SUBJECT: The Hamilton Street Railway Company ("HSR") - Corporate Governance LS07007 (City Wide)

RECOMMENDATION:

(a) That Council, sitting, firstly, as representatives of the beneficial Shareholder (City of Hamilton), and, secondly, sitting as the Board of Directors of The Hamilton Street Railway Company ("HSR"), authorize the updating of the corporate governance of the HSR as set out in Appendices A and B to Report LS07007;

(b) That Council, in its capacities outlined in Recommendation 1 above, ratify and confirm the required documentation in the forms attached as Appendices A and B to Report LS07007;

(c) That Council, sitting as Council for the City, authorize City staff to undertake and perform the duties on behalf of the HSR as set out in Appendix B to Report LS07007;

Peter A. Barkwell, City Solicitor
Legal Services
EXECUTIVE SUMMARY:

The Hamilton Street Railway Company ("HSR") is a corporation owned and operated by the City of Hamilton. The composition of the Board of Directors and the Officers of the HSR is based on the composition of Council. As a result of changes following the most recent municipal election, the corporate governance needs to be updated to reflect the same.

The proposed course of action and the ratification of the attached documentation will have the following effect:

(a) the Board of Directors of the HSR, being all of the Council including the Mayor, will be appointed by way of a shareholder’s resolution;

(b) the Board of Directors will, by way of corporate by-law, appoint the Officers of the HSR, effective December 1, 2006, being:

President – Fred Eisenberger, Mayor  
Vice-President – Scott Stewart, General Manager, Public Works  
Treasurer – Joe Rinaldo, General Manager, Corporate Services  
Secretary – Kevin Christensen, City Clerk  
General Manager – Don Hill, Director of Transit

(c) the Board of Directors will, by way of corporate by-law, appoint the signing authorities for the HSR;

(d) the Board of Directors, will, by way of corporate by-law, adopt the applicable procurement policies of the City of Hamilton, with necessary modifications, and any amendments thereto that may from time to time be made;

(e) the President and Secretary, as signing authorities of the HSR, will be authorized, by way of corporate by-law, to sign each of the necessary By-laws in the forms attached hereto; and

(f) the City Solicitor, acting as solicitor for the HSR, will be authorized, by way of a corporate by-law, to make all necessary filings with the Ministry of Consumer and Business Services as may be required to give effect to the foregoing.

BACKGROUND:

HSR was incorporated by an Act of Parliament in 1873 as a private corporation endowed with certain rights pursuant to the Corporation of the City of Hamilton By-law No. 63, passed by City Council on December 22, 1873. The purpose of the HSR’s incorporation
was to construct and operate a steel railway in the Corporation of the City of Hamilton and the adjoining municipalities.

The ownership and corporate structure of the HSR changed frequently as it passed between private and public sectors until 1960, at which time the City of Hamilton acquired the shares of the HSR and began operating it by way of the Hamilton Transit Commission.

In 1977, the shares of the HSR were transferred to The Regional Municipality of Hamilton-Wentworth (the “Region”). The HSR was operated by the Region until the amalgamation of the Region and the former Corporation of the City of Hamilton (the “amalgamation”).

Following the amalgamation, responsibility for the HSR rested solely with the City of Hamilton. The acquisition of shares by the City of Hamilton was authorized by the City of Hamilton Act, 1999, which specifies that the City is authorized to hold shares in the HSR and to exercise any rights associated with such shares. The transfer of shares from the Region to the City of Hamilton was ratified in By-Law HSR05-001.

In 2006, Legal Services discovered some inconsistencies in the records of the HSR and undertook the necessary actions to ensure that the corporate governance was brought up-to-date, as authorized by Council on June 14, 2006.

The most recent By-law passed by the Board of Directors of the HSR is By-Law No. HSR05-001, being a by-law dated June 14, 2006 to appoint the Officers of the HSR for the period December 1, 2003, ending November 30, 2006... As the HSR has entered into and/or is preparing to enter into major contracts, including without limiting the foregoing, a long term licence agreement with Eastgate Square Holdings Inc., as well as agreements relating to the Greater Toronto Area Fare Card System, it is imperative that the by-law appointing the Officers be updated so as to authorize the current Mayor and Clerk to sign on behalf of the HSR (as the President and Secretary respectively) or to ratify any contracts already so signed.

