SUBJECT: GTA Fare System Project - (City Wide) (PW4117b)

RECOMMENDATION:

(a) That Council acting as Board of Directors, authorize the execution of the GTA Fare System Operational Agreement by the Mayor and City Clerk, on behalf of the Hamilton Street Railway Company.

(b) That Council acting as Board of Directors, authorize the Province of Ontario, acting as its Agent under the GTA Fare System Procurement Governance Agreement, to award a contract for the GTA Fare System, on behalf of the Hamilton Street Railway Company.

(c) That Council acting as Board of Directors, authorize the execution of the project Funding Agreement, service level agreements, and such additional documents as may be required by the GTA Fare System Operational Agreement by the Mayor and City Clerk, on behalf of the Hamilton Street Railway Company.

(d) That Council designate the Director of Transit as HSR’s representative on the GTA Fare System Operational Agreement Executive Committee, and the Manager of Fare Administration & ATS as the alternate representative on the Operational Agreement Executive Committee; and the Manager of Fare Administration & ATS as HSR’s representative on the GTA Fare System Operational Agreement Steering Committee, and the Supervisor of Revenue and Accessibility as the alternate representative on the Operational Agreement Steering Committee.

(e) That Council authorize and direct that additional project funds in the amount of $3,350,000 be directed to Capital Account 5300583504, to be funded from Gas Tax Reserve through 2007, 2008 and 2009 Capital Requests.

Scott Stewart, C.E.T.
General Manager
Public Works
EXECUTIVE SUMMARY:

In approving Report PW04117a, Council authorized execution of the GTA Fare System Procurement Governance Agreement with the Province to allow participation in the GTA Fare System with the Province, GO Transit, and GTA municipalities. Within this Agreement, signed in June 2005, participants assigned to the Province the right to act as their agent in the procurement of the equipment and services required for the GTA Fare System. The Province is now prepared to award a vendor contract under the procurement Governance Agreement, and requires the consent of the governing bodies of the project partners to proceed.

The procurement has been conducted according to Ontario Public Service (OPS) policies and practices, which may differ from those of each participant. The OPS policy requires that the name of the leading proponent not be revealed until the contract is awarded. The position of the Province in this regard is set out in a letter from the Project Office dated May 12, 2006, appended to this report as Attachment B.

Contract award will follow the approval process for each of the 10 participants and a final Project Executive Committee meeting. Once all approvals are received from participants (target end of June) and the Project Executive Committee agrees to authorize the signing of a contract, the Province will be in a position to announce the award to the successful vendor and release the name. Formal signing of the contract will follow shortly afterwards once the contract documents are prepared and finalized with the vendor.

To be eligible for provincial gas tax funding, GTA municipalities are required to participate in the GTA Fare System Project and as a participant, remain in good financial standing.

Within the GTA Fare System Procurement Governance Agreement, there were provisions for withdrawal from the arrangement should the actual bid costs exceed estimates by 15% or under other unfavourable circumstances. Capital and operating cost estimates had been developed by the Project Office and participants based on bid results for similar projects elsewhere in the world, as recommended by a consulting firm with experience in major fare system projects.

The bid by the leading proponent with regard to City of Hamilton capital costs under this procurement exceeds the 2005 estimated costs of the system, having increased from $2.5M to $4.6M. In addition to this expanded capital cost requirement, staff have come to a more refined definition of anticipated ramp-up costs for this project, at some further capital cost impact to the project; and have further included additional monies for estimated applicable taxes that will be due under the procurement.

