SUBJECT: Agreement of Cost-Share between the City of Hamilton and the Province of Ontario for the Proposed Interchange (and affected Infrastructure) at King’s Highway Nos. 5 and 6 (FCS07037(a)) (City Wide)

RECOMMENDATION:

(a) That the Agreement of Cost-Share for the Proposed Interchange at King’s Highway Nos. 5 and 6 attached as Appendix “A” to report FCS07037(a), between the City and the Province of Ontario, be approved;

(b) That the Developer, Flamborough Power Centre Incorporated (F.P.C.), be required to submit to the City of Hamilton an unconditional Security in the amount of $2 million for the removal of the commercial development holding provisions currently in place;

(c) That the City draw upon said Security, per recommendation ("b") to report FCS07037(a), as City funds are due to the Province per the Agreement referred to in recommendation (a) to report FCS07037(a);

(d) That staff be directed to proceed with the necessary studies and Environment Assessment (EA) process for any roadways in the north-west quadrant required for access to the lands between Hwy #5 and Borer's Creek;

(e) That the Environment Assessment referred to in recommendation ("d") to report FCS07037(a) be funded from the Roads Development Charges Reserve; and
(f) That the Mayor and Clerk be authorized to execute the Agreement dated April ____, 2008, attached as Appendix “A” to report FCS07037(a), between the City of Hamilton and Her Majesty the Queen in Right of Ontario (the Province of Ontario).

Joseph L. Rinaldo  
General Manager,  
Finance and Corporate Services

EXECUTIVE SUMMARY:

On March 28, 2007, Council approved report FCS07037 which, set out for staff, principles for negotiations between the City of Hamilton and the Province regarding the cost-sharing for the proposed interchange at King’s Highway Nos. 5 and 6. In summary, the principles were that the City would cost-share in the amount of twenty-five (25%) with the Province, whose share would be seventy-five (75%). The only deviation from this principle is that the City’s share of construction costs would be capped at $7,500,000.

Since the last Council update, City and Provincial staff have identified additional road and underground infrastructure requirements due to the construction of the interchange. Refer to Table 1 of this report FCS07037(a) for a complete summary of costs and revenues directly associated with this project. Table 1 of this report FCS07037(a) illustrates that growth revenue will be the source of funding for the City’s portion of total costs of $18.97 million. In addition, commercial property tax revenue to the municipality will be approximately $3.5 million annually in a relatively short time period as demand for commercial development in the Flamborough Power Centre is significant. Also, the additional internal roads required (due to original access closure because of the new interchange) would open up new development land as well as continue access for all properties affected by the interchange reconstruction.

Agreement Highlights:

Interchange
• All related costs to be shared on a 75/25 split between MTO and the City (MTO 75%, City 25%);
• Construction costs cost to the City will be capped at $7.5 Million;
• Construction costs will include the utility costs.

Municipal Roads
• All costs related to providing the necessary municipal roads to facilitate the interchange will be shared on a 75/25 split (MTO 75%, City 25%);
• MTO will obtain Environmental Approvals (EA) and any other approvals for the construction of all the necessary municipal roads except what is required in the north-west quadrant for access to lands between Hwy 5 and the Creek;

• The City will obtain Environmental Approvals (EA) and any other approvals for the construction of any roadway in the north-west quadrant for access to lands between Hwy 5 and the Creek;

• MTO will design and construct all the necessary municipal roads (with the co-operation and assistance of the City, and to the City’s design standards);

• If any of the municipal roads are required, prior to MTO’s schedule for providing these roads (due to development of lands in the vicinity of the interchange), the City, with the agreement of MTO, will take responsibility for the construction of any such roadway. The cost-sharing agreement (75% MTO, 25% City) would not change in this instance.

**BACKGROUND:**

The Ministry of Transportation had not provided for this capital project within its latest 10-year Capital Plan and therefore was not included in the City’s Development Charge Capital Forecast. Staff will include the City’s cost for this project in the new DC By-Law (road and underground growth infrastructure) scheduled for completion in 2009. Upon Council approval of the Cost-Share Agreement, provincial staff will be presenting this project to the Ministry of Public Infrastructure Renewal and Treasury Board for approval and subsequent inclusion within their 5-year Capital Plan.