**ANALYSIS/RATIONALE:**

The HSR is a private corporation endowed with attributes similar to that of a municipal corporation. As such, it is subject to the provisions of the Corporations Information Act, which requires timely filing of Notices of Change advising the Minister of Consumer and Business Services (the “Minister”) of changes in the composition of the Board of Directors and Officers.

As a result of the most recent municipal election, the corporation records of the HSR as filed with the Minister are out of date with respect to both the Board of Directors and the Officers of the HSR. In addition, the Business Corporations Act requires that the shareholder’s meeting be held no later than fifteen months following the date of the most recent shareholder’s meeting, which was June 14, 2006.
Sitting as representatives of the beneficial shareholder (City of Hamilton), a resolution was passed appointing a Board of Directors consisting of the Mayor and the fifteen Councillors.

This had the effect, for practical purposes, of enabling Council, sitting as the Board of Directors for HSR, to conduct that business of the HSR requiring Board of Director approval as part of its usual business.

If the above recommendation is approved, the fifteen Councillors and the Mayor will comprise the new Board of Directors of the HSR and will continue to sit annually or as needed as both the shareholder and Board of Directors for the HSR.

**ALTERNATIVES FOR CONSIDERATION:**

Corporate governance could be left to lapse leaving the validity of contracts entered into by the HSR open to challenge.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** There are fines which can be imposed by the Minister for failing to make timely filings in accordance with the *Corporations Information Act*. Without proper authorizations in place, contracts will not be signed having further potential financial implications.

**Staffing:** Ongoing administration and monitoring of the corporate governance of the HSR can be accommodated within the City Clerk’s Office, with assistance and advice from Legal Services when required.

**Legal:** Corporate governance documentation associated with the HSR will be appropriately reviewed by Legal Services to meet the needs of the HSR while protecting the City’s interests. Further, as the legislative requirements of the governance of the HSR may change from time to time, staff recommends that Legal Services be authorized to carry out the necessary filings on behalf of the HSR on an ongoing basis.

**POLICIES AFFECTING PROPOSAL:**

Staff is unaware of any policies affecting the recommendations, or any contravention of existing City policies.
RELEVANT CONSULTATION:

- The Hamilton Street Railway Company
- Public Works
- Corporate Services

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☐ Yes ☑ No

Environmental Well-Being is enhanced. ☐ Yes ☑ No

Economic Well-Being is enhanced. ☐ Yes ☑ No

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

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No
APPENDIX “A” to LS07007

Shareholders’ Resolution

The Hamilton Street Railway Company

WHEREAS the Council of the City Of Hamilton are sitting as representatives of the beneficial Shareholder (City of Hamilton) for The Hamilton Street Railway Company (the “Corporation”);

WHEREAS by Section 11.9, subsection (1) of the City of Hamilton Act, 1999, S.O. 1999, c.14, the City of Hamilton is authorized to hold the shares in the Corporation and to exercise the rights attributed thereto;

WHEREAS by subsection (2) of the aforesaid subsection of the said Act, the City of Hamilton is mandated to manage the affairs of the Corporation;

NOW THEREFORE the Council of the City of Hamilton, acting in its capacity as representatives of the beneficial Shareholder (City of Hamilton) of the Corporation, RESOLVES AS FOLLOWS:

1. BE IT RESOLVED that the number of Directors comprising the Board of Directors of the Corporation be set at sixteen (16) and, effective December 1, 2006, be comprised of the following persons:

   Mayor Fred Eisenberger
   Councillor Bernie Morelli
   Councillor Sam Merulla
   Councillor Chad Collins
   Councillor Tom Jackson
   Councillor Scott Duvall
   Councillor David Mitchell
   Councillor Lloyd Ferguson
   Councillor Robert Pasuta
   Councillor Margaret McCarthy
   Councillor Brian McHattie
   Councillor Terry Whitehead
   Councillor Brad Clark
   Councillor Maria Pearson
   Councillor Bob Bratina
   Councillor Russ Powers

2. BE IT RESOLVED that the President and Secretary of the Corporation are hereby authorized and directed to sign this Special Resolution of Shareholders in writing formalizing the items contained therein.

