SUBJECT: Canada Strategic Infrastructure Fund Agreement for Hamilton Harbour (PW09054) - (City Wide)

RECOMMENDATION:

(a) That the City of Hamilton enter into a Contribution Agreement with Her Majesty the Queen in Right of Canada to receive funding from the Government of Canada under the Canada Strategic Infrastructure Fund (CSIF) for the Hamilton Harbour Clean Up project;

(b) That the Mayor and City Clerk be authorized and directed to execute the agreement, with content acceptable to the Acting General Manager of Public Works and in a form satisfactory to the City Solicitor.

Gerry Davis, CMA
Acting General Manager
Public Works Department

EXECUTIVE SUMMARY:

Water quality issues in Hamilton Harbour impact the status and prosperity of the region and are being addressed through the Hamilton Harbour Remedial Action Plan (HHRAP). This stakeholder process includes the City of Hamilton and its commitment to support and participate in developing and implementing wastewater solutions for the betterment of local waterways. Large financial commitments have been made by the City through past improvements to its wastewater systems. Continued progress is required to meet expected goals. In support of City wastewater initiatives and the
HHRAP program, the Government of Canada has committed to contribute up to $35M under the Canada Strategic Infrastructure Fund (CSIF) for the Hamilton Harbour Clean Up project. Through this funding program the Government of Ontario will contribute up to an additional $15M and the City will finance the estimated remaining project costs of $41.6M.

This planned work has a total estimated cost of $91.6M and includes three major subprojects identified below:

1. **Dechlorination of Wastewater in Dundas - $3.4M estimate**
   In order to meet requirements under the Canadian Environmental Protection Act, 1999 (CEPA 99) for elimination of chlorine release to the environment this project will upgrade the Dundas wastewater treatment plant disinfection system. The current chlorination system will be replaced with a modern Ultraviolet disinfection system to control bacteria in wastewater effluent. Chlorine is detrimental to fish and other aquatic organisms and as a result this work will have beneficial impacts.

2. **Hamilton Combined Sewer Overflow (CSO) Control - $82.0M estimate**
   The completed Water and Wastewater Master Plan (2006) has concluded that future wastewater treatment in Hamilton will be expanded and centralized at the Woodward Avenue Wastewater Treatment Plant. In order to utilize the future full plant capacity, the Combined Sewer Overflow initiative will divert larger quantities of flow from the industrialized area of Hamilton to the treatment plant for processing. This will be done through implementation of new pumping strategies controlled by computerized Real Time Control systems. These improvements will significantly reduce sewer overflow from being released into Hamilton Harbour during heavy rains.

3. **Naturalization of Windermere Basin - $6.2M estimate**
   Historically the Windermere Basin has been used as an area that collects sediment travelling from the Red Hill Valley and out of the Woodward Wastewater Treatment Plant. Improvements to the Red Hill Valley and planned improvements to the Woodward Plant will reduce the amount of sediment in the system providing an opportunity to return the Windermere Basin to a more naturalized state. The project will channelize flow to the Windermere Arm where less frequent dredging activity will take place in a commercial setting, leaving room for vegetated floodplains in the remainder of the Basin. This project will add greenspace to the east end and complement new trail systems planned for the area.

**BACKGROUND:**

The recommendations contained within this Report have City Wide implications.

On October 24, 2005, the Governments of Canada and Ontario announced their intended partnership support for the proposed Hamilton Harbour Clean Up project in Hamilton. This Agreement included federal support of $35M and provincial support of $15M for wastewater treatment and collection system improvements. This work contributes significantly to efforts for the clean up of the Hamilton Harbour. Since that time, the province has deposited their contribution into City accounts, environmental assessment work has been undertaken, and the design process has started in preparation for construction activity. Federal money will be released separately based on a process controlled through the finalization of the program Contribution Agreement.
This document has been constructed through a process of cooperation between city and federal staff, to outline financial recovery requirements available for eligible expenses incurred between September 5, 2007 and March 31, 2013.

The funding for this project involves several components, including: 1) Disinfection system replacement at the Dundas wastewater treatment plant (WWTP); 2) Implementation of combined sewer overflow (CSO) control within the collection system to address the need for improved wet weather management; and 3) Naturalization of the Windermere Basin. The estimated total cost of these three components is $91.6M.

Upgrades to the Dundas Wastewater Treatment Plant (WWTP) will reduce residual effluent chlorine levels to meet federal requirements for the elimination of inorganic chloramines and chlorinated wastewater effluents which are specified as toxic substances under Schedule 1 of the Canadian Environmental Protection Act, 1999. The reduction of chlorine levels will be achieved by upgrading the disinfection processes at the Dundas WWTP with new Ultraviolet (UV) disinfection equipment. Upgrades to the combined collection system operating in the city will also be made to provide improved levels of CSO control. The strategy for achieving this will include conveying larger quantities of wastewater flow to the Woodward WWTP for centralized treatment. This will be achieved through new pumping facilities and implementation of Real Time Control Systems dedicated to optimizing flow management. The final component is the naturalization of Windermere Basin, the waterbody that receives wastewater effluent from the Woodward plant on its way to Hamilton Harbour. This work will effectively address sediment control issues while creating additional wildlife habitat. This project is designed to enhance the quality of life for visitors and residents in the City of Hamilton, and will contribute to public health improvements and protection of the environment. The positive results of this work will help in removing Hamilton Harbour from the Area of Concern list under the Canada-USA Great Lakes Water Quality Agreement.

The total estimated eligible costs of the project are estimated at $91.6M. The federal contribution to this project will be up to $35M. On March 30, 2006, the Ontario Government unconditionally advanced the City of Hamilton a $15M Ministry of Agriculture Food and Rural Affairs grant to use towards this initiative. The $15M currently resides in a City of Hamilton Capital Account No. 5169309324. The City of Hamilton will be contributing $41.6M under the Wastewater Investments Needs and Strategies program.

The finalized Contribution Agreement authorized by the City of Hamilton and the Federal Government of Canada specifies the obligations, requirements, and expectations of both parties and gives concrete expression to the federal contribution. The Agreement is attached as Appendix “A”.

**ANALYSIS/RATIONALE:**

N/A

**ALTERNATIVES FOR CONSIDERATION:**

N/A
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial Implications - There are no immediate financial implications resulting from the adoption of this report.

Staffing Implications - N/A

Legal Implications - There are no immediate legal implications resulting from the adoption of this Report. Legal Services will draft and review the necessary documents to assist in the delivery of the infrastructure funding grant.

POLICIES AFFECTING PROPOSAL:

The Public Works Strategy Plan, Innovate Now -

The recommendations from this Report will assist in meeting Public Works’ key goal, to be recognized as the centre of environmental and innovative excellence in Canada. In addition, implementing the recommendations will also assist Public Works in building on our Strategic Vision Drivers as follows:

- **Communities (Services our communities connect with and trust)** -
  Government grant funding will provide support for needed upgrades to Hamilton wastewater systems. This work will address identified environmental impacts that require mitigation efforts in order to reduce the release of chlorine, combined sewer overflows and improve the condition of Windermere Basin. All three of these initiatives will generate long-term benefits for the local and regional community.

- **People (Skilled teams ready for any situation)** -
  The works supported by this grant funding opportunity demonstrate the ability of our City staff to responsibly plan and respond to important and complex issues that affect our community. Implementing proposed wastewater improvements requires the knowledge and skill of many staff that work with the system on a daily basis. The works identified under the funding agreement are identified through a number of planning and design processes that have taken place, not the least of which includes the Water and Wastewater Master Plan. The proposed solution represents forward thinking to address current issues. Projects such as this have the ability to contribute to the positive image that Hamilton seeks to maintain and will promote a sense of pride among staff.