The proposed Interchange was originally planned by the Province to be built in the time frame of 2020/2025. Due to increased Provincial population estimates contained in the Province’s most recent “Places to Grow” document and the approvals in place for the Flamborough Power Centre Development, provincial staff are now proposing that this project’s development schedule be accelerated.

The Ministry of Transportation has come to an agreement with Flamborough Power Centre Incorporated regarding a significant portion of the MTO’s land acquisition requirements for the interchange. The financial cost of this acquisition was within the proposed budget for this piece. Of note, is that F.P.C. has also agreed to contribute to the City an amount of $2 million. This was to compensate the City for accelerating this project in its’ 10-year capital plan to coincide with the Province’s proposed scheduling. Based on the percentage of total traffic generated from each of the four (4) legs (traffic from the east on Dundas Street, which is the City’s responsibility, represents more than 25% of the total traffic at the interchange), the Ministry is prepared to limit the City’s contribution to 25% of the total cost. Based on other similar infrastructure which requires Provincial funding, City staff feel that this share of costs to be fair and equitable.
ANALYSIS/RATIONALE:

Table 1 to report FCS07037(a) summarizes the original cost-share amounts based upon the information available at the time (refer to report FCS07037 approved by Council in March 2007,) as well as, additional internal municipal road and underground infrastructure requirements and all forecast revenues.

Table 1
Hwy #5 & 6 Interchange
Estimated Project Costs ($ millions) - note 2

<table>
<thead>
<tr>
<th>Original Estimate</th>
<th>MTO (75%)</th>
<th>Hamilton (25%)</th>
<th>Total cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$22.87</td>
<td>$7.63</td>
<td>$30.50</td>
</tr>
<tr>
<td>Construction(note 1)</td>
<td>21.05</td>
<td>7.02</td>
<td>28.07</td>
</tr>
<tr>
<td>Overhead</td>
<td>1.51</td>
<td>0.50</td>
<td>2.01</td>
</tr>
<tr>
<td>SubTotal</td>
<td>$45.43</td>
<td>$15.15</td>
<td>$60.58</td>
</tr>
</tbody>
</table>

Note 1: City construction costs capped at $7.5 million

Additional Infrastructure (Internal roads) Costs ($ millions)

| Land | $4.80 | $1.60 | 6.40 |
| Construction | 6.30 | 2.10 | 8.40 |
| Overhead | 0.37 | 0.12 | 0.49 |
| SubTotal | $11.47 | $3.82 | 15.29 |
| Total Expenditures | $56.90 | $18.97 | $75.87 |

Non-Levy Revenues

- FPC completed $3,500,000 ($12 sq.ft. ave x 300,000 sq.ft.)
- FPC proposed $13,500,000 ($15 sq.ft. ave x 900,000 sq.ft.)
- Butty lands (ind.) $1,200,000 ($4 sq.ft. ave x 300,000 sq.ft.)
- Borer's Creek $600,000
- Parkland Ded. $1,000,000
- FPC contribution $2,000,000

Total Non-Levy Revenues $21,800,000

Operating Revenues (Levy - Commercial Property Taxes)
(Flamborough Power Centre only)
Years 1 - 3, $1.3m. annually, Yrs 4 - 5 ($2.0m annually), Yr.6 ($3.5m annually)

The City’s share of costs ($18.97m) would be fully funded from development revenues with no contribution from the tax levy. In addition, when fully completed, the Flamborough Power Centre will pay to the City approximately $3.5 million annually in property taxes.
**ALTERNATIVES FOR CONSIDERATION:**

An alternative consideration would be for the City to not agree with the proposed Cost-Share Agreement. This would delay the reconstruction of the proposed interchange for at least 10-years. The full development of the Flamborough/Waterdown area would not be able to proceed as currently there are growth constraints of which transportation is a significant factor.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial/Legal – Refer to Table 1 of this report FCS07037(a) for details.