RESOLVED at Hamilton, this day of July 2007

__________________________
Fred Eisenberger
President

__________________________
Kevin C. Christenson
Secretary
APPENDIX “B” to LS07007

THE HAMILTON STREET RAILWAY COMPANY

BY-LAW NO. HSR 07-001

Being a By-law to appoint the Officers of the Company for the period commencing December 1, 2006, ending November 30, 2010, to appoint solicitors, to appoint signing authorities, to adopt purchasing policies and to ratify agreements

That the Council of the City Of Hamilton, sitting as the Board of Directors for The Hamilton Street Railway Company, hereby enacts as follows:

1. That the following persons be appointed to the following positions as Officers of the Company concurrent with the term of Council commencing December 1, 2006, ending November 30, 2010:

   President                    Fred Eisenberger
   Vice-President               Scott Stewart
   Secretary                   Kevin C. Christenson
   General Manager             Don Hull
   Treasurer                   Joseph Rinaldo

2. That the City Solicitor for the City of Hamilton is authorized to act as Solicitor for the Company and, as such, is authorized and directed to prepare and file any and all documents as may be required by the Ministry of Consumer and Business Services and any governing legislation, to give effect to the foregoing.

3. a. That the signing officers of the Company for the purposes of executing contracts having monetary values of up to and including $250,000.00 (Cdn), including, without limiting the foregoing, those contracts of said value specifically authorized by City of Hamilton’s Council to be executed by the HSR, shall be the General Manager.
   b. That the signing officers of the Company for the purposes of executing contracts having monetary values in excess of $250,000.00 (Cdn), including, without limiting the foregoing, those contracts of said value specifically authorized by City of Hamilton’s Council to be executed by the HSR, shall be the President and Secretary.
   c. Every contract signed by the General Manager shall be initialed by the Solicitor of the Company before being signed by the General Manager.
   d. Every contract signed by the President and Secretary for the Company shall be initialed by the General Manager and Solicitor of the Company before being signed by the President and Secretary.
   e. That subject to 3 (a) to (d) hereof, the procurement policies adopted by the City of Hamilton, any successor procurement policies that may be adopted by the City of Hamilton and any amendments thereto that may from time to time be made, including without limiting the foregoing, the Purchasing Policies and the Commodity Price Hedging Agreement Policy, shall apply in their entirety to the Company, with necessary modifications.
   f. That the City of Hamilton, through its Purchasing Division, be authorized to conduct procurements on behalf of the Company, in accordance with the above-noted policies, except where otherwise provided by resolution of the Board.
g. That the Manager of Energy Initiatives for the City of Hamilton, be authorized to conduct procurements of energy commodities on behalf of the Company, in accordance with the above-noted policies, except where otherwise provided by resolution of the Board.

4. That the City Solicitor of the City of Hamilton is authorized and directed to prepare any such corporate minutes, registers, share certificates and any other documentation as may be required to give effect to the foregoing and to create an up-to-date corporate minute book for the Company.

5. That the Secretary of the Company be authorized and directed to maintain the corporate minute book for the Company and to retain the same at the City Clerk's Office of the City of Hamilton.

6. That the following agreements, executed on behalf of the Company, are hereby confirmed and ratified:

   a. GTA Fare System Procurement Governance Agreement, executed by the Mayor and Clerk on May 26, 2005, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007, which was adopted by Council for the City of Hamilton on April 27, 2005;

   b. GTA Fare System Operating Agreement, executed by the Mayor and Clerk on September 22, 2006, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007, which was adopted by Council for the City of Hamilton on April 27, 2005.

7. In order to give effect to Recommendation (d) of Report PW04117a (a copy of which is attached hereto as Schedule A), any funding or other agreements and/or documents with the Province of Ontario relating to the GTA Fare System project may be executed by the President and Secretary, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007 which was adopted by Council for the City of Hamilton on April 27, 2005, and following any applicable and/or necessary City of Hamilton Council Resolution for award of any of the aforementioned contracts.

8. In order to give effect to Recommendation (c) of Report PW04117b (a copy of which is attached hereto as Schedule B), all agreements and other documents flowing from, or otherwise relating to, the Joint Procurement RFP entitled “To Procure a Farebox Collection System for the Transit Fleets of Brampton Transit, The Hamilton Street Railway Company (HSR) and Burlington Transit” issued by The Corporation of the City of Brampton on behalf of The Corporation of The City of Brampton (“Brampton”), The Corporation of The City of Burlington (“Burlington”) and The Hamilton Street Railway Company (RFP No. 2007-001) may be executed by the President and Secretary, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007 which was adopted by Council for the City of Hamilton on April 27, 2005, and following any applicable and/or necessary City of Hamilton Council Resolution for award of any of the aforementioned contracts/agreements. Any of the aforementioned documents executed prior to passing of this Resolution of this Board are hereby confirmed and ratified.