After all anticipated expenditures and recovery of anticipated Provincial subsidy, a total of $4.35M is now required under the project. Through the 2005 and 2006 Capital Budget processes, $1 million has been allocated to date. As recommended in Recommendation (e) to this report, a further $3.35 million more is required. Table 1 below illustrates the anticipated reserve requirement over the life of the project.
TABLE 1: ANTICIPATED IMPACT ON GAS TAX RESERVE

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</thead>
<tbody>
<tr>
<td>– Capital Account</td>
<td>5300583504</td>
<td>0M</td>
<td>3.03M</td>
<td>0.32 M</td>
<td>4.35M</td>
</tr>
</tbody>
</table>

NOTE TO TABLE 1 - The GTA Fare System initiative outlined in this report is an eligible use of Gas Tax subsidy, and the use of Gas Tax Reserve to fund the outstanding requirements is necessary. Up to 33.33% of expenditures are eligible for Provincial subsidy under the terms of the GTA Fare System Procurement Governance Agreement, and will flow back to the Gas Tax Reserve upon subsidy recovery. The 2007 - 2009 Gas Tax Reserve impacts are shown as net of Provincial subsidy.

The primary cost drivers of the increase in capital costs may be summarized as follows.

- Fixed cost contract, providing for capital and operating cost certainty over the life of the agreement.
- Risk transference, requiring the vendor to be responsible to a high degree for liability associated with default, poor performance, and requirements to meet detailed specifications.
- Service level and disaster recovery requirements that are similar to banking standards.
- Software license requirements that impose no restrictions against increased system growth, and allow other vendors and/or applications without additional payments and/or licenses.
- Open interface standard to support future purchases from a range of compatible vendors.
- A highly developed set of business requirements that will support fixed cost from vendor and minimize necessity for large change orders.

In addition to capital costs, vendor bids included operating costs associated with several centralized services that were evaluated as to the 10 year operating impact on the overall fare system solution. It had been expected that these would be within 15% of estimated costs. The vendor bids result in fare system operating costs that were about $640K greater over 10 years than originally estimated, but that fall within the established 15% threshold and within the current established operating budget. Recommendation (b) to this report, recommending that the Province award a vendor contract on behalf of the City, commits the City to contractual obligations to purchase equipment technical support and third party agency support from the vendor at a cost of approximately $320K annually over the life of the contract, beginning at the time of GTA Fare System implementation in Hamilton. These are not net new operating costs to the City, but will be contracted rather than internal costs.

Council also authorized staff to negotiate an Operational Agreement with the Province to define the framework and mechanisms for governance of the project and participation of the parties over the term of the contract with the Vendor; this Operational Agreement has been completed, and is being recommended to Council for execution under this report. This Agreement represents a new model of cooperation between Province and the municipalities in the delivery of transit fare integration across the region. It is a legally binding agreement between the City and the Province wherein Council retains all
authority and accountability for local transit, transit fare policy and decision making, and retains control of budget changes through annual budget cycle. The Operational Agreement has a defined length of 10 years with 3, three year renewal options tied to the Vendor contract, with a projected start date of July 2006 (or upon award of the Vendor contract). MTO can only enter into a contract after it has received unanimous approval from GO Transit and participating GTA municipalities. Other municipal Transit agencies are seeking approvals in parallel processes. Approvals in June 2006 will allow MTO to move to contract signing within the targeted timeframe.

The Operational Agreement defines:

- The respective roles, rights, responsibilities and relationships of the parties
- The relationships between the vendor, Ministry, municipalities and GO Transit
- The mechanisms that will allow changes to the GTA Fare System and to adapt to new circumstances
- The mechanisms for the parties to work together at various levels
- A framework that would allow the parties to work within a longer term governance context
- The level of commitment of all parties in working together fairly and responsibly
- That all participants are equal parties to the agreement
- The Operational Agreement in a manner that is consistent with the Procurement Governance Agreement signed in June 2005.

There are risks to the City under the Operational Agreement, associated with the length of Contract term given the prospective City of Hamilton roll-out date of late 2008/early 2009; if the Province was to not renew the Contract with the vendor beyond 2016, the City’s substantial investment in project capital may have a lesser return than anticipated under the business case analysis. Under that scenario, the City would have to work with other project partners to assume the operation of the Central System at a cost that cannot currently be estimated, or would have to upgrade or replace its registering fareboxes to meet its full fare system needs. This risk is mitigated by the stated commitment of the Province to the project through funding of the Central System operating and capital costs, length and renewal provisions for the Vendor contract, funding of 1/3 of municipal capital costs, and legislated commitments made under the proposed GTTA, all of which indicate the Province’s long term vision of the GTA Fare System as an integral part of the broader transit solution within the region.