Staffing – N/A.

**POLICIES AFFECTING PROPOSAL:**

The City of Hamilton’s Development Charges By-Law and related policies.

**RELEVANT CONSULTATION:**

Legal Services Division
Economic Development and Planning Department
Public Works Department – Capital Planning and Implementation Division

**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.

<table>
<thead>
<tr>
<th>Community Well-Being is enhanced.</th>
<th>☑ Yes</th>
<th>☐ No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Well-Being is enhanced.</td>
<td>☑ Yes</td>
<td>☐ No</td>
</tr>
<tr>
<td>Economic Well-Being is enhanced.</td>
<td>☑ Yes</td>
<td>☐ No</td>
</tr>
</tbody>
</table>

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
AGREEMENT

THIS AGREEMENT is made this __________ day of ________________, 2007

BETWEEN:

HER MAJESTY THE QUEEN in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario, (hereinafter referred to as the "Ministry")

OF THE FIRST PART

- and -

CITY OF HAMILTON, (hereinafter referred to as the “City”)

OF THE SECOND PART.

WHEREAS the Ministry has jurisdiction and control of the King’s Highway No. 6 ("Highway 6") and King’s Highway No. 5 ("Highway 5"), west of Highway 6;

WHEREAS the City has jurisdiction and control of Regional Road No. 5 (formerly Kings’ Highway No. 5), east of Highway 6;

WHEREAS the Ministry intends to construct a grade separated interchange at the Highway 6 and Highway 5/Regional road 5 intersection, all within the City of Hamilton, as shown in Schedule ‘A’ attached to this Agreement;

AND WHEREAS the City has agreed to contribute and pay to the Ministry, twenty five (25%) percent of the actual design, property acquisition and contract administration of the Interchange, as detailed in Schedule ‘B’ attached to this Agreement;

AND WHEREAS the City has agreed to contribute and pay to the Ministry, twenty five (25%) percent of the construction cost (including, utility relocation costs) to a maximum of seven million five hundred thousand ($7,500,000.00) Dollars for the Interchange, as detailed in Schedule ‘B’ attached to this Agreement;

AND WHEREAS the Ministry also intends to design and construct with the cooperation and assistance of the City such municipal road, as may be necessary to facilitate the grade separated interchange at the Highway 6 and Highway 5/Regional Road 5 intersection, as shown in Schedule ‘A’ attached to this Agreement;
AND WHEREAS the City has agreed to contribute and pay to the Ministry twenty five (25%) percent of the actual costs as detailed in Schedules ‘C’ attached to this Agreement, in order to design and construct the municipal road improvements as shown in Schedules ‘A’ attached to this Agreement, in order to facilitate the grade separated interchange at the Highway 6 and Highway 5/Regional Road 5 intersection, as shown in Schedule ‘A’ attached to this Agreement;

AND WHEREAS it is deemed expedient to enter into this Agreement to set out the mutually agreed upon terms and conditions for the cost sharing of the design, property acquisition, utility relocations, contract administration and the construction of the interchange and municipal road improvements.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants herein contained, the Parties hereto, for themselves and their respective successors and assigns, hereby mutually agree as follows:

DEFINITIONS
1. In this Agreement,
   a) “Director” means the Regional Director of the Central Region of the Ministry or his nominee,
   b) “Interchange” means that grade separated portion of the Highway 6 and Highway 5/Regional Road 5 within the designated right-of-way of Highway 6, as shown in Schedule ‘A’ to this Agreement,
   c) “Municipal Roads” means new and existing road re-alignments or improvements, shown as M1, M2, M3, M4 and M5, in Schedule ‘A’ to this Agreement, required to facilitate the grade separated interchange.