- **Process (Smart processes to match our needs)** -
  A careful planning process has been at the core of each implementation project making up the schedule of works under the government funding program. Plans have been formulated to ensure that aspects of the Triple Bottom Line approach to problem solving are considered. Social, Environmental, and Economic impacts were all considered in order to provide a balanced approach to the preferred alternative. A detailed evaluation process was employed in order to effectively arrive at the optimal solution which meets Hamilton-specific goals and objectives. The result is an approach that will effectively utilize grant funding to address legislated requirements and environmental protection.

- **Finances (Sound finance management for the long haul)** -
  The Canada Strategic Infrastructure Funding opportunity evidenced by the signed Contribution Agreement offset a portion of financial pressures in the City of Hamilton's
Water and Wastewater budget. As a result of legislative and environmental issues affecting Hamilton Harbour, the work identified under this funding agreement is necessary to be completed. Partnering with the senior levels of government provides a positive economic impact to the City of Hamilton.

**RELEVANT CONSULTATION:**
Staff from the Finance and Administration Section and Legal Services Division were consulted for input on the recommendations contained in this Report.

**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
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.
The public are involved in the definition and development of local solutions.
Partnerships are promoted to benefit the City of Hamilton.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected.
Air quality and water quality and quantity are protected.
Ecological function and the natural heritage system are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☐ Yes ☑ No
This Contribution Agreement made as of [month, day, year]:

BETWEEN:
HER MAJESTY THE QUEEN IN RIGHT OF CANADA, ("Canada")
represented by the Minister of Transport, Infrastructure and Communities

AND

CITY OF HAMILTON, (the “City”) represented by the Mayor and City Clerk of the City of Hamilton.

SUMMARY INFORMATION ON THE AGREEMENT AND PROJECT

This is an Agreement between the Government of Canada and the City of Hamilton for a federal contribution of up to $35 million for wastewater treatment and collection system improvements. This work contributes significantly to efforts for the clean-up of the Hamilton Harbour. The funding for this project involves several components, including: 1) Disinfection system replacement at the Dundas wastewater treatment plant; 2) Implementation of combined sewer overflow control within the collection system to address the need for improved wet weather management; and 3) Naturalization of the Windermere basin. The estimated total cost of these three components is $91.6 million.

Upgrades to the Dundas wastewater treatment plant will reduce residual effluent chlorine levels to meet Federal requirements for the elimination of inorganic chloramines and chlorinated wastewater effluents which are specified as toxic substances under Schedule 1 of the Canadian Environmental Protection Act. The reduction of chlorine levels will be achieved by upgrading the disinfection processes at the Dundas wastewater treatment plant with new ultraviolet disinfection equipment. Upgrades to the combined collection system operating in the City will also be made to provide improved levels of combined sewer overflow control. The strategy for achieving this will include conveying larger quantities of wastewater flow to the Woodward wastewater treatment plant for centralized treatment. This will be achieved through new pumping facilities and implementation of Real Time Control Systems dedicated to optimizing flow management. The final component is the naturalization of Windermere Basin, the waterbody that receives wastewater effluent from the Woodward plant on its way to Hamilton Harbour. This work will effectively address sediment control issues while creating additional wildlife habitat. This project is designed to enhance the quality of life for visitors and residents in the City of Hamilton, and will contribute to public health improvements and protection of the environment. The positive results of this work will help in removing Hamilton Harbour from the Area of Concern list under the Canada – USA Great Lakes Water Quality Agreement.

The total eligible costs of the project are estimated at $91.6 million. The federal contribution to this project will be up to $35 million. On March 30, 2006, the Ontario Government unconditionally advanced the City of Hamilton a $15 million Ministry of Agriculture Food and Rural Affairs grant to use towards this initiative. The $15 million currently resides in a City of Hamilton Reserve Fund. The City of Hamilton will be contributing $41.6 million, under the Wastewater Investments Needs and Strategies program.

This Agreement specifies the obligations, requirements and expectations of both the Government of Canada and the City of Hamilton and gives concrete expression to the federal contribution.
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BACKGROUND TO THE AGREEMENT

WHEREAS the Parties recognize that investments in public infrastructure are fundamental to the quality of life of Canadians and necessary to ensure continued economic growth;

AND WHEREAS the Government of Canada allocated $3 billion for infrastructure investments in its 2003 Budget, of which $2 billion was allocated to the Canada Strategic Infrastructure Fund for large-scale strategic infrastructure Projects that emphasize collaboration with municipal, provincial, territorial governments, as well as the private sector;

AND WHEREAS the City agrees to carry out the Project and the Government of Canada wishes to support the Project and its objectives.

NOW THEREFORE, in accordance with the principles set out above and the mutual covenants and Agreements herein, Canada and the City hereby agree as follows:

1. INTERPRETATION

1.1 DEFINITIONS

In addition to the terms defined in the recitals and elsewhere in this Agreement, for the purposes of this Agreement, the Parties agree to the following definitions:

“Agreement” or “Contribution Agreement” means this Contribution Agreement and all Schedules, as may be amended from time to time.

“Approval” means the approval of the Project under the Canadian Environmental Assessment Act.

“Canada” means Her Majesty the Queen in Right of Canada.

“City” means the City of Hamilton.

“City Co-chair” means the Co-chair appointed by the City pursuant to Section 5.1.

“Committee” means the Management Committee established under Section 5.1.

“Contract” means an Agreement with a Third Party whereby the latter agrees to supply a product or service to the Project in return for financial consideration.

“Eligible Costs” means costs of the Project eligible for funding by Canada under the terms of Schedule A to this Agreement.

“Federal Co-chair” means the Co-chair appointed by Canada pursuant to Section 5.2.

“Federal Minister” means the Minister of Transport, Infrastructure and Communities.

“Final Claim” means the request for final payment submitted by the City in accordance with Sections 7.3 and 7.4.

“Final Deficiency List” means the list of final corrective measures related to the completion of the Project Components that has been prepared by the City and certified by an accredited engineer in the appropriate field of study or by a licensed structural architect.

“Fiscal Year” means the period beginning April 1 of a year and ending March 31 of the following year.
“Party” means Canada or the City, as the case may be.

“Parties” means Canada and the City.

“Program” means the Canada Strategic Infrastructure Fund.

“Project” means the Infrastructure Project described in Section 2.2, and Schedule B, which is the subject of this Agreement.

“Project Completion Certificate” means the certificate, in the form scheduled to this Agreement, delivered by the City confirming that the Project has been completed in compliance with all the provisions of this Agreement.

“Project Completion Date” means the date on which the Committee approves the Project Completion Certificate and receives an attestation from the City confirming that all deficiencies from the Final Deficiency List have been remedied to the satisfaction to the City.

“Project Component” means a component of the Project as described and enumerated in Schedule B.

“Project Implementation” means stages of the Project directly related to the completion of the Project and includes, but is not limited to, environmental assessment and monitoring, design, planning, engineering, construction, testing and evaluation. Project Implementation does not include, among other things, the subsequent operation, maintenance, repair, rehabilitation, or reconstruction of the Project.

“Project Start Date” means the date of the announcement by the Federal Minister confirming Canada’s contribution to the City, which is September 5, 2007.

“Third Party” means any legal entity, other than a Party, who participates in the implementation of the Project.

1.2 ENTIRE AGREEMENT

This Agreement is made under the Canada Strategic Infrastructure Fund Act and comprises the entire Agreement between the Parties. No prior document, negotiation, provision, undertaking or Agreement in relation to the subject of the Agreement has legal effect, nor does the “Summary Information on the Agreement and Project” Box on the front page of this Agreement.

