SUBJECT: City of Hamilton / Ministry of Transportation 2009 Ontario Bus Replacement (OBRP) Funding Requirement (PW09070) - (City Wide)

RECOMMENDATION:

(a) That in compliance with the 2009 Ontario Bus Replacement Program (OBRP) eligibility requirements for the replacement of Conventional and Specialized Transit fleet, the City of Hamilton make an application for subsidy in the amount of $5,382,279 to the Ministry of Transportation;

(b) That the Mayor and City Clerk be authorized and directed to execute the necessary documents, in a form satisfactory to the City Solicitor, to give effect to sub-section (a);

(c) That the City of Hamilton, Corporate Services Department set up an OBRP capital reserve as per the 2009 OBRP guidelines;

(d) That certified copies of this resolution and the Confirming By-law from the September 16, 2009 meeting of City Council be forwarded to the Ministry of Transportation.
and the Province of Ontario, a certified copy of the Council resolution and the confirming by-law will be provided to the Ministry of Transportation.

The subsidy rate for the replacement of conventional transit fleet has changed in 2008, rising from 24% in 2007, to 33.33% for a fixed 12-year period 2008 - 2020. Coupled with this decision, is that the Province will no longer provide lump sum payments. Payments will now be on the basis of 1/12th of the gross expenditure in recognition of, and the requirement for, a 12-year bus life cycle.

Further, this funding model applies only to the 9 largest Transit systems in Ontario, of which Hamilton is fourth largest. A new level of increased risk for the nine municipalities, including Hamilton, albeit viewed as low, has been introduced. The respective agreement, attached as Appendix “A”, contains two (2) clauses (9 and 10), which have the effect of allowing the agreement to be terminated by the Ministry, without cause and without having to provide the balance of payments that may be owing. It must be recognized that this has a level of risk never before associated with Provincial funding.

A funding plan will be coordinated with Corporate Finance. The funding plan whether through internal borrowing or external debt financing will allow for the sustainability of current Conventional Transit and Specialized Transit Fleets capital reserves. The Province will allow the nine municipalities affected by this change to include the cost of borrowing/foregone interest revenue in their subsidy allocation.

**BACKGROUND:**

The information and recommendations contained within this report have City wide implications.

The 2009 Conventional Transit fleet purchase has been ordered.

The 2009 OBRP program remains capped at $50 million by the Province.

For 2009, the Province has advised that there will be no redistribution of any unspent funds in the program year due to the return of the subsidy level to 33.3%.

**ANALYSIS/RATIONALE:**

N/A

**ALTERNATIVES FOR CONSIDERATION:**

There are no alternative considerations.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Ratification of the By-Law required for eligibility of OBRP subsidy funding for the City of Hamilton in 2009.

**POLICIES AFFECTING PROPOSAL:**

Complies with Public Works Department’s “Innovate Now” plan goal of sound financial management for the long haul.
Complies with Corporate Strategic Plan of delivery of municipal services and management of capital assets/liabilities in a sustainable, innovative, and cost effective manner. Also provides for full life cycle costing for capital.

RELEVANT CONSULTATION:
Staff has consulted with the Ministry of Transportation’s Public Transit Office, Clerk’s, Corporate Finance and Legal Services.

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
Purchase of modern, environmentally friendly Transit Fleet enhances the image of public transit in the community.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Purchase of low emission Transit Fleet demonstrates leadership in "greening" the community through GHG reductions.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Purchase of modern fleet mitigates escalating costs of fleet maintenance associated with older fleet.

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
Appendix “A”

June 19, 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 Minister of Transportation for the Province of Ontario (the “Ministry”) and the City of Hamilton (the “Municipality”) Related to Funding Provided to the Municipality under the Ontario Bus Replacement Program (this “Letter of Agreement”)

This Letter of Agreement is in response to the application received from the Municipality for funding under the Ontario Bus Replacement Program (the “OBRP”).

The Ministry has now completed its review of the application and wishes, subject to the terms and conditions set out below, to provide the Municipality with funding for the replacement of ageing transit buses in support of strong communities, increased public transportation reliability, reduction of operating municipal costs, and investment in the renewal of transportation systems.

Funding from the Ministry to the Municipality under the OBRP (the “OBRP funding”) will be provided in accordance with the terms and conditions set out in this Letter of Agreement and the Ontario Bus Replacement Program (OBRP)-2009 Guidelines and Requirements (the “Guidelines and Requirements”), including compliance with the Province’s Canadian Content for Transit Vehicle Procurement Policy.

In consideration of the mutual covenants and agreements contained in this Letter of Agreement and the Guidelines and Requirements, which the Municipality has reviewed and understands and which are hereby incorporated by reference, and other good and valuable consideration (the receipt of which is hereby acknowledged), the Ministry and the Municipality covenant and agree as follows:

1. In accordance with and subject to the terms and conditions set out in this Letter of Agreement and the Guidelines and Requirements, the Ministry agrees to provide OBRP funding to the Municipality up to, unless the Ministry otherwise agrees upon in writing, a maximum amount of $5,382,279.00 towards the replacement of conventional transit
buses and specialized transit buses and applicable interest as set out in sections 2, 3 and 4.