SCOPE OF WORK
2. It is understood and agreed by the parties that the work consists of the detailed design, environmental approval, property acquisition, utility relocations, construction and construction administration of a new interchange at the present intersection of Highway 6 and Highway 5/Regional Road 5.
   The work consists of also the detailed design, environmental approval, property acquisition, utility relocations, construction and construction administration of the municipal roads in order to facilitate the grade separated interchange at the Highway 6 and Highway 5/Regional Road 5 intersection
DESIGN AND CONSTRUCTION

3. It is understood and agreed by the parties that the proposed design of the Interchange is in accordance with Ministry standards, specifications, policies and practices.

4. The Ministry will undertake all surveying, engineering investigations, environmental studies, engineering design and other duties associated with the design of the Interchange.

5. The Ministry will undertake all surveying, engineering investigations, environmental studies, engineering design and other duties associated with the design of the Municipal Roads. The City shall facilitate and assist in obtaining any municipal approvals for this work.

6. The Ministry shall obtain Environmental Approvals and such other approvals as required for the construction of the Interchange.

7. The Ministry shall obtain Environmental Approvals and such other approvals as required for the construction of the Municipal Roads shown as M1, M2, M3 and M5 in Schedule A. The City shall facilitate and assist in obtaining any municipal approvals that may be required for such work. The City will obtain Environmental Approvals and any other approvals for the construction of any roadway in the northwest quadrant for access to lands between Hwy 5 and the Creek (the municipal road shown as M4 in Schedule A).

8. The City shall not object to the Ministry proposing the closure of any municipal road or portion thereof required to facilitate the construction of the Interchange or the improvements to the Municipal Roads, subject to the Ministry receiving environmental clearance through the Ministry’s environmental approval process. The City will initiate the process to pass the necessary by-laws when required to do so.

9. The Ministry, or another person, shall undertake the relocation of any and all utilities that may be necessary for the Interchange. The City will facilitate and assist in obtaining and relocating utilities as required.

10. The Ministry, or another person, shall also undertake the relocation of any and all utilities that may be necessary for the Municipal Roads. The City will facilitate and assist in obtaining utility approvals and clearances, if required.

11. Prior to the commencement of construction of the Interchange, the Ministry shall acquire the lands necessary for the Interchange.

12. Prior to the commencement of construction of the Municipal Roads, the Ministry shall also acquire the lands necessary for the Municipal Roads. The City will facilitate and assist, if required.

13. The Ministry, at its sole discretion, may undertake the construction of the Interchange.
and the Municipal Roads by means of a series of suitable construction contracts that may be smaller by the cost or amount of work to be performed.

14. Prior to tendering a contract, the Ministry shall prepare a final cost estimate for the City’s information.

15. The Ministry shall tender the Interchange construction contract in such a way that the Municipal Road improvements shall be substantially completed and constructed prior to the commencement of construction of the Interchange in order to ensure safe traffic movement.

16. The Ministry shall tender, advertise, award, administer the construction and construct the Interchange in accordance with Ministry standards, specifications, policies and practices.

17. If in the opinion of the Ministry, the unit prices or total bid tender are excessive, the Ministry reserves the right to refuse to approve the award of the construction contract and may re-tender and advertise the contract;

18. The Ministry shall ensure that the City is kept informed about the progress of design, construction and other associated activity.

FINANCIAL CONTRIBUTION

19. The Ministry and the City agree that the costs for the Interchange and the Municipal Roads, as detailed in Schedules ‘B’ and ‘C’ attached to this Agreement, are for estimating purposes only and that it is the intention of the parties to pay the actual cost in accordance with the terms and conditions set out in this Agreement.

20. The City shall pay twenty-five (25%) percent of the actual costs for the design, property acquisition (including the cost for the lands and any and all expropriation costs), construction administration, resolution of liens and claims, plus GST for the Interchange, as shown in Schedule ‘B’ attached to this Agreement.

21. The City shall pay for construction costs, including all utility relocations for the Interchange to a maximum of Seven Million Five Hundred Thousand ($7,500,000.00) Dollars, plus GST, as shown in Schedule ‘B’ attached to this Agreement.