1.3 DURATION OF AGREEMENT

This Agreement will be effective as of the date it is signed by Canada and shall terminate the earlier of eighteen months after the Project Completion Date and March 31, 2013.

1.4 SURVIVAL

Despite Section 1.3, the Parties’ rights and obligations under Sections 8 (Dispute Resolution) and 12 (General), and Subsections 3.3 (Disclosure of Other Funding and Adjustments), 7.6 (Final Adjustments), 9.2 (Record Keeping), 9.4 (Compliance Audits), 9.9 (Evaluation) and 11.2 (Indemnification), and any other Section which is required to give effect to the termination or to its consequences will survive the expiry or early termination of this Agreement.

1.5 SCHEDULES

The following schedules are attached to, and form part of, this Agreement:
a) Schedule A – Eligible and Ineligible Costs;
b) Schedule B – Detailed Description of the Project and Canada’s and the City Funding Commitment;
c) Schedule C – Communication Protocol;
d) Schedule D – Project Completion Certificate; and
e) Schedule E – Project Completion Report Summary Form.

1.6 PRECEDENCE

In the event or to the extent of a conflict or inconsistency, the part of this Agreement that precedes the signatures of the Parties will take precedence over the Schedules.

1.7 ACCOUNTING AND FINANCIAL TERMS

All accounting terms not otherwise defined herein have the meanings assigned to them. All calculations will be made and all financial data to be submitted will be prepared, in accordance with the Generally Accepted Accounting Principles in effect in Canada. These will include, without limitation, those principles and standards approved or recommended from time to time by the Canadian Institute of Chartered Accountants or the Public Sector Accounting Board, as applicable, or any successor institute, applied on a consistent basis.

1.8 HEADINGS NOT TO BE USED FOR INTERPRETATION

The headings used in this Agreement are inserted for convenience of reference only and shall not affect its interpretation.

2. PURPOSE

2.1 PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to provide a common framework for the implementation of the Project, which is made possible by Canada’s contribution under the Program together with the City’s contribution, as set out in Section 3.

2.2 DESCRIPTION OF PROJECT

The Project will implement wastewater disinfection upgrades to the Dundas wastewater treatment facility in Hamilton. In addition, the Project will implement wastewater collection system control strategies to reduce combined sewer overflows, thereby reducing and strategically controlling the release of combined sewer overflows into Hamilton Harbour during wet weather events. This will be done through implementation of new pumping facilities and Real Time Control infrastructure. Finally, the Project will also naturalize the City of Hamilton’s Windermere Basin; wetland construction is intended to create aquatic habitat, and contribute to a key feature for the development of green space for an eastern gateway to Hamilton. The development of a wetland supports a number of Remedial Action Plan goals for Hamilton Harbour.

The City of Hamilton, through its Water and Wastewater Division, currently provides municipal water and wastewater service to approximately 400,000 residents. Total population for the city is projected to rise from 500,000 to approximately 660,000 by 2031. This Project will improve capture and control of wastewater in the collection
system, remove chlorine residuals historically associated with disinfected effluent, and improve environmental conditions in the Windermere Basin, to benefit local fish, wildlife and human populations. The implementation of this Project will be a big step towards removing Hamilton from the list of 42 areas of concern in Canada and the U.S.A. identified by the International joint Commission.

Canada and the City of Hamilton have agreed to jointly fund this Project which specifically consists of the following Projects:

1. Disinfection system replacement at the Dundas wastewater treatment plant incorporating ultraviolet technology;
2. Implementation of combined sewer overflow control facilities and Real Time Control systems to reduce system overflows during storm events; and

Canada, subject to the terms of this Agreement, will contribute up to $35 million. Total eligible costs for disinfection upgrades, combined sewer overflow control, Real Time Control, and Windermere naturalization are estimated at $91.6 million. The Project is expected to be substantially completed by September 2012. Canada’s funding to the Project will be provided over four Fiscal Years starting in 2009.

This Agreement relates solely to the funding of the Project components listed in Schedule B and excludes proposed Projects not listed in that Schedule at the time of signing of this Agreement.

3. OBLIGATION OF THE PARTIES

3.1 CONTRIBUTION BY CANADA

a) Canada agrees, subject to the Terms and Conditions of this Agreement, including Schedule B, to pay a contribution to the City of no more than fifty percent of the total Eligible Costs of the Project, during the Fiscal Years 2008-2009 to 2012-2013, but only to a maximum of $35,000,000, and only in accordance with the Fiscal Year breakdown in Schedule B. The City agrees that the contribution provided by Canada is to be used for the purposes described in Section 2.2 and Schedule B.

b) The Parties acknowledge that Canada’s role in the Project is limited to making a financial contribution to the Project and that Canada will have no involvement in the subsequent operation of the Project. Canada is neither a decision maker nor an advisor to the Project.

3.2 COMMITMENTS BY THE CITY

The City agrees to be responsible for the complete, diligent and timely Project Implementation, within the costs and deadlines specified in this Agreement and for greater certainty those costs and deadlines specified in Schedule B and in accordance with all other Terms and Conditions of this Agreement, and for all overruns and costs thereof.

3.3 DISCLOSURE OF OTHER FUNDING AND ADJUSTMENTS

The City agrees to inform Canada promptly of all financial assistance received for the Project. If the federal government’s total financial assistance toward the Project exceeds 50 percent of total Eligible Costs, or if the total financial assistance received or due in
respect of the Eligible Costs exceeds 100 percent thereof, Canada may recover the excess from the City or reduce its contribution by an amount equal to the excess.

3.4 **APPROPRIATIONS**

A payment due by Canada under this Agreement is conditional on a legislated appropriation for the Fiscal Year in which the payment is due. Canada shall exercise and make its best efforts to cause its legislature to enact the appropriation legislation required to carry out this Agreement.

3.5 **FISCAL YEAR BUDGETING**

Subject to the conditions in this Agreement, Canada agrees to commit funds for the Project for a Fiscal Year in accordance with the table of estimated contributions in Schedule B. If, in a Fiscal Year, an amount lesser than the estimated contribution is paid or payable by Canada, Canada will, subject to Section 3.4, make best efforts to re-allocate the difference to a subsequent Fiscal Year.

3.6 **INCREASE IN PROJECT COSTS**

If, at any time during the life of this Agreement, the City determines that it will not be possible to complete construction of the Project unless it expends amounts in excess of the costing identified in Schedule B of this Agreement, the City will immediately notify Canada of that determination. If the City so notifies, it will, within thirty days of a request from Canada, provide a summary of the measures that it proposes to remedy the shortfall. If Canada is not satisfied that the measures proposed will be adequate to remedy the shortfall, then Canada may suspend its funding obligations until such time as measures are proposed that, in Canada’s opinion, will be adequate to remedy the shortfall, whereupon its funding obligation will be reinstated.

3.7 **NO ACTIONS OR PROCEEDINGS**

The City confirms that it is not subject to an obligation or prohibition, nor is there an action or legal proceeding or threat of action or proceeding, that could or might interfere with its performance of this Agreement, and agrees to inform Canada immediately if any such action or proceedings are brought during the term of this Agreement.

4. **COMPLIANCE WITH ENVIRONMENTAL LEGISLATION AND ABORIGINAL CONSULTATION**

4.1 **CONDITIONAL COMMITMENT**

All of Canada’s commitments under this Agreement are conditional on compliance by both Parties with the provisions of all applicable environmental legislation and with the implementation and adherence to the mitigation, monitoring and follow up measures set out in the Approval and any amendment thereto or other approval under *Canadian Environmental Assessment Act* that may be required in future.