9. In order to give effect to Recommendations (a) and (b) of Report (PW07070) (a copy of which is attached hereto as Schedule C), all agreements or other documents relating to the Eastgate Transit Terminal Reconstruction project authorized by City of Hamilton Council are to be executed by the President and Secretary, pursuant to Item (7.2) of the Public Works Committee Report 07-007 which was adopted by Council for the City of Hamilton on May 16, 2007. Any of the
- 3 -

aforementioned documents executed prior to passing of this Resolution of this Board are hereby confirmed and ratified.

10. In order to give effect to the Recommendation in Report PW07012 (a copy of which is attached hereto as Schedule D), the Columbia Housing Services Inc. Transportation Agreement is to be executed by the Vice-President of the HSR (General Manager of Public Works for the City of Hamilton), pursuant to Item 5.4 of the Public Works Committee Report 07-001, which was adopted by Council for the City of Hamilton on January 24, 2007.

11. That Items 1, 2, 3, 5, 6, and 7 of By-law HSR05-001 and any amendments thereto are hereby repealed.

PASSED AND ENACTED the day of July, 2007

______________________________
Fred Eisenberger
President

______________________________
Kevin C. Christenson
Secretary
RECOMMENDATION:

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

(b) That Council authorize the Mayor and City Clerk to execute additional copies of the GTA Fare System Procurement Governance Agreement as may be required to provide for the joining of added municipalities and transit authorities to the GTA Fare System Project.

(c) That Council authorize the Mayor and City Clerk to execute a resolution on behalf of the Board of Directors for the Hamilton Street Railway Company in the form of Schedule "D" to the GTA Fare System Procurement Governance Agreement, and showing the authority of the agents to execute the agreement per (a) and (b) above.

(d) That Council authorize staff of the Hamilton Street Railway Company and City to execute such additional documents as may be required by the GTA Fare System Procurement Governance Agreement.

(e) That Council designate the Director of Transit as HSR's representative on the GTA Fare System Project Executive Committee, and the Manager of Fare Administration & ATS as the alternate representative on the Project Executive Committee; and the Manager of Fare Administration & ATS as HSR's representative on the GTA Fare System Project Steering Committee, and the Supervisor of Revenue and Accessibility as the alternate representative on the Project Steering Committee.
SUBJECT: GTA Fare System Project  
(PW04117a) - (City Wide) - Page 2 of 16

(f) That staff be authorized to negotiate a suitable Operating Agreement for the future management of the GTA Fare System Project by the Hamilton Street Railway Company.

(g) That staff continue to keep Council advised of the GTA Fare System procurement process.

(h) That Council authorize staff to proceed with the necessary internal procurement activities to acquire new electronic registering fare boxes for the HSR in conjunction with the GTA Fare System Project, and in accordance with the 2003 Capital Budget allocation of $4,500,000 (Capital Account 5300351100).

(i) That Council authorize the hiring of a senior project manager position on a contract basis for the duration of the Project, to be funded, subject to Council approval of the 2005 Capital Budget, from the 2005 Capital Budget allocation of $500,000 for the Project (Capital Account 5300351100).

Scott Stewart, C.E.T.  
General Manager  
Public Works

EXECUTIVE SUMMARY:

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 reports have been provided previously to Council. The project has now reached the stage where commitments are required from the different parties to enable procurement activities to move forward.

In parallel with the GTA Fare System Project activities, the existing electronic registering fare boxes used by the Hamilton Street Railway have reached the end of their service life and need replacement. This fare collection system was implemented in 1986 and was expected to have a service life of about 15 years. The reliability of the equipment is deteriorating and maintenance costs are increasing each year. A capital budget allocation of $4.5 million has been approved by Council in 2003 and subsequently carried forward as a Capital Budget WIP for the replacement of the fare boxes.