22. The City shall pay the costs as stated in Schedules ‘C’ attached to this Agreement, as well as all applicable Goods and Services Tax (“GST”), towards the design, property acquisition, (including the cost for the lands and any and all expropriation costs), utility relocations, construction administration and construction costs of the Municipal Roads.
23 In the event the City requests the Ministry to complete additional work with regard to
the Interchange or the Municipal Roads, and the Ministry agrees to such a request,
then the City shall pay the Ministry:
  a) the cost incurred by the Ministry in carrying out the request; and
  b) the cost of materials, labour, force account work, surcharges and other expenses
     associated with carrying out the request.

INVOICING

24. The Ministry shall, from time to time, invoice the City for payments for the actual cost
    of the Interchange and the Municipal Roads. The City shall pay the Ministry the
    invoiced amount within sixty (60) days of receipt of the invoice.

COMPLETION

25. The Ministry shall report the completion date of the Interchange and the Municipal
    Roads to the City
26. The Ministry shall seek to resolve any and all construction liens filed with respect to
    the Municipal Roads as may be reasonably possible.

GENERAL PROVISIONS

27. The rights, duties and powers of the Minister of Transportation for the Province of
    Ontario under this Agreement may be exercised by:
    a) the Director, or
    b) a nominee.
28. All notices, demands or requests sent to a party to this Agreement may be served
    personally or mailed by registered mail, postage prepaid (at any time other than during
    a general discontinuance of postal services due to a strike, lockout or otherwise) or
    sent by facsimile transmission and addressed to the party to whom it is given as
    follows:

    If to the Ministry:

    Roger Hanmer
    Regional Director, Central Region
    Ministry of Transportation
    2nd Floor, Atrium Tower (Building “D”)
    1201 Wilson Avenue
    Downsview, Ontario
    M3M 1J8
    Tel. No.: 416-235-5400
    Fax No.: 416-235-5266
If to the City:

Gerry Davis  
Senior Director, Capital Planning & Implementation  
Public works Department  
City of Hamilton  
Suite 320, 77 James St. N.  
Hamilton, Ontario  
L8R 2K3  
Tel. No.: 905-546-2424 ext. 4621  
Fax No.: 905-546-4435

Any notice shall be deemed to have been given to and received by the party to whom it is addressed:

(a) if delivered, on the date of delivery;

(b) if mailed, then on the fifth business day after being deposited in the mail;

(c) if faxed, on the day after facsimile transmission.

The address for each party hereunder may be changed upon written notice to the other party.

29. All Schedules referred to in this Agreement and attached hereto form part of this Agreement.

30. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

31. The City warrants that it has taken all necessary steps, done all acts, passed all by-laws and obtained all approvals within its power legally required to give it the authority to enter into this agreement.

32. Any changes, alterations or amendments to this Agreement shall be made in writing and mutually agreed upon by the Parties. The Director may execute any such amendment on behalf of the Ministry.

33. This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
IN WITNESS WHEREOF the Minister of Transportation for the Province of Ontario on behalf of the Party of the First Part has hereunto set his hand and the Party of the Second Part has hereunder affixed its Corporate Seal under the hands of its proper officers duly authorized in that behalf.

SIGNED AND SEALED this ______ day of __________________, 2008.

HER MAJESTY THE QUEEN in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario

MINISTER OF TRANSPORTATION (ONTARIO)

SIGNED AND SEALED this ______ day of __________________, 2008.

THE CITY OF HAMILTON

_______________________________________
Mayor

_______________________________________
City Clerk
SCHEDULE A

To a Legal Agreement between the Ministry of Transportation and The City of Hamilton

Highway 6 and Highway 5/Regional Road 5 Interchange

Map showing New Interchange and Municipal Roads
SUMMARY OF COST SHARING DETAILS - INTERCHANGE  
(Effective as of December 2006)