The City of Hamilton is in the process of complying with Provincial and Federal environmental assessment legislation where it is applicable to the component works that make up the Hamilton Harbour Cleanup Funding project. The provincial environmental assessment process has been completed. Continued cooperation between the City of Hamilton, Infrastructure Canada and the Canadian Environmental Assessment Agency is addressing Federal environmental legislation requirements.
a) Despite any other provision of this Agreement, no funds will become payable by Canada unless and until an environmental assessment of the Project has been conducted in accordance with the *Canadian Environmental Assessment Act* and Canada has determined that, taking into account the implementation of any appropriate mitigation measures, the Project is unlikely to cause significant adverse environmental effects; and

b) All of Canada’s commitments under this Agreement are conditional on compliance by both Parties with the provisions of all applicable environmental legislation including, without limitation, the implementation and adherence to such mitigation, monitoring and follow up measures in respect of the Project that may be required from time to time by Canada.

### 4.2 ACCESS

The City will provide Canada with reasonable access to any Project site for the purposes of inspection and of ensuring that the terms and conditions of any environmental approval are met, and that any mitigation, monitoring or follow-up measure required has been carried out.

### 4.3 ABORIGINAL CONSULTATION

The City acknowledges that Canada’s contribution is conditional upon Canada satisfying any obligation that it may have to consult with, and where appropriate, to accommodate Aboriginal groups.

### 5. MANAGEMENT COMMITTEE

#### 5.1 ESTABLISHMENT

Within sixty days of the signing of this Agreement, Canada and the City agree to establish a Management Committee to administer and manage this Agreement. Each Party will appoint two members to the Committee, drawn from among its senior officials, and will notify the other of the appointments within the sixty day period. The Committee will exist until its activities, including the audits, reports and final adjustments, have been completed.

#### 5.2 CO-CHAIRS

The Committee will be headed by two Co-chairs chosen from its members, one appointed by Canada, the Federal Co-chair, and one appointed by the City, the City Co-chair. If a Co-chair is absent or otherwise unable to act, the other federal member or the other City member, as the case may be, will replace her or him.

#### 5.3 MEETINGS

Within thirty days of its initial meeting, the Committee will adopt written rules and procedures with respect to its meetings and those of its sub-committees, including rules for the conduct of meetings and the making of decisions.

#### 5.4 MANDATE

The Committee will:
a) Review the procedures described in Section 6.1, and ensure that the principles in Section 6.2 are respected;

b) Monitor the progress of the Project;

c) Review and adjust the information in Schedule B as required, subject to Sections 3 and 5.5;

d) Establish sub-committees, as needed, for carrying out this Agreement;

e) Attend to any other function required by this Agreement or mutually directed by either Canada or the City; and

f) Review and approve the Project Completion Certificate, audits, annual reports and any other deliverables outlined in this Agreement.

5.5 **CHANGES DURING THE LIFE OF THE PROJECT**

a) In this Section, “significant change” includes, in respect of the Project:
   
i. any material change to its location, scope or timing;
   
ii. any change that may require a further environmental assessment decision;
   
iii. an increase to the total Eligible Costs of a Project Component, which, when added to any previous increase, would be greater than twenty percent of the total cost as set out in Schedule B for that Project Component; and
   
iv. an increase to the total Eligible Costs of the Project, which, when added to any previous increase, is greater than twenty percent of the total costs of the Project, as set out in Schedule B.

b) A request for a change to the Project will be reviewed by the Committee, or
   
i. in the case of a request for a significant change, the Committee will recommend to Federal Minister whether to approve it or not; and
   
ii. if the change is not significant, the Committee may approve or reject it.

5.6 **RECOMMENDATIONS AND DECISIONS**

Decisions and recommendations of the Committee must be unanimous and recorded in writing. Any adjustment required to Schedule B must be recommended by the Committee and requested in writing to Infrastructure Canada.

5.7 **ROLE OF PARTIES**

The Parties agree to:

a) Establish a fixed location where this Agreement will be managed for its duration and maintain that location until the Committee’s activities have concluded and, if a relocation is required, establish a new location;

b) Retain at the location, and make available to the Parties, all documents relevant to this Agreement and the work of the Committee;

c) Prepare the documentation needed for the proper administration of this Agreement, including payment claim forms, approval documents, agendas and minutes of
meetings of the Committee and its subcommittees, contracts of service, etc.;

d) Ensure that any audit required under this Agreement is carried out and the results are reported to Canada;

e) Ensure that administrative and financial systems are developed and implemented for the Project; and

f) Inform the Federal Co-chair promptly of any proposed change to any term of the Agreement.

6. CONTRACT PROCEDURES

6.1 AWARDING OF CONTRACTS

The City will ensure that all contracts are awarded and managed in accordance with relevant policies and procedures, copies of which will be provided to the Committee. Notwithstanding the foregoing, the City agrees that Contracts will be awarded in a way that is:

a) Transparent and consistent with value for money principles; and

b) In accordance with the Agreement on Internal Trade.

Canada may require that a Contract be re-tendered if, in Canada’s opinion, a Contract was not awarded in compliance with the foregoing.

6.2 CONTRACT PROVISIONS

The City will ensure that all Contracts are consistent with, and incorporate, the relevant provisions of this Agreement. More specifically, but without limiting the generality of the foregoing, the City agrees to include in the Contracts, provisions to ensure that:

a) Proper and accurate accounts and records are maintained and that the City has the contractual right to audit them;

b) All applicable labour, environmental and human rights legislation is respected, including the Occupational Health and Safety Act and Regulations; and

c) Canada and the Auditor General of Canada will at all times be permitted to inspect the terms of the Contract and any records and accounts respecting the Project and will have free access to the Project sites and to any documentation relevant for the purpose of audit and that a representative of Canada may, if necessary, actually conduct such audit.

7. CLAIMS AND PAYMENTS

7.1 PAYMENT CONDITIONS

Canada will not be required to make any payment after June 30 of a Fiscal Year, other than the first Fiscal Year in which claims are submitted, until it has received and approved the annual report and audits required under this Agreement for the previous Fiscal Year. Canada will, within thirty days of receipt, approve the report or audits, or notify the City of any deficiency.

7.2 CLAIM PROCEDURES
Claims will be submitted to Canada no more than every three months by the City in a form acceptable to Canada, certified by the City, and must include the following:

a) Signature of the City’s Co-chair as to accuracy of the information submitted in support of the claim;

b) Break down of expenses claimed, by Project Component listed in Schedule B;

c) For each expense, the invoice/contract vendor name and number, the period the expense was incurred, the date paid, and the category of eligible costs in Schedule A to which each expense corresponds;

d) Identification of any deferred payment amounts; and

e) Confirmation from the City, in the form of a progress report(s) to the Committee, that the work covered by the claim has been carried out in compliance with the applicable Terms and Conditions of any environmental permits and approvals.

7.3 **TIME LIMITS FOR FINAL CLAIM**

The City agrees that it will not submit the Final Claim for payment any later than the date which is the earlier of:

a) Twelve months after the Project has been substantially completed; and

b) March 31, 2013.

Canada will have no obligation to pay the Final Claim submitted after this date.

7.4 **FINAL CLAIM**

The Final Claim must be accompanied by the Project Completion Certificate and a copy of the attestation confirming that the items listed in the Final Deficiency List have been remedied.

7.5 **HOLDBACK**

Canada may release to the City up to ninety percent of its contribution, under this Agreement. The remaining ten percent of Canada’s contribution (the “Holdback”) will be released when:

a) The City has fulfilled its obligations under this Agreement including, but not limited to those under Sections 9.7 and 9.8;

b) The Committee has approved the reports delivered pursuant to Sections 9.7 and 9.8; and

c) The final adjustments under Section 7.6 have been carried out.

