, statutory holiday pay, or the number of statutory holidays, beyond the requirements of the Employment Standards Act.

**The Emergence and Development of Canadian Fair Wage Policies**

Fair wage policies have long historical roots in Canada. They were based on the policy objectives of creating fairness across employers bidding for government work, eliminating the worst employer practices and in ensuring a fair return on labour’s efforts.

In addition to the federal level, various Canadian jurisdictions generally developed fair wage policies at both a broader geographic area as well as at the local level (e.g., cities). Historically, in Canada, the construction industry has been the object of fair wage policies because of the importance of the industry in relation to total contracts tendered by governments.

**Policy Rationale for a Fair Wage Policy**

The original public policy rationale for fair wage policy was to eliminate unfair, very low-wage competition, to permit governments to act as model employers, and from the union perspective, to reduce lower-wage non-union competition. While the worst of such practices are, most likely, diminished, so too, arguably, is the tolerance for such practices. To the extent that fair wage policies advance the objective of government as a model employer, they remain relevant today.

In the context of today’s economic and social environment, fair wages may reasonably be equated with fair market conditions, so that terms and conditions of employment that are below market or that are far below generally prevailing rates may be considered exploitative and undesirable from a policy viewpoint.
This report concludes that there remains a reasonable policy rationale for utilizing a fair wage policy in construction in Hamilton. This conclusion acknowledges that:

- Fair wages policies still have some role in protecting workers against unfair or sub-market working conditions; consequently there is some need for a fair wage policy in contemporary construction labour markets in order to provide a “floor” for terms and conditions of employment; and

- Fair wage policies can serve a positive role in promoting good employment practices.

This report approaches the issue of what constitutes a reasonable approach to implementing the Hamilton Fair Wage Policy with a view to addressing three specific fair wage policy objectives:

- First, to further the objective of government as a “model employer”.

- Second, to ensure that a reasonable “floor” for terms and conditions of employment is provided. This is needed in order to prevent exploitation and provide protection for the workers in the non-union segment of the industry who are potentially vulnerable.

- Third, to prevent non-union competition from eroding union wage levels. Union workers have a genuine concern that allowing any (sub)contractors to pay fair wages could undercut their employment and, ultimately, their wages.

The Federal government, the provincial governments of Ontario, Manitoba and British Columbia, the City of New York, the municipalities of Toronto, Oshawa, London, Montreal, Calgary, Edmonton and Greater Vancouver, in addition to numerous agencies, boards, commissions and universities/colleges all have adopted fair wage policies.

**ANALYSIS OF ALTERNATIVES:**

Several alternatives are available to Council, should the recommendations of this report not be satisfactory.

(i) Discontinue the Fair Wage Policy and associated Fair Wage Schedules and allow market forces to determine the minimum wage rates. Such direction could result in a loss of perceived and/or actual “fairness” as it may result in a suppression of worker’s wages and it is strongly believed that the utilization of sub-contractors would escalate.

The message of such a direction would be that the strategy of paying low wages can be used to gain a competitive advantage in winning City contracts, and would conceivably place contractors bidding with a unionized workforce at a disadvantage, given their labour costs are fixed through collective agreements.
(ii) Adopt an alternative wage scale for the City’s Fair Wage Policy based on a different percentage of established wages and benefits in the construction trades.

As noted earlier, the proposed Fair Wage Schedule was in essence a set of negotiations following which the various labour groups met to accept or reject. Movement away from the proposed Fair Wage Schedule would entail re-opening these discussions.

(iii) Adopt an alternative established wage scale for the City’s Fair Wage Policy based on another established wage schedule. (i.e. Federal or Provincial Fair Wage Schedule). It would appear that both the Federal and Provincial Fair Wage Schedules are dated, and are obviously calculated on a significantly broader scope than the City of Hamilton which may not be reflective of prevailing rates within our geographical area. Further, such schedules are based on a wide variety of “construction workers” beyond the building trades.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

The Manager of Purchasing reports in Report FCS03112 (Fair Wage Policy – June 10, 2003) that the financial impact to the City of requiring compliance with the Fair Wage Schedules has never been quantified. Report FCS03112 recommended that the costs associated with compliance be segregated by construction contract proponents in order to quantify these costs in the future, and such costs were to be reported to Council on an annual basis.

POLICIES AFFECTING PROPOSAL:

Fair Wage Policy.

CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:

Consultation was undertaken with the following departments and agencies:

City Manager’s Office
Hamilton-Halton Building Trades Association
International Union of Operating Engineers, Local 793
Labourers International Union of North America, Local 837
Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers.
United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67
International Union of Painters and Allied Trades, Local 205
United Brotherhood of Carpenters and Joiners of America, Local 18
Christian Labour Association of Canada
NB – Input from non-unionized groups was sought but no responses were obtained.