The ongoing direction and management of the operational activities of the GTA Fare System will be the responsibility of a Steering Committee and Executive Committee that will consist of staff representatives of each participant. The authority and decision-making mechanisms of these committees is defined in the GTA Fare System Operational Agreement.

During the course of the project “blueprint” phase, several service level agreements will be developed and implemented. Recommendation (c) to this report seeks authorization allowing City representatives to execute the completed Funding Agreement, service level agreements, and such other agreements as may be necessary under the Operational Agreement to ensure that the City may participate in project activities within the project timelines agreed to by the partners.
Discussions with the Province are currently in progress to conclude a Funding Agreement that will definitively set out which capital costs will be eligible for the 1/3 funding under the project, but until this Funding Agreement is concluded, there remains a degree of uncertainty as to the proportion of capital expenditure which the City might recover through subsidy.

In previous 10 year capital projections and gas tax reserve projections, a total project capital requirement of $2.5M had been indicated. The additional funds now required under the project have been reflected in the 10 year gas tax reserve projection (see complete amended reserve projection attached as Attachment A to this report). The additional requirement will necessitate a reordering of priorities within the planned use of gas tax funding in order that the reserve does not go into deficit in 2008.

**BACKGROUND:**

The information/recommendations contained within this report have City wide implications and relate to matters/facilities/programming/property within the entire City.

The GTA Fare System Project is an initiative led by the Provincial Government and involving GO Transit and the municipal transit services within the GTA and Hamilton. The goal of the project is to have a universal transit fare payment system that enables public transit customers to travel on the different transit services within the GTA using a single stored value fare card. Work has been underway for some time to develop the concept and method of operation that would be acceptable to all parties involved. Staff from the City of Hamilton has actively participated on the different committees and progress and recommendation reports have been provided previously to Council. Council has, in Report PW04117a, approved participation of the City in this project through the execution of the GTA Fare System Procurement Governance Agreement, conditional on specific cost information which is the subject of this report.

As part of the development of this project, and as previously reported to Council, a number of different fare system options to meet Hamilton’s needs had been investigated. The recommended option, approved by Council in Report PW04117a, is to implement new registering fare boxes in conjunction with implementation of the GTA Fare System. This option is recommended for several reasons:

- Replacement of the existing fare box system now is necessary to avoid the risk of widespread failure of the existing 20 year old equipment.
- The implementation of new registering fare boxes provides the highest level of functionality for transit customers, transit operators and security of revenues.
- The Province has agreed to provide 33.33% funding towards the capital costs of new registering fare boxes as well as the GTA Fare System.
- This option is expected to reduce future fare collection operating costs and improve revenue recovery.
- Proceeding with the recommended option will result in capital and operating cost avoidance to the City, when compared with the option of Hamilton simply replacing its current fare system with a like registering farebox only.
- This option fulfils the requirement for the City Of Hamilton to participate in the GTA Fare System Project as a condition of the gas tax funding agreement with the Province.
The Province is now prepared to award a vendor contract under the procurement Governance Agreement, and requires the consent of the governing bodies of the project partners to proceed.

**ANALYSIS/RATIONALE:**

In the previous report to Council, staff had reported that the implementation of new electronic registering fareboxes and the GTA Fare System as an integrated solution to replace the current fare system would yield a projected 10 year cost savings/mitigation. Work on farebox acquisition is underway, with expected installation in 2007. Given the increased cost to the GTA Fare System over the initial estimates, it may still be expected that the 10 year cost savings/mitigation for the City’s fare system, net of Provincial subsidy, will be in the order of $1.0 million, as illustrated in Table 2 below. This level of cost reduction still makes the fare system solution which includes the GTA Fare System a viable one at a business case level.