<table>
<thead>
<tr>
<th>Item</th>
<th>Total Cost</th>
<th>Ministry of Transportation (75% share)</th>
<th>City of Hamilton (25% share)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property</td>
<td>$30,500,000.</td>
<td>$22,875,000.</td>
<td>$7,625,000.</td>
</tr>
<tr>
<td>Utilities</td>
<td>$1,500,000.</td>
<td>$1,125,000.</td>
<td>$375,000. (See Note 2)</td>
</tr>
<tr>
<td>Construction</td>
<td>$25,300,000.</td>
<td>$18,975,000.</td>
<td>$6,325,000. (See Note 2)</td>
</tr>
<tr>
<td>Design (5% of Construction)</td>
<td>$1,265,000.</td>
<td>$948,750.</td>
<td>$316,250.</td>
</tr>
<tr>
<td>Construction Administration (8% of Construction)</td>
<td>$2,024,000.</td>
<td>$1,518,000.</td>
<td>$506,000.</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$60,589,000.</td>
<td>$45,441,750.</td>
<td>$15,147,250.</td>
</tr>
<tr>
<td>Admin Overheads (7%)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GST (6% x Subtotal)</td>
<td></td>
<td></td>
<td>See Note 3</td>
</tr>
</tbody>
</table>

Notes:
1. The above costs are estimates only; the actual costs will also include the resolution of additional work, change orders, claims and liens.
2. The sum total of the City’s share of the Utility relocation costs and the Construction Costs shall be capped at $7,500,000.00.
3. The City shall pay the Ministry, costs including GST (6%) on the City’s portion of the contribution to this project.
4. The City of Hamilton is currently entitled to receive 100% of GST paid, back in the form of a rebate per the Federal Excise Tax Act (February 2004).
5. Payments to the Province by the City of Hamilton will commence in the year 2010. They will be based on actual expenditures and will be due December 31. The purpose of this is to allow for reasonable budget preparation and to allow for initial Development Charge collections from this project which will be added to the City’s DC Background study in 2009.
## SUMMARY OF COST SHARING DETAILS – MUNICIPAL ROADS

(Estimated Construction and Property costs of Municipal roads, based on Hamilton’s estimates of April 2008)

<table>
<thead>
<tr>
<th>Item</th>
<th>Total Cost</th>
<th>Ministry of Transportation (75% share)</th>
<th>City of Hamilton (25% share)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property</td>
<td>$6,409,000.</td>
<td>$4,806,750.</td>
<td>$1,602,250.</td>
</tr>
<tr>
<td>Utilities</td>
<td>See note 2 below</td>
<td>See note 2 below</td>
<td>See note 2 below</td>
</tr>
<tr>
<td>Construction</td>
<td>$8,193,000.</td>
<td>$6,144,750.</td>
<td>$2,048,250.</td>
</tr>
<tr>
<td>Design (5% of Construction)</td>
<td>$409,650.</td>
<td>$307,238.</td>
<td>$102,412.</td>
</tr>
<tr>
<td>Construction Administration (8% of Construction)</td>
<td>$655,440.</td>
<td>$491,580.</td>
<td>$163,860.</td>
</tr>
<tr>
<td>Admin Overheads (7%)</td>
<td>$0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GST (6% x Subtotal)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
1. The above costs are estimates only; the actual costs will also include the resolution of additional work, change orders, claims and liens.
2. Utility costs when determined will be split on a 75/25 basis (75% MTO; 25% City)
3. If signals are warranted at Highway 5 and the proposed new municipal road intersection, west of the proposed N-E/W ramp terminal, the cost for this will be split on a 75/25 basis (75% MTO; 25% City)
4. The City shall pay the Ministry, costs including GST (6%) on the City’s portion of the contribution to this project.
5. The City of Hamilton is currently entitled to receive 100% of GST paid, back in the form of a rebate per the Federal Excise Tax Act (February 2004).
6. Payments to the Province by the City of Hamilton will commence in the year 2010. They will be based on actual expenditures and will be due December 31. The purpose of this is to allow for reasonable budget preparation and to allow for initial Development Charge collections from this project which will be added to the City’s DC Background study in 2009.
7. Due to incomplete information available, City of Hamilton report FCS07037a, Table 1 uses a different factor for the calculation of Design and Construction Administration than the Province for Schedule C. The Province’s budgeted number’s are the correct ones and based on their standard costing practises.