**STRATEGIC COMMITMENT:**

**Fiscal Accountability:** to increase the efficiency of our city government through fiscal responsibility and prudence

**Leadership:** in our thinking and in our actions; encouraging individual and team initiatives that exceed expectations, and advocating what we believe in

**Integrity:** to demonstrate honesty and sincerity in all of our dealings, upholding only the highest ethical principles; to provide open and transparent communications to create informed opinion

**Teamwork:** working in full cooperation and a spirit of collegiality with staff, Council, residents, businesses and external partners

**A City of Growth and Opportunity**

To secure a future of growth and opportunity for the City of Hamilton, Council commits to focus all available resources on economic development.

**A City That Spends Wisely and Invests Strategically**

To get the best value for taxpayer dollars, and to ensure that we have the financial resources available to invest in our economic development and other community priorities, Council commits to increase the efficiency of our city government.

**Best Practices – Best Value**

Council will pursue best practices to lower the cost of government and ensure best value in service delivery. It is recognized that best value is not just a calculation of dollars: it also includes accountability, service quality, accessibility and other community priorities which must be taken into account as per Council policy.
FAIR WAGE POLICY

POLICY STATEMENT

On all Construction Contracts with the City of Hamilton (the City) City, every Contractor and Sub-Contractor shall pay or provide Wages, Benefits and Hours of Work to their Employees, in accordance with the Fair Wage Policy and the Fair Wage Schedule of the City.

DEFINITIONS

In this Policy:

(a) "Benefits" means a pension plan or RRSP's (or equivalent), major medical plans, dental plans, vacation entitlement and public holiday entitlement;

(b) "Bidder" means any person submitting a bid in response to a Tender Notice.

(c) "Construction Contract" means any Construction Contract or construction maintenance contract of an estimated value of at least one hundred thousand dollars ($100,000) entered into between the City and a Contractor and the various Sub-contracts to that Construction Contract;

(d) "Contractor" means any person, firm or corporation having a Construction Contract with the City for the performance of construction work but does not include any person, firm or corporation that only supplies materials for the Construction Contract;

(e) "Employees" means those persons employed by the Contractor or Sub-Contractor in positions, classifications, trades or any combination thereof identified in the Fair Wage Schedule, for the performance of construction work on a Construction Contract with the City;

(f) "Fair Wage Schedule" means the schedule of Wages, Benefits and Hours of Work for the performance of construction work on all City Construction Contracts, as approved and as amended from time to time by the Council of the City of Hamilton;

(g) "Hours of Work" means the regular hours of work per day and week and shall include a provision for the payment of overtime beyond such regular hours, as per the Employment Standards Act of Ontario.

(h) "City" means The City of Hamilton, its officers, officials, Employees and agents or any of them;

(i) "City Council" means the Council of The City of Hamilton.;

(j) "Sub-Contractor" means any person, firm or corporation performing construction work under an agreement with a Contractor having a Construction Contract with the
City or an agreement under the Contractor with another Sub-Contractor for the performance of construction work but does not include any person, firm or corporation that only supplies materials for the Construction Contract;

(k) “Successful Bidder” means the Bidder whose bid is selected by the City for the award of the Construction Contract in respect of a Project or Works; and

(l) "Wages" means the basic hourly rate of pay for each position, classification and trade as per the Fair Wage Schedule.

PROCEDURES

1. (a) The General Manager of Human Resources or designate will prepare and review the Fair Wage Schedule from time to time and recommend to the appropriate committee of City Council those amendments to the Fair Wage Schedule which are required to reflect the prevailing Wages, Benefits and Hours of Work in the construction industry in the geographical area of the City.

(b) The Manager of Purchasing or designate will review the Fair Wage Policy from time to time and recommend to the appropriate Committee of City Council any required amendments to the Fair Wage Policy.

(c) The Manager of Purchasing for the City or designate will co-ordinate the preparation of an annual report for the appropriate Committee of City Council regarding complaints investigated and audits performed pursuant to the Fair Wage Policy.

2. The Manager of Purchasing or designate shall notify every person bidding on City Construction Contracts of the then current Fair Wage Policy and Fair Wage Schedule and shall provide copies of the same to the Bidders, upon request, at the cost of the City of Hamilton. The Contractor and its Sub-Contractor shall not be responsible for any Fair Wage Schedule rate increases which occur after the closing of the tender for the City Construction Contract on which the Contractor is the successful Bidder.