**TABLE 2: UPDATED ANTICIPATED 10 YEAR CAPITAL AND OPERATING COSTS**

<table>
<thead>
<tr>
<th></th>
<th>2005 Projected</th>
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<th>2006 Projected</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GTAFS</td>
<td>Farebox</td>
<td>10 Year</td>
<td>GTAFS</td>
</tr>
<tr>
<td></td>
<td>&amp; Farebox Only</td>
<td></td>
<td>Cost Benefit</td>
<td>&amp; Farebox Only</td>
</tr>
<tr>
<td>Total Capital Items</td>
<td>$ 6.05</td>
<td>$ 4.36</td>
<td></td>
<td>$ 8.17</td>
</tr>
<tr>
<td>Total Ramp Up</td>
<td>$ 0.63</td>
<td>$ 0.21</td>
<td></td>
<td>$ 1.43</td>
</tr>
<tr>
<td>PST</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td>$ 0.40</td>
</tr>
<tr>
<td>Total Capital Costs</td>
<td>$ 6.68</td>
<td>$ 4.57</td>
<td></td>
<td>$ 10.00</td>
</tr>
<tr>
<td>Provincial Funding</td>
<td>$(2.23)</td>
<td>$ -</td>
<td></td>
<td>$(3.24)</td>
</tr>
<tr>
<td>10 Year Operating</td>
<td>$ 9.15</td>
<td>$ 12.94</td>
<td>$ 3.91</td>
<td>$ 9.80</td>
</tr>
<tr>
<td>Total Capital &amp; Operating</td>
<td>$ 13.60</td>
<td>$ 17.51</td>
<td>$ 3.91</td>
<td>$ 16.56</td>
</tr>
</tbody>
</table>

The updated impact of the requirements to implement the GTA Fare System on the Gas Tax Reserve is illustrated in the table attached to this report as Attachment A. All costs are shown as net of Provincial subsidy. Analysis shows that some reordering of capital program priorities within the planned use of Gas Tax will be required in order that the reserve does not go into deficit in 2008.

**ALTERNATIVES FOR CONSIDERATION:**

Council could consider the alternative of not approving the recommendations of this report, and thus not approving participation in the GTA Fare System. The City would carry out a fare system replacement independent of other GTA municipalities and the Province, and procure a fare box system that emulates the current one, which is overdue for retirement.

The primary implications of such an alternative is the loss of gas tax funding from the Province, as participation in the GTA Fare System Project is a condition of the gas tax
funding agreement with the Province. Gas tax subsidy has a value to the community of some $12M annually, and funds a number of ongoing operational and one time capital commitments, as illustrated in the table attached to this report as Attachment A. Loss of the gas tax subsidy would have significant operational and financial impacts on the City.

A secondary implication of not approving the recommendations of this report is the loss of 1/3 capital subsidy from the Province specific to fare systems replacement, such subsidy only being available if municipal fare system replacement includes participation in the GTA Fare System. This special Provincial subsidy is estimated to have a value to the City of about $3.2M. The result of not receiving this subsidy would be an increase in the estimated 10 year capital and operating cost of fare system replacement in the order of $1.0M.

Staff do not recommend the alternative of not participating in the GTA Fare System Project.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial implications to the City are outlined within this Report under the Executive Summary and Analysis/Rationale sections hereto.

There are no permanent staffing implications of the implementation phase of the GTA Fare System Project. All incremental temporary staffing implications to carry out the project have been accounted for within the detailed work plan. The long term staffing implications of the GTA Fare System have yet to be determined, as there is not yet a clear understanding of the required staffing levels and detailed job descriptions that will result from the change in technology. These implications will be dealt with in a future report to Council once the detailed blueprint phase of the project is completed in or around 2007.