2. Unless the Ministry otherwise approves in writing and subject to the Municipality meeting the annual performance requirements set out below, the Ministry will provide OBRP funding to the Municipality for the replacement of conventional transit buses over twelve (12) years (starting in 2009 and ending in 2021). Payments for such OBRP funding will be provided annually and equal to one-twelfth (1/12th) of the OBRP funding allocated to conventional transit buses, up to the maximum amount set out in section 1 and applicable interest as calculated in section 3 below. The Municipality shall, annually, provide the Ministry with:
   a. evidence that the Municipality still owns each conventional transit bus for which it has received OBRP funds under this Letter of Agreement;
   b. an inspection report to attest to the maintenance of each conventional transit bus in accordance with the safety standards certification required under the Highway Traffic Act, R.S.O. 1990, c. H.8, O. Reg. 611;
   c. an annual kilometre reading for each conventional transit bus as evidence that the conventional transit bus has been in revenue service; and
   d. starting in the second year of this Letter of Agreement and for the subsequent ten (10) years, an auditor’s report confirming that all the above requirements have been met no later than February 15th of the following calendar year end.

3. The interest rates at which the Ministry agrees to pay interest on OBRP funding provided for the replacement of conventional transit buses, in accordance with section 1, will be calculated as follows:
   a. Where the Municipality borrows money from a third party, the rate will be the Ontario Strategic Infrastructure Financing Authority (OSIFA) ten (10) year borrowing rate as at March 31st, adjusted annually; and
   b. Where the Municipality uses its own funds, excluding OBRP funds kept in an OBRP capital reserve account, a rate, subject to Ministry review, equal to its internal rate of return, as provided in writing by the Municipality no later than February 15th of the following calendar year end, and not to exceed the rate set by the Ministry in paragraph 3(a).

4. The Ministry will provide OBRP funding to the Municipality for the replacement of specialized transit buses in its entirety prior to March 31, 2010.

5. The Municipality shall not receive direct financing from OSIFA for the replacement of conventional transit buses for which OBRP funds have been provided. Despite the above, the Municipality may engage the services of OSIFA to assist with financing arrangements.

6. The OBRP funding to be provided under section 1 is subject to the Municipality having provided the Ministry with the required number of copies of this Letter of Agreement signed by the Municipality, certified copies of the authorizing municipal by-law(s) and of a binding agreement between the Municipality or a transit operator, as applicable, and a manufacturer of transit buses for the purchase of such transit buses to be delivered in 2009 and, where applicable, a binding operating agreement between the Municipality and a transit operator.

7. Despite Section 1, the Municipality understands and agrees that any amount payable under this Letter of Agreement may be subject, at the sole discretion of the Ministry, to
adjustment for consistency with the agreements described in section 6, 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.

8. Unless terminated earlier in accordance with the terms and conditions set out in this Letter of Agreement or extended at the Ministry’s option and with the consent of the Municipality, the term of this Letter of Agreement shall commence on the effective date, which shall be the last date it is signed by one of the representatives from the Municipality, and shall expire immediately upon the Ministry making the last one-twelfth (1/12th) payment as contemplated in section 2.

9. 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: a) cancel all further OBRP funding payments; and b) determine the Municipality’s reasonable costs to terminate any binding agreement between the Municipality and a transit operator or a manufacturer of transit buses acquired under the OBRP, and permit the Municipality to offset these costs against the OBRP funds remaining in the possession or under the control of the Municipality.

10. If the Ministry fails to receive the necessary appropriation from the Legislature for the OBRP, the Ministry, in addition to any adjustments it may make under section 7, may terminate this Letter of Agreement immediately by giving notice to the Municipality. In such instance, the Ministry shall have the same rights as those set out in paragraphs 9 a and b.

11. This Letter of Agreement constitutes the entire Agreement between the Ministry and the Municipality with respect to the subject matter contained in this Letter of Agreement, and supersedes all prior oral or written representations and agreements.

12. Any changes to this Letter of Agreement shall be by written amendment signed by the Ministry and the Municipality.

13. Any provisions, which, by their nature are intended to survive the termination or expiration of this Letter of Agreement, shall survive its termination or expiration, including the Municipality’s indemnification obligations.

14. 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 and dated copies to:

Ministry of Transportation
Division Services and Program Management Office
777 Bay Street, 27th Floor
Toronto, Ontario
M7A 2J8
Once the Ministry has received the signed copies of this Letter of Agreement and related certified copies of the authorizing municipal by-law(s), and agreements set out in Section 6, the Ministry may, in accordance with the OBRP, make arrangements for the payment of OBRP funding to the Municipality.

Yours sincerely,

[Signature]

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 that the Municipality has consented to be bound by these terms.

Per: ___________________ Date: ___________________
   Head of Council

Per: ___________________ Date: ___________________
   Clerk or Authorized Delegate