3. For all Construction Contracts with the City, the Contractor shall provide to the City, in a form acceptable to the General Manager of Public Works or designate, a Statutory Declaration confirming that the Contractor and its Sub-Contractor are in compliance with the Fair Wage Policy and the Fair Wage Schedule. This sworn statement shall be provided to the City after substantial performance of the Construction Contract (as defined in the Construction Lien Act of Ontario) and prior to release of the holdback. The City reserves the right to not release any holdback on a Construction Contract until such Contractor's sworn statement of compliance is received and deemed to be satisfactory by the General Manager of Public Works or designate.

4. For Construction Contracts with the City, the City will require a Bidder and all their
proposed sub-contractors to provide their Merit Adjusted Premium (MAP)/CAD-7 experience rating as established by the Workplace Safety and Insurance Board (WSIB) to use as an evaluation criteria for the award of a construction contract.

5. (a) A Contractor is fully responsible for ensuring that all of its Sub-Contractors comply with the Fair Wage Policy and the Fair Wage Schedule. A Sub-Contractor is fully responsible for ensuring that all of its Sub-Contractors comply with the Fair Wage Policy and the Fair Wage Schedule.

(b) A Contractor must provide all of its Sub-Contractors with a copy of the Fair Wage Policy and Fair Wage Schedule before any construction work is performed by the Sub-Contractors.

6. Any person who has an objection to the administration of the Fair Wage Policy or the Fair Wage Schedule, or both, may make a written request to appear and to make submissions before the appropriate Committee of City Council and such Committee may, in its sole discretion, grant or refuse such request.

POSTING

All Contractors must post in a conspicuous place on every construction project site, in a location satisfactory to the Manager of Purchasing for the City of Hamilton or designate, a copy of the Fair Wage Policy and the Fair Wage Schedule supplied to it by the City and which will include a telephone number by which any inquiry regarding the Fair Wage Policy or the Fair Wage Schedule, or both may be made to the Manager of Purchasing or designate.

RECORDS

1. (a) The Contractor must keep records of the names, addresses, Wages paid, Benefits paid or provided and hours worked for all of its Employees.

(b) The Contractor shall make these records available for inspection by the City upon request by the City.

2. The Contractor shall, in any agreement with a Sub-Contractor, require the Sub-Contractor to,

(a) keep records of the names, addresses, Wages paid, Benefits paid or provided and hours worked for all of its Employees;

(b) make these records available for inspection by the City upon request by the City; and

(c) require its Sub-Contractor to assume the same obligations in relation to their own Employees.
3. Where the Manager of Purchasing or designate has determined that a Contractor or Sub-Contractor is in non-compliance with this Fair Wage Policy or the Fair Wage Schedule, such Contractor or Sub-Contractor will be required to separate and provide, to the Manager of Purchasing or designate, its records pertaining to the Construction Contract or work for which it has been found to be in non-compliance.

The Contractor or Sub-Contractor shall be required to provide the said records within thirty (30) calendar days of the date that the Manager of Purchasing or designate provides notice of such requirement to the Contractor or Sub-Contractor.

Failure to provide these records as required herein may result in the Contractor or Sub-Contractor being subject to the CONSEQUENCES OF NON-COMPLIANCE provisions of this Fair Wage Policy.

AD HOC FAIR WAGE POLICY COMMITTEE

1. The City shall establish an Ad Hoc Fair Wage Policy Committee to identify issues, and provide a forum for consultation regarding the implementation and administration of the Fair Wage Policy.

2. The Committee shall meet quarterly, or as necessary as required upon agreement of the Committee.

3. An agenda for the meeting will be established by the parties a minimum of two (2) weeks prior to any meeting.

4. The Committee shall be comprised of the following members:
   a. City of Hamilton Director of Finance
   b. City of Hamilton Director of Employee and Labour Relations
   c. A representative of the Hamilton Construction Association
   d. A representative of the Hamilton – Brantford chapter of the Ontario Building and Construction Trades Council

COMPLAINTS

1. Any person may submit a complaint to the City alleging non-compliance with the Fair Wage Policy or the Fair Wage Schedule, or both, by any Contractor or Sub-Contractor performing construction work on a City Construction Contract. All complaints must be submitted in writing on a completed "Fair Wage Complaint Form", to the Manager of Purchasing or designate, at the earliest time but no later than fifteen (15) days following substantial performance of the:

   (a) relevant City Construction Contract where a complaint is being made against a Contractor; or
(b) relevant Sub-contract to a City Construction Contract where a complaint is being made against a Sub-Contractor.