Legal Implications:

i) Purpose and Effect of the Relationship of the Parties reflected in the Operational Agreement: To carry out the purpose initially reported in PW04117a dealing with procurement for this project, the Province of Ontario has further undertaken to organize and assist the development of an agreement to carry out operational issues between the Province, the Greater Toronto Transit Authority (Go Transit), Mississauga, the HSR, York, Burlington, Brampton, Oakville and Durham (the parties). The Toronto Transit System is a possible later entrant to the operating agreement or other agreement to extend the system, and the Province has left open the possibility of expanding to more locations. The various municipalities and transit authorities are participating as parties to further their own similar goals and their need for fare systems. The combined efforts are intended to integrate, simplify and strengthen the public transit system for riders and participants. The Operating Agreement which this report deals with is a secondary step to carry out the GTA Fare Card project and to set out the rights and obligations between the parties. The draft agreement developed jointly by the parties is consistent with the earlier approved Procurement Agreement and its funding model. Note as well that a separate agreement, between the City of Hamilton and the Province will be required to ensure
continued Gas Tax Funding, and the Operating Agreement recommended in this report is a requirement for future provincial gas tax funding for the City.

ii) Elements of the Agreement: Generally a fixed form of agreement has been developed by the participants to date, including the HSR, and this jointly developed fixed form is the contract which Council is considering in this report (the “operating agreement”). Specific content of the operating agreement includes the following:

(a) Provincial Commitment for Funding: Consistent with the Procurement Agreement, the Provincial commitment is for funding of the central system with the vendor of fare card services, operation of the Project Office, the particular Ministry of Transportation needs in the central system, and the requirements of volume growth (as in when the system expands the number of riders), the annual audit, central branding and system marketing (other than local marketing costs which are the responsibility of individual municipalities and transit authorities). Municipalities and transit authorities would pay for their own operating costs, including central system services provided to them (i.e. the initial network set up, customer support supplied to them by the central system, and the cost of any enhancement specially created for them within the central system).

(b) Ministry as Agent for Participants/Ability of the Ministry to Appoint Successor: The Ministry of Transportation will have the authority to assign its responsibility under the operating agreement to other properly funded institutions to carry out its role, which allows for provincial delegation and re-organization of transit responsibility. The Ministry (or its successor) will also be the agent for the parties to the operating agreement. This will allow the Ministry to carry out the project and enter future agreements the parties behalf such as the one required with the eventual vendor of fare card services. The agreement with the vendor will have specified indemnities to protect the HSR and other parties. The operating agreement provides for an executive committee, with representatives of all parties including the HSR. This committee has the ability to exercise control over the agent, with substantial or unanimous support required for decisions. In order to carry out the transit and public purposes behind the agreement, additional parties (municipalities and transit authorities) may be added by the Ministry during the term, which will expand the geographical reach of the fare card project.

(c) Term: The proposed Operating Agreement is effective for 10 years from signature. The HSR’s schedule of implementation is part way through the initial term. The Operating Agreement contains a right of renewal of up to three three-year terms, requiring the majority of participants to agree to renew.

(d) Rights of Termination: The proposed operating agreement contains rights of termination for the Ministry and other participants on default, or without default on advance notice such as those decisions to terminate that might be based on funding (budget) decisions reserved by law and the agreement to the Ministry and Councils/Transit Boards. Notice periods without cause under the operating agreement are 120 days if before
Launch 3 Completion or 365 days if after. "Launch 3 Completion" occurs when both GO Transit is fully using the Fare card system and when there has been acceptance of the system by the Ministry as agent on behalf of Hamilton, Brampton and Durham. After giving notice of the intent to cancel the agreement and during the period of notice, the HSR would lose voting rights on the executive committee and be responsible for outstanding amounts due under the agreement and other specified costs until the notice becomes effective, as well as some closing out costs. Termination by the Ministry without appointment of a successor is likely to result in the system not being operated, but the equipment design would serve to allow a similar system to be operated solely by the HSR or with other municipalities. The parties would be responsible for certain closing costs on the project if the Ministry withdrew completely without appointing a successor, and the municipalities including the HSR must assist in limiting the amount of those costs. The Ministry may also be responsible for selling and distributing the proceeds of certain assets to municipalities if the project were wound up, based on the contributions to acquiring these assets and subject to accounting of amounts due between the parties under the proposed agreement. Certain rights and obligations also survive such terminations, including indemnities provided between the parties so that termination cannot be used to escape liabilities arising under the agreement.