7.6 **FINAL ADJUSTMENTS**

After the City has submitted the Project Completion Report described in Section 9.7, the Parties will jointly carry out a final reconciliation of all claims and payments in respect of the Project and make any adjustments required in the circumstances. Canada shall deduct any amounts owing to it from the Holdback after which the balance of the Holdback, if any, shall be released.
8. **DISPUTE RESOLUTION**

8.1 **DISPUTE RESOLUTION**

The Parties agree to keep each other informed of any matter that could be contentious by exchanging information within the Committee, and agree to attempt to resolve potential disputes within the Committee.

8.2 **REFERRAL**

If an issue contemplated by Section 8.1 arises, the Federal Co-chair and the City Co-chair shall examine it together as soon as possible and in any event within ten business days within receipt of notice of such contentious matter. Where the Co-chairs cannot agree on a resolution, the matter will be referred to the Federal Minister and the Mayor of Hamilton for resolution. A decision will be provided within sixty days. Any payments related to the issue in dispute will be suspended, together with the obligations related to such issue, pending resolution.

8.3 **WAIVER**

A Party may waive any of its rights under this Agreement only in writing, and any tolerance or indulgence demonstrated by that Party will not constitute a waiver. Unless a waiver is executed in writing, a Party will be entitled to seek any remedy that it may have under this Agreement or otherwise at law.

8.4 **EVENTS OF DEFAULT**

Canada may, subject to the matter having first been submitted to the Committee and the Federal Minister and the Mayor of Hamilton, as set out above, declare that an event of default has occurred if, in the opinion of Canada, the City has:

a) Not completed the Project on the Terms and Conditions herein;

b) Submitted false or misleading information to Canada, or made a false or misleading representation, except for an error in good faith, demonstration of which is incumbent on the City to Canada’s satisfaction;

c) Not complied with any condition, undertaking or material term in the Agreement; or

d) Neglected or failed to pay to Canada any amount due in accordance with the Agreement.

Canada will not declare that an event of default has occurred unless it has given notice to the City of the condition or event which in Canada’s opinion constitutes an event of default and the City has failed, within thirty days of receipt of the notice, either to correct the condition or event complained of or to demonstrate, to the satisfaction of Canada, that it has taken such steps as are necessary to correct the condition, and has notified Canada of the rectification.

8.5 **REMEDIES**

a) If Canada declares, under Section 8.4 that an event of default has occurred, Canada, as appropriate, may immediately exercise one or more of the following remedies:

i. suspend its obligation to contribute or continue to contribute to the Eligible Costs including any obligation to pay any amount owing prior to the date of such
suspension;

ii. terminate any obligation to contribute or continue to contribute to the Eligible Costs, including any obligation to pay any amount owing prior to the date of such termination; and

iii. require upon demand that the City repay Canada, as appropriate, all or part of their contributions, together with interest from the date of demand as set out in Section 12.4.

b) The City acknowledges that in the event of default of any of the provisions of this Agreement, it is fair and reasonable that Canada be entitled to exercise the remedies set out in this Agreement and to do so in the manner provided for in this Agreement.

9. PROJECT INFORMATION AND AUDITS

9.1 SHARED INFORMATION MANAGEMENT SYSTEM FOR INFRASTRUCTURE

The City will meet the requirements of the Government of Canada’s Shared Information Management System for Infrastructure.

9.2 RECORD KEEPING

The City will ensure that proper and accurate accounts and records, including, but not limited to, contracts, invoices, statements, receipts and vouchers, in respect of the Project, are kept for at least six years after its completion and will, upon reasonable notice, make them available to a representative of Canada for inspection and audit.

9.3 FINANCIAL AUDIT FOR EACH FISCAL YEAR OF THE PROJECT

For each Fiscal Year of the Project, the City will cause a financial audit to be carried out by accredited, independent auditors, in accordance with applicable accounting and auditing standards, and will:

a) By June 30 of the following Fiscal Year, submit to Canada a report of the audit, which will include:

i. assurance that Project and financial information is complete, accurate and timely, in compliance with the Terms and Conditions of this Agreement;

ii. an assessment of the efficiency and effectiveness of financial controls and mechanisms;

iii. recommendations by the City for improvement or redress and timelines to address the recommendations; and

iv. an action plan to address the recommendations;

b) By August 31 of the following Fiscal Year, provide a report on follow-up actions taken to address the recommendations; and

c) Before December 31 of each Fiscal Year of the Project, the City of Hamilton will provide a Project Audit Plan that it will carry out in the next Fiscal Year, which will include:
i. the audit objectives to be achieved for the audit cycle in question;

ii. the audit methodology;

iii. the level of resources (financial and human) to be allocated to provide assurance in the soundness of the management accountability framework;

iv. clear understanding with respect to access to working papers by Canada and the City; and

v. time frames for audits and public access to audit reports.

9.4 COMPLIANCE AUDITS

Twice during the life of the Project, the first by June 30, 2010, and the second being the Final Compliance Audit detailed in Section 9.8, the City will prepare a compliance audit to be carried out by accredited, independent auditors, in accordance with applicable accounting and auditing standards. This audit will include an objective and independent assurance of compliance with the Terms and Conditions of this Agreement with the following key objectives:

a) Determine whether funds were expended for the purposes intended and that claims are for costs incurred and paid in full, and with due regard to economy, efficiency and effectiveness;

b) Assess the efficiency and effectiveness of management, administration and financial and non-financial controls and mechanisms;

c) Determine compliance with this Agreement;

d) Ensure that Project and financial information are complete, accurate and timely, in accordance with the Terms and Conditions of the Agreement;

e) Ensure that information and monitoring processes and systems are sufficient for the identification, capture, validation and monitoring of achievement of intended benefits;

f) Assess the overall management and administration of the Project.

The City will supplement this audit and will:

a) Ensure diligent communication of audit findings and plan of action to address issues for improvement or redress; and

b) Ensure that procedures and appropriate accountability for prompt and timely corrective action is taken on audit findings.

9.5 OTHER AUDITS

Canada may, at its expense, audit all accounts, records and claims for reimbursement relating to the Project and may undertake reviews of the City’s administrative, financial and claim certification processes and the City agrees to give Canada access to all records and sites, as Canada may require, to carry out the audits.

9.6 ANNUAL REPORT

For each Fiscal Year of the Project, the City will prepare and submit to Canada, by June 30 of the following Fiscal Year, a report, which will include the following information:
a) Overall progress to date:
   i. a summary of progress, by Project Component;
   ii. a description of any changes to the Project or to Schedule B; and
   iii. if appropriate, an explanation of why the Project is not on schedule and a
description of catch-up measures planned or undertaken; and estimate of
progress for the next Fiscal Year.

b) Environmental Issues:
   i. an overview of both expected and unanticipated environmental issues including
proposed mitigation strategies; and
   ii. a discussion of any concerns by the public.

c) Benefits:
   i. a description of any benefits derived from the Project during the Fiscal Year.

d) Budget:
   i. a summary of the planned and actual expenditures for the Fiscal Year per Project
Component;
   ii. an explanation of any variations from the “Estimated contribution to Eligible Costs
per Party” table in Schedule B, along with any necessary remedial measures; and
   iii. a copy of the latest audit report prepared under Section 9.3 (a).

e) Risk Management:
   i. a description of any risk as to the scope, schedule, budget, quality, objectives or
public perception of the Project;
   ii. an explanation of any risk mitigation or monitoring measures identified prior to the
implementation of the Project; and
   iii. a description of any new risk identified and the plans to mitigate it.

f) Communications:
   i. a summary of communication activities related to the Project.

g) Appendices:
   i. APPENDIX A: Project maps/photos;
   ii. APPENDIX B: News releases or other communication documents;
   iii. APPENDIX C: Agenda and minutes of Management Committee meetings; and
   iv. APPENDIX D: Site visit reports.