2. Upon receipt of a completed "Fair Wage Complaint Form" the Manager of Purchasing or designate on behalf of the City will conduct an initial review of the complaint submitted and advise the initiator of the complaint what the likely cost of an investigation will be. The initiator will confirm to the City whether or not they would like to proceed with the complaint. The City shall take such action as it deems is necessary to determine whether the Contractor and/or Sub-Contractor involved or named in the complaint is in compliance with the Fair Wage Policy and the Fair Wage Schedule. Any action deemed necessary by the City shall be commenced within thirty (30) calendar days of receipt of a completed "Fair Wage Complaint Form" by the Manager of Purchasing or designate.

3. (a) The Manager of Purchasing or designate shall inform the complainant and any Contractor or Sub-Contractor involved or named in the complaint, of the results of the City determination of Contractor's and/or Sub-Contractor's compliance or non-compliance with the Fair Wage Policy or the Fair Wage Schedule, or both.

(b) Whenever a complaint is submitted by a person other than an individual employee of the Contractor or Sub-Contractor involved or named in the complaint, and said Contractor and/or Sub-Contractor is found to be in compliance with the Fair Wage Policy or the Fair Wage Schedule, or both, with respect to the complaint submitted, the City costs of inspection, audits or other action deemed necessary regarding such complaint shall be assessed against the complainant.

4. The City shall make every effort to safeguard the confidentiality of each complainant's identity. However, this information is subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act of Ontario.

INSPECTION AND AUDITS

1. The City retains the right to inspect and audit the records (as referred to in the RECORDS section of this Fair Wage Policy) of the Contractor or Sub-Contractor at any time during the period of the Construction Contract and at any time thereafter as deemed necessary by the City. The Contractor shall supply certified copies of any such records whenever requested by the City.

COMPLIANCE

1. A Contractor or Sub-contractor shall be in compliance with the wages requirements of the Fair Wage Policy when it pays to its employees wages equal to or greater than the amount set out in the Fair Wage Schedule.
2. A Contractor or Sub-contractor shall be in compliance with the benefits and pension requirements of the Fair Wage Policy when the Contractor or Sub-contractor:

A. (i) Provides to its employee a vacation and public holiday entitlement which meets the minimum requirements of the *Employment Standards Act* of Ontario.

or

(ii) Pays to its employees, in addition to the wages as set out in the Fair Wage Schedule, a vacation and public holiday entitlement which meets the minimum requirements of the *Employment Standards Act* of Ontario.

B.(i) Provides to its employees a major medical plan, a dental plan, and a pension plan, RRSP’s or equivalent (yearly or other bonuses and profit sharing do not qualify as an equivalent)

or

(ii) Provides one or more of the foregoing benefits in Item B (i) that equals an amount of twenty per cent (20%), or greater, of the wages as set out in the Fair Wage Schedule for the particular classification, or alternatively, provides one or more of the foregoing benefits in Item B (i) in combination with pay/percentage in lieu of benefits that equals an amount of twenty per cent (20%), or greater, of the wages as set out in the Fair Wage Schedule for the particular classification.

or

(iii) If none of the foregoing benefits in Item B(i) are provided then it pays to its employees, in addition to the wages as set out in the Fair Wage Schedule, an amount equal to or greater than twenty per cent (20%) of the wages established in the Fair Wage Schedule for the particular classification.

3. A Contractor or Sub-Contractor shall be in compliance with the Hours of Work requirements of the Fair Wage Policy when the Contractor or Sub-Contractor provides to its Employees overtime pay for those hours worked in excess of the regular daily and weekly Hours of Work (as per the *Employment Standards Act* of Ontario), at an amount not less than one and one half times the Wages as set out in the Fair Wage Schedule. Notwithstanding that a Contractor or Sub-Contractor pays Wages in excess of the rates as set out in the Fair Wage Schedule, the Contractor or Sub-Contractor shall not, in computing overtime Wages payable to an employee, set off against such overtime Wages any part of the Wages earned by the employee in respect of their regular work period.