(e) Appointees and Committee Structures: Under the proposed agreement the HSR will have appointees on a Steering Committee which committee has a management function, and on the Executive Committee which has the role of directing, monitoring, policy making and an approval role for the agent and elemental events or changes in the agreement. Each municipality and transit authority will have one such voting member on the Committee. These appointees, being recommended for appointment in recommendation (e) to this report, are being given delegated authority to assist the agent (Ministry) in carrying out their role in implementing the agreement. Each committee allows one vote for the Ministry and qualified users. The appointment of alternate members will help ensure attendance by and representation for the HSR. The decisions by the Executive Committee require a high level of support by the parties. Some decisions for the committees require all parties to approve, and some require only the parties present and voting to approve unanimously, with a few less important decisions requiring the support of 60% of members present and voting. Disputes between the parties to the proposed agreement, such as the failure of the Executive Committee to reach approval may involve dispute resolution steps provided in the agreement. The Ministry’s costs of dispute resolution are borne by the other parties, as are their own costs. Alternate dispute mechanisms (versus Court proceedings) are required and designed to ensure timely resolution, assist low cost resolutions, and to involve appointees and senior officials from the HSR and City and no interruption of operations. More formal mediation and arbitration procedures are provided for if required for resolve a dispute.
iii) Other Legal Implications:

(A) Council acts as the Board of Directors for the Hamilton Street Railway Company (“HSR”), and is approving the entering into of the agreement and related matters of documentation on behalf of the HSR. Certain other steps will involve City staff because of the sharing of staff for HSR operations, such as necessary confidentiality agreements as may be required during the procurement if City staff have access to confidential information, so there is authority for such matters in Recommendation (c).

(B) The approval of the operating agreement and consent to the awarding of a contract to the vendor removes rights to terminate the procurement agreement previously entered into by Council, so that the HSR would proceed to obtain necessary equipment for the GTA Fare Card system. Attempting to avoid procurement under the earlier agreement after this approval would result in cost consequences under that agreement as dealt with in Report PW04117aPW004117a.

iv) Future Steps:
The Gas Tax Funding Agreement has been finalized, with the City of Hamilton required to sign to ensure continued gas tax funds from the Province. Additional documents related to the GTA Fare System will be required, such as the project Funding Agreement and the Service Level Agreements with the Province and the vendor; and Recommendation (c) of this report is seeking Council authorization for specified staff of the City and HSR to execute documents on their behalf to carry out the implementation.

POLICIES AFFECTING PROPOSAL:
The recommendations contained within this Report are affected by the policies of the Province of Ontario, as set out in legislation governing gas tax, and the requirement for participation of municipalities within the GTA and Hamilton in the GTA Fare System.

The GTA Fare System Operational Agreement is a legally binding agreement between the City and the Province which commits the City to specified operating, governance and financial obligations with regard to the long term operation and maintenance of the system. Council retains all authority and accountability for local transit, transit fare policy and decision making, and retains control of budget changes through the annual budget cycle. The Operational Agreement has a defined length of 10 years with 3, three year renewal options tied to the Vendor contract, with a projected start date of July 2006 (or upon award of the Vendor contract).

RELEVANT CONSULTATION:
Staff from the City of Hamilton, including Finance & Corporate Services and Public Works, has been in discussion and negotiation with the Province and project partners from the GTA municipalities throughout the course of this project. This consultation has included work on agreements regarding project governance; procurement; funding; and operational commitment and logistics. This Report recommends the GTA Fare System Operational Agreement, which defines respective roles, rights, responsibilities and
relationships of the parties and the necessary mechanisms for the parties to work together at various levels, which has resulted from consultation with the above noted partners.

**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

The recommendations enhance community well-being through increased travel options and security related to the use of public Transit, and improved integration with Provincial goals regarding enhancement of public Transit as a means of dealing with urban growth and pressures on community road networks.

**Environmental Well-Being is enhanced.** ☑ Yes ☐ No

The recommendations enhance public Transit within the community and across the GTA, providing environmental benefits associated with increased Transit use and a decrease in the dependence on private automobiles.

**Economic Well-Being is enhanced.** ☑ Yes ☐ No

The recommendations enhance economic well-being through cost avoidance related to the distribution and collection of public Transit fares.

**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