9.7 PROJECT COMPLETION REPORT

Before the earlier of (i) March 31, 2013 and (ii) twelve months after the Project
Completion Date, the City agrees to present to Canada a Project completion report
setting out:

a) The amounts and the sources of all Project funding;
b) All costs of the Project;

c) All Eligible Costs incurred for the Project;

d) All outstanding financial items, including any amount that may have been claimed by the City for ineligible expenditures;

e) Any Eligible Costs incurred but not paid at the time;

f) Confirmation that the terms and conditions of the environmental Approval have been implemented;

g) Attestation by the City that all elements of the Project were completed;

h) An explanation of any variances from any estimate provided during the application process;

i) Outputs and benefits achieved compared to those planned, including any unexpected benefits;

j) Any issues raised in the final audit report and related adjustments, if necessary;

k) The Project sustainability plan;

l) A final result statement; and

m) The Project Completion Report Summary Form, in the form scheduled to this Agreement.

9.8 FINAL COMPLIANCE AUDIT

Before the earlier of (i) March 31, 2013 and (ii) twelve months after the Project Completion Date, the City agrees to present to Canada a final compliance audit confirming that:

a) The Project has respected all the terms and conditions of this Agreement;

b) All claims were for Eligible Costs; and

c) All payments to Third Parties have been made with due diligence.

9.9 EVALUATION

Canada may at any reasonable time, and as many times as it requires, at its expense, evaluate the Project and the City agrees to cooperate and give Canada access to all records and sites, as Canada may require, to carry out the evaluation.

Canada will conduct formative and summative evaluations of the Program and each Party agrees to provide all information necessary to carry out the evaluations and to cooperate in the successful conclusion of the Program.

10. COMMUNICATIONS

The Parties agree to follow and comply with Schedule C.

11. REPRESENTATIONS AND INDEMNITY

11.1 BINDING OBLIGATIONS

Each Party declares to the other that the signing and execution of this Agreement was duly and validly authorized, and that each has incurred a legal and valid obligation that is
11.2 INDEMNIFICATION

The City agrees at all times to indemnify and save harmless Canada, its officers, servants, employees or agents, from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

a) The Project;

b) The performance of this Agreement or the breach of any term or condition of this Agreement by the City, its officers, employees and agents, or by a Third Party, its officers, employees, or agents;

c) The design, construction, operation, maintenance and repair of any part of the Project; and

d) Any omission or other willful or negligent act of the City or a Third Party and their respective employees, officers, or agents, except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the act or negligence of an officer, employee, or agent of Canada in the performance of his or her duties.

11.3 CITY’S REPRESENTATIONS AND WARRANTIES

The City represents and warrants to the Federal Minister that:

a) The City is in good standing under the laws of the jurisdiction in which it is required to be registered;

b) The City has the requisite power (corporate and other) to own its assets and to carry on the activities as contemplated by the Agreement;

c) The execution and delivery of this Agreement by the City, and the carrying out by it of all of the activities as contemplated hereby by the City, have been duly authorized by all requisite corporate action;

d) The City has full power to execute and deliver this Agreement and to perform its obligations hereunder;

e) This Agreement constitutes a legally binding obligation of the City, enforceable against it in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization and other laws affecting generally the enforcement of the rights of creditors and subject to a court’s discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies; the execution and delivery of this Agreement and the performance by the City of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:

i. violate the provisions of the City’s by-laws, any other corporate governance document subscribed to by the City or any resolution of the City;

ii. violate any judgment, decree, order or award of any court, government agency,
regulatory authority or arbitrator; or

iii. conflict with or result in the breach or termination of any material term or provision of, or constitute a default under, or cause any acceleration under, any licence, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, permit, deed of trust or any other instrument or Agreement by which it is bound.

f) The City shall obtain the necessary authorizations, as needed for the performance of the work, from third parties who may own the intellectual property rights or other rights in respect of Project Components. Canada shall not be liable for any claim by a Third Party in respect of such rights.

12. GENERAL

12.1 DISPOSAL OF ASSETS

The City undertakes to notify Canada in writing, one hundred eighty days in advance if, at any time during a period of twenty-five years from the date of completion of the Project, the City proposes to sell, lease, encumber or otherwise or dispose of, directly or indirectly, any assets, constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms of this Agreement, other than to Canada, the Province or a Crown corporation of the Province that is the latter’s agent for the purpose of implementing the Agreement and, upon disposition, undertakes to reimburse Canada, on demand, a proportionate amount of the funds so contributed by Canada, in the proportion set forth below:

Canada recognizes that project components may require regular maintenance, upgrades and replacement activities. In the event that the City replaces a project component and sells the old component, the proceeds of the sale do not need to be reimbursed to Canada. However, in the event that the City sells a project component in a way that alters the system, preventing it from being able to achieve the agreed project objectives and goals, without replacing the component, the City undertakes to reimburse Canada for this component using the fixed assets formula below, for the return of contribution to Canada.

Fixed Assets:

<table>
<thead>
<tr>
<th>Where asset is sold, leased, encumbered or disposed of within:</th>
<th>Return of contribution (in current dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Years after Project completion</td>
<td>100%</td>
</tr>
<tr>
<td>5 Years after Project completion</td>
<td>90%</td>
</tr>
<tr>
<td>10 Years after Project completion</td>
<td>75%</td>
</tr>
<tr>
<td>15 Years after Project completion</td>
<td>45%</td>
</tr>
<tr>
<td>20 Years after Project completion</td>
<td>15%</td>
</tr>
<tr>
<td>25 Years after Project completion</td>
<td>5%</td>
</tr>
</tbody>
</table>

12.2 REVENUES FROM ASSETS

The Parties acknowledge that their contributions to the Project are meant to accrue to the public benefit. The City will notify Canada in writing within ninety days of the end of a Fiscal Year, if any asset to which Canada has contributed under this Agreement is used
in such a way that, in the Fiscal Year, revenues are generated from it which exceed its operating expenses and Canada may require the City to pay to Canada immediately a portion of the excess, in the same proportion as Canada’s contribution is to the total cost of the asset. This obligation will apply only to the first twenty-five complete Fiscal Years following the completion of the Project.

12.3 **DEBTS DUE TO CANADA**

Any amount owed to Canada under this Agreement will constitute a debt due to Canada, which the City agrees to reimburse Canada forthwith on demand.

12.4 **INTEREST ON DEBTS DUE TO CANADA**

Debts due to Canada will accrue interest in accordance with the *Interest and Administrative Charges Regulations* of the *Financial Administration Act*.

12.5 **SET-OFF BY CANADA**

Any debt due to Canada may be offset against any amounts payable by Canada to the City.

12.6 **NO BENEFIT**

No member of the House of Commons or the Senate of Canada or of municipal counsel will be admitted to any share or part of any Contract made pursuant to this Agreement, or to any benefits arising from it.

12.7 **ANNUAL FINANCIAL STATEMENTS**

The City will, in its public accounts or financial statements, reflect Canada’s contribution as in accordance with its established accounting practices.

12.8 **NO AGENCY**

No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between Canada and the City or between Canada and a Third Party.

12.9 **NO AUTHORITY TO REPRESENT**

Nothing in this Agreement is to be construed as authorizing a Third Party to contract for, or to incur any obligation on behalf of, a Party or to act as agent for a Party.