**CONSEQUENCES OF NON-COMPLIANCE**
1. The Manager of Purchasing or designate upon determining that a Contractor or Sub-Contractor is in non-compliance of the Fair Wage Policy or the Fair Wage Schedule, or both:

(a) shall advise the Contractor or Sub-Contractor, in writing, that it has been determined that the Contractor or Sub-Contractor is in non-compliance and that the Contractor or Sub-Contractor is required to comply immediately;

and

(b) may withhold the amount of funds by which the Contractor or Sub-Contractor has been determined to be in non-compliance from any payment or payments owed by the City to the Contractor until such time as the Contractor or Sub-Contractor complies. The amount of such funds withheld shall not exceed the balance of payments owed by the City to the Contractor under the Construction Contract or the balance of payments owed by the Contractor to the Sub-Contractor determined to be in non-compliance under the Construction Contract;

and

(c) shall assess the cost of the City inspection, audit or other action as deemed necessary by the City as a result of such determination of non-compliance of the Contractor and/or Sub-Contractor and may deduct such costs from any payment owed by the City to the Contractor. The amount of costs assessed shall not exceed any payments owed by the City to the Contractor under the Construction Contract or any payments owed by the Contractor to the Sub-Contractor determined to be in non-compliance under the Construction Contract, except where the City has notified the Contractor of the receipt of a complaint or the commencement of an inspection or audit within forty-five (45) days following substantial performance of the Construction Contract or Sub-contract in which case, the Contractor shall be responsible for all of the City costs.

2. Where a Contractor or Sub-Contractor has been determined to be in non-compliance with the Fair Wage Schedule for the first time in a five (5) year period, the Manager of Purchasing or designate may require such Contractor or Sub-Contractor, on the next three (3) City Construction Contracts on which the Contractor or Sub-Contractor performs construction work, to submit an accountant's report which verifies the Contractor's or Sub-Contractor's compliance with the Fair Wage Policy and the Fair Wage Schedule. Any costs associated with providing this accountant's report shall be borne by the Contractor or Sub-Contractor. Such accountant's report shall be in a form satisfactory to the Manager of Purchasing or designate and shall be submitted after substantial performance of the Construction Contract (as defined in the Construction Lien Act of Ontario) and prior to the release
of the holdback.

The City reserves the right to treat a first time offender as a repeat offender.

3. Where a Contractor or Sub-Contractor has been determined to be in non-compliance with the Fair Wage Schedule for a second or subsequent time within a five (5) year period from the date of the first determination of non-compliance by the Manager of Purchasing or designate, the City, as approved by City Council, may:

   (a) refuse to accept bids, quotations or proposals from such Contractor on City Construction Contracts, for a period of two (2) years from the date of City Council approval, save and except any Construction Contract the Contractor may currently have with the City.

   (b) not allow such Sub-Contractor to perform any construction work on any City Construction Contract, for a period of two (2) years from the date of City Council approval, save and except any Construction Contract on which the Sub-Contractor may currently be performing construction work.

4. Where a Contractor or Sub-Contractor has been determined to be in non-compliance of the Fair Wage Policy by the Manager of Purchasing or designate, such Contractor or Sub-Contractor may be subject to the same consequences as stated above, in #3 of the CONSEQUENCES OF NON-COMPLIANCE, as approved by City Council.

5. The Manager of Purchasing or designate shall, upon request, make available a list of all Contractors and Sub-Contractors who have been determined to be in non-compliance with the Fair Wage Policy or the Fair Wage Schedule, or both and are subject to restrictions in accordance with #2, #3, #4, of the CONSEQUENCES OF NON-COMPLIANCE.

6. The Manager of Purchasing or designate will require a Contractor or Sub-Contractor to substitute, at its own cost, any Sub-Contractor who, is named on the list referred to in #5 of the CONSEQUENCES OF NON-COMPLIANCE above, and is identified as not being allowed to perform any construction work on a City .

7. The City is not in any way liable, obligated or responsible to any employee, Sub-Contractor, Contractor or any other person for the payment of any monies not paid by a Contractor or Sub-Contractor in accordance with the Fair Wage Policy or the Fair Wage Schedule, or both, and the City assumes no responsibility to such employee, Sub-Contractor, Contractor or any other person for the administration and enforcement of the Fair Wage Policy or the Fair Wage Schedule, or both.

* THIS POLICY SHALL BE READ WITH SUCH GENDER OR NUMBER OR CORPORATE STATUS AS THE CONTEXT MAY REQUIRE.
Date: September 13, 2005

To: Chair and Members
Corporate Administration Committee

From: Carolyn Biggs
Legislative Assistant

Subject: Corporate Administration Committee Agenda – September 21, 2005
Item 8.4 – Fair Wage Policy for Construction Trades – Appendix “B”

Members of the Committee:

Attached is Appendix “B” to Report FCS05098/HUR05016 which is Item 8.4 on the September 21 agenda of the Corporate Administration Committee.

Please note that this appendix is being distributed under separate cover as it contains CONFIDENTIAL information, and will not be made public until such time as it is approved by Council.

:cab.

c.c. Mayor and Members of Council
G. Peace, City Manager
J. Rinaldo, General Manager, Finance and Corporate Services
C. Graham, General Manager, Human Resources