12.10 **ASSIGNMENT**

The City will not transfer or assign its rights or obligations under this Agreement without the prior written consent of Canada. Any attempt by the City to assign any of the rights, duties or obligations of this Agreement without the express written consent of Canada is void.

12.11 **COUNTERPART SIGNATURE**

This Agreement may be signed in counterparts, and the signed copies will, when attached, constitute an original Agreement.
12.12 VALUES AND ETHICS CODE

No person governed by any post-employment, ethics and conflict of interest guidelines or policies of Canada or the City shall derive a direct benefit from this Agreement unless that person complies with the applicable provisions of the guidelines or policy.

12.13 SEVERABILITY

If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between the Parties is found to be or becomes invalid or unenforceable, in whole or in part, and if the Committee agrees, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

12.14 LOBBYISTS AND AGENT FEES

The City:

a) Warrants that any person it has hired, for payment, to speak to or correspond with any employee or other person representing Canada on the City’s behalf, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the Lobbying Act, is registered pursuant to that Act; and

b) Warrants that no payment or other compensation that is contingent upon or is calculated upon the contribution hereunder or negotiating the whole or any part of the terms of this Agreement will be paid to a person.

In the event of a breach of a) or b), or both, Canada may either terminate this Agreement or recover the full amount of the compensation from its contribution amount.

12.15 AMENDMENTS

Subject to Sections 5.4 (c) and 5.5, this Agreement can only be amended in writing by the Parties.

12.16 COMPLIANCE WITH LAWS

The City agrees to apply, in relation to the Project, in all material respects, the requirements of all applicable laws, regulations, orders and orders in council, including environmental laws and regulations, and shall comply with the requirements of all regulatory bodies.

12.17 INTELLECTUAL PROPERTY

Any Intellectual property resulting from the activities under this Agreement shall, as between the City and Canada, vest in the City.

12.18 GOVERNING LAW

This Agreement shall be interpreted and applied in accordance with the laws and in the Courts of the Province of Ontario.
12.19 NOTICE DEEMED GIVEN

Any notice, information or document provided for under this Agreement may be delivered or sent by letter, postage or other charges prepaid, and will be deemed to have been delivered on receipt. A Party may change the address below by notifying the other Parties in writing.

Any notice to Canada must be sent to both:

Director General, Intergovernmental Operations
Infrastructure Canada
90 Sparks Street
Ottawa, Ontario
K1P 5B4

and

Director General, Sector Strategies and Infrastructure Programs Branch
Industry Canada
CD Howe Building - Floor 08E – Room 869C
235 Queen Street
Ottawa, Ontario
K1A 0H5

Any notice to the City of Hamilton must be sent to both:

Attention: Kevin C. Christenson, City Clerk
City of Hamilton
City Hall
71 Main St. West
Hamilton, Ontario
L8P 4Y5

and

Attention: Director, Water and Wastewater Treatment
City of Hamilton
Public Works Department
55 John St. North, 6th Floor
Hamilton, Ontario
L8R 3M8

13. SPECIAL CONDITIONS

The Steering Committee Co-chairs may invite representatives from the Government of the Province of Ontario to attend Committee meetings as non-voting participants.
SIGNATURES

This Agreement has been executed on behalf of Her Majesty in Right of Canada by the Minister of Transport, Infrastructure and Communities and on behalf of the City of Hamilton jointly by the Mayor and City Clerk of the City of Hamilton.

HER MAJESTY IN RIGHT OF CANADA

Original signed by:

__________________________
John Baird, P.C., M.P.
Minister of Transport,
Infrastructure and Communities

Date: ______________________

CITY OF HAMILTON

Original signed by:

__________________________
Fred Eisenberger
Mayor

Date: _____________________

__________________________
Kevin C. Christenson
City Clerk

Date: _____________________
SCHEDULE A – ELIGIBLE AND INELIGIBLE COSTS

A.1 ELIGIBLE COSTS

Subject to Section A.2, Eligible Costs will be all necessary direct costs incurred properly and reasonably for the implementation of the Project, paid by the City, invoiced against a contract for goods and services, and include:

a) Capital costs, as defined and determined according to accounting principles generally recognized in Canada, and relating to the acquisition, construction or renovation of a fixed capital asset;

b) The costs of surveying, engineering, architectural, supervision, testing, and management services;

c) The costs of environmental assessments;

d) The costs of developing and implementing innovative techniques for carrying out the Project;

e) Communications costs as outlined in the Communication Protocol Guidelines;

f) Evaluation; and

g) Other costs that are considered to be direct and necessary for the successful implementation of a Project.

A.2 INELIGIBLE COSTS

The following costs are ineligible:

a) Costs incurred before the Project Start Date or after the Project Completion Date;

b) Land acquisition, real estate fees and related costs, financing charges and loan interest payments;

c) Leasing land, buildings, equipment and other facilities;

d) Any goods and services cost which are received through donations or in kind;

e) Services or works normally provided by the recipient incurred in the course of implementation of a Project, except those specified as eligible costs;

f) Employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the recipient, and more specifically costs relating to services delivered directly by permanent employees of the recipient, or of a Crown corporation or corporation owned and controlled by the recipient;

g) Provincial sales tax and Goods and Services Tax, for which the recipient is eligible for a rebate, and any other costs eligible for rebates; and

h) Legal fees.
### SCHEDULE B - DETAILED DESCRIPTION OF THE PROJECTS AND CANADA’S FUNDING COMMITMENT

<table>
<thead>
<tr>
<th>Name of Project Component</th>
<th>Description of Project Component</th>
<th>Estimated Total Costs</th>
<th>Estimated Eligible Costs</th>
<th>Estimated Contribution by Canada</th>
<th>Estimated contribution to Eligible Costs per Party, per Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disinfection Upgrade Dundas wastewater treatment plant</td>
<td>Implementation of ultraviolet disinfection systems to address elimination of chlorinated wastewater effluent. This project begins January 2008 and scheduled to finish in 2009 on site at the Dundas wastewater treatment plant located at 135 King St. Dundas ON.</td>
<td>$3,400,000</td>
<td>$3,400,000</td>
<td>$2,000,000</td>
<td>Canada: $2,000,000; Ontario: $100,000; City of Hamilton: $180,000; Total: $680,000</td>
</tr>
<tr>
<td>Combined sewer overflow Control Improvement</td>
<td>Construction of combined sewer overflow control structures within the Hamilton Collection system in order to fully utilize available wastewater system capacity and enhance conveyance capacity where required. Pump Stations will be built in the City to divert flows away from environmentally sensitive areas, and to rehabilitate and enhance pumping functionality and reliability. This work also includes design and Construction of Real Time Control systems for wastewater infrastructure. Hardware and software Control systems as well as field equipment will be implemented to optimize flow within the system in order to maximize treatment potential. Implementation is planned from 2009 through to 2012.</td>
<td>$82,000,000</td>
<td>$82,000,000</td>
<td>$30,000,000</td>
<td>Canada: $13,000,000; Ontario: $910,000; City of Hamilton: $1,130,000; Total: $5,040,000</td>
</tr>
<tr>
<td>Naturalization of the Windemere Basin</td>
<td>Implementation of a naturalization plan on site at the Windemere Basin located in the southeast corner of Hamilton Harbour near Pier 25. Construction will include creation of a wetland, hydraulic controls and naturalization features including islands and containment dikes. Work is expected to begin in 2008 and to finish in 2012.</td>
<td>$6,200,000</td>
<td>$6,200,000</td>
<td>$3,000,000</td>
<td>Canada: $2,160,000; Ontario: $330,000; City of Hamilton: $374,000; Total: $1,364,000</td>
</tr>
</tbody>
</table>

**TOTAL*** | | $91,600,000 | $91,600,000 | $35,000,000 | Canada: $17,160,000; Ontario: $1,340,000; Hamilton: $1,684,000; Total: $3,024,000 |

**Note 1:** For greater certainty, Canada’s total contribution cannot exceed the amount set out in Section 3.1.

**Note 2:** Costs are derived from conceptual design level estimates. The detailed design process will provide more accurate costing information at a later date as each project progresses.

**Note 3:** Amounts identified for the City of Hamilton include additional finances required to meet the total project cost of $91.6M over and above the $75M identified as original program estimate.

**Note 4:** Total project costs are estimated based on Engineering Design and Construction contract works. These contracts only include work that meets the definition of eligibility therefore eligible costs and project costs appear the same in the table.
SCHEDULE C – COMMUNICATION PROTOCOL

PURPOSE

The purpose of this guideline is to outline the key principles and communications requirements of contribution Agreements signed under the Canada Strategic Infrastructure Fund.

GUIDING PRINCIPLE

The key guiding principle in the conduct of communications activities for Canada Strategic Infrastructure Fund is to inform Canadians, in a spirit of cooperation and partnership between Canada and the City about initiatives to help improve their quality of life.

The purpose of these activities, to be undertaken jointly by Canada and the City and other partners where appropriate, is to provide greater opportunities for open, transparent, effective and proactive communications with Canadians by conveying information to the public on the basis of a well-planned, appropriate, continuous and consistent approach. The activities should recognize the contribution of all partners and communicate to Canadians the benefits of the initiatives.

COMMUNICATING WITH THE PUBLIC

In keeping with the main guiding principle, Canada and the City will issue joint news releases after signing the Agreement and/or completing important Project Components. In a spirit of partnership, Canada and the City will work together on planning such announcements and preparing materials that ensure Canada and the City receive equal prominence. The news releases will include quotes from the designated representatives of Canada and the City.

Public events will be held at the request of one or more Parties. In order to meet the Parties' head office requirements, a minimum of 14 days’ notice should be given for such an event. Federal and provincial ministers, or their designated representatives, as well representatives of the City should participate in the events, which should take place on a date and at a location agreed to by the Parties. All public events require the prior consent of the Agreement Management Committee.

Canada and the City will cooperate in organizing media conferences, announcements and official ceremonies. The Table of Precedence for Canada, as established by Canadian Heritage (http://www.pch.gc.ca/pgm/ceem-cced/prtcl/precedence-eng.cfm), or some other mutually acceptable protocol should be respected. Canada and the City have to agree on public statements and messages issued at events.

The City may produce information kits, brochures, public reports and Internet pages providing information on the Project and Agreement for private-sector interest groups, contractors and members of the public. The City will consult with Canada in preparing the content and look of all such material.

All other communications activities related to a Project should be in compliance with this guideline.
CITY’S REQUIREMENTS

The City will be required to ensure the following:

a) All public information material related to calls to tender will clearly and prominently indicate that the Project is funded under Canada Strategic Infrastructure Fund;

b) Provide and install temporary signage at a prominent location where there is visible activity related to an approved Project and indicating that the Project is funded under Canada Strategic Infrastructure Fund; and

c) In order to meet Canada’s communications requirements, the City must ensure that:

   i. signage wording is in both official languages;

   ii. official designs and logos of both Canada and the City are used, are of the same size and occupy the same amount of space; and

   iii. any other messages, as well as specifications on signage and timeframe for installation, are approved by the Agreement Management Committee.

The Parties should notify each other at the outset of planning for communications activities. While any of the Parties may choose not to participate in any given activity, planning should proceed through consultation, so that the Parties can make informed decisions regarding their participation. Similarly, media relations should be handled in a spirit of cooperation, with due regard for time constraints.

Upon completion of a Project and where feasible, Canada and the City may provide and install a plaque or permanent sign with an appropriate inscription. The design, wording and specifications of such permanent signs must meet the same requirements as the temporary signage.

COMMUNICATIONS COSTS

Unless otherwise agreed to by Canada and the City, the City will pay the costs of preparing and delivering communications activities and products, including documents, distribution to the media, and the organization of special events. These costs are deemed to be Eligible Costs under the Agreement.

Costs incurred for special requirements requested by Canada, and deemed to impose an undue burden on the City will be paid in accordance with an equitable cost-sharing formula agreed to by the two Parties.

The City will pay the costs of temporary and permanent signage. These costs are deemed to be Eligible Costs under the Agreement.
SCHEDULE D – PROJECT COMPLETION CERTIFICATE

Sample Certificate of Completion (Notarization Required)

PROJECT CONSTRUCTION COMPLETION CERTIFICATE

RECIPIENT NAME

In the matter of the Canada Strategic Infrastructure Fund Agreement (the “Agreement”) dated __________________ made between ____________________________ (the “Recipient”) and the Government of Canada regarding ______________________________________ (the “Project”) (Project Title)

I, ____________________________, (TITLE OF OFFICIAL) of the _____________________________ (Entity) ____________________________ in the Province of __________________, do solemnly declare that:

1. Eligible Project Costs totalling $____________ have been incurred and paid by ____________________________ for construction of the Project; and (Name of Recipient)

2. Construction on the Project and its components has been fully completed in accordance with the Terms and Conditions of the Agreement and the environmental approvals required for the Project.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

____________________________________ Signature of Official

Declared before me at the ____________________________

________________________________________

in the Province of __________ this ____ day of __________ , AD 20___.

______________________________

NAME AND TITLE

A Commissioner for Oaths in and for the Province of ____________________________

______________________________

My Commission Expires ______________

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**SCHEDULE E – PROJECT COMPLETION REPORT SUMMARY FORM**

**CANADA STRATEGIC INFRASTRUCTURE FUND PROJECT COMPLETION REPORT SUMMARY FORM**

**Part 1 – Project Information**

<table>
<thead>
<tr>
<th>Municipality:</th>
<th>Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>File Number:</td>
<td>Date:</td>
</tr>
<tr>
<td>Project Number:</td>
<td>Title:</td>
</tr>
</tbody>
</table>

**Eligible Project Costs:**

I certify that the named Project has been completed in accordance with the provincial-municipal Agreement and that, where applicable, all identified environmental mitigation measures have been satisfactorily addressed and that supporting invoices and records are available for audit, if required.

<table>
<thead>
<tr>
<th>Total Project Costs:</th>
<th>Signature:</th>
</tr>
</thead>
</table>

**Part 2 – Final Report Information**

Breakdown of Eligible Project costs

<table>
<thead>
<tr>
<th>Preliminary Engineering:</th>
<th>$</th>
<th>Project Start Date (as indicated in the Agreement):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering:</td>
<td>$</td>
<td>Project End Date (as indicated in the Agreement):</td>
</tr>
<tr>
<td>Construction:</td>
<td>$</td>
<td>Construction Start Date</td>
</tr>
<tr>
<td>Project Management:</td>
<td>$</td>
<td>Construction End Date</td>
</tr>
<tr>
<td>Surveys:</td>
<td>$</td>
<td>Date of Communications Event Announcing Project</td>
</tr>
<tr>
<td>Miscellaneous:</td>
<td>$</td>
<td>Date of Communications Event Announcing completion of Project (ribbon cutting, etc.)</td>
</tr>
</tbody>
</table>

| P.S.T.                          | $ |
| G.S.T.                          | $ |
| Gross Project Total:            | $ |
| Less G.S.T.:                    | $ |
| Net Project Total:              | $ |