The GTA Fare System Project is of significant interest to the City of Hamilton for several reasons. Firstly, the GTA Fare System will, upon full fare system implementation in 2008 and beyond, provide significant benefits to Hamilton transit customers and operating cost savings in the range of up to $300,000 annually for the City. These
operating cost savings will result from a combination of improved revenue recovery and reduced fare collection costs. Secondly, the existing fare box system requires replacement and this can be carried out in conjunction with the fare card system. Funding assistance is available from the Province to assist with this replacement if it includes the GTA Fare System. Finally, the Province has also advised that participation in the GTA Fare System project is a condition of receiving the funds available under the Provincial gas tax transit fund.

The GTA Fare System Procurement Governance Agreement has been developed through extensive discussions between the Province, GO Transit and municipal participants, including the City of Hamilton. It will form the basis for the commitment between the parties to move forward to jointly procure and install the new fare card system and it sets out a framework for the governance of the new arrangement. There are provisions within the draft agreement for Hamilton to withdraw from the arrangement if actual bid costs exceed estimates by 15% or under other unfavourable circumstances. Should these higher than estimated bid costs or other unfavourable circumstances occur, further negotiations between the participating municipalities and the Province will be required to determine the impact of withdrawal on eligibility for gas tax funding.

The ongoing direction and management of the procurement and implementation 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 Procurement Governance Agreement.

Following the procurement and implementation of the GTA Fare System, the ongoing management and coordination of activities at each transit service will be carried out in accordance with one or more Operating Agreements that have not yet been developed. Council direction to proceed with the negotiation of these agreements will enable this work to proceed. Reports on these discussions will be provided to Council in future.

A number of different fare system options to meet Hamilton's needs have been investigated. The preferred option 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 of nearly $4M over the 10 year life cycle of the system, when compared with the option of Hamilton simply replacing its current fare system with a like registering farebox only.

The commitments to funding of the GTA Fare System and municipal fare box systems are set out in the GTA Fare System Procurement Governance Agreement. These
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Provincial funding commitments to the capital and operating costs are detailed in Table 1 below.

**TABLE 1: PROVINCIAL FUNDING OF GTA FARE SYSTEM AND FARE BOX**

<table>
<thead>
<tr>
<th></th>
<th>Municipal Contribution</th>
<th>Provincial Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>GTA Fare System: Central System - Capital Costs</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>GTA Fare System: Central System - Operating Costs</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>GTA Fare System: Municipal Components - Capital Costs</td>
<td>66.67%</td>
<td>33.33%</td>
</tr>
<tr>
<td>GTA Fare System: Municipal Components - Operating Costs</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>GTA Fare System: Centralized Services - Operating Costs</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Municipal Fare Box System - Capital Costs</td>
<td>66.67%</td>
<td>33.33%</td>
</tr>
<tr>
<td>Municipal Fare Box System - Operating Costs</td>
<td>100%</td>
<td>0%</td>
</tr>
</tbody>
</table>

The total estimated capital cost of the GTA Fare System and new electronic fare boxes is as much as $8.1 million, inclusive of capital cost and implementation cost contingencies, and before Provincial subsidy. The current agreement with the Province includes such contingency provisions for project participation should capital costs be up to 15% higher than costs that had been estimated during the development of the Municipal Service Provider Business Case Analyses. The expected disposition of this $8.1 million is detailed in Table 2 below.

**TABLE 2: PROPOSED FARE SYSTEM CAPITAL COSTS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>GTA Fare System Capital Costs</td>
<td>$2.5 M</td>
</tr>
<tr>
<td>Municipal Fare Box Capital Costs</td>
<td>$3.5 M</td>
</tr>
<tr>
<td>Combined System Ramp Up Costs</td>
<td>$.6 M</td>
</tr>
<tr>
<td>Capital Cost Contingency @ 15%</td>
<td>$1.1 M</td>
</tr>
<tr>
<td>Implementation Cost Contingency</td>
<td>$.4 M</td>
</tr>
<tr>
<td>Total Upset Capital Cost</td>
<td>$8.1 M</td>
</tr>
</tbody>
</table>

Through past and future Capital Budget submissions, staff will be requesting sufficient funding to cover the full anticipated capital costs noted in Table 2, with the understanding that up to 33.33% of these costs would eventually be recovered from the Province through subsidy application. The Fare System capital initiatives outlined in this report are eligible for Gas Tax subsidy, and the use of Gas Tax Reserve to fund the outstanding requirements is necessary. Table 3 below outlines the recommended funding strategy.

**TABLE 3: PROJECT FUNDING SOURCE SUMMARY**

<table>
<thead>
<tr>
<th>Source of Funds:</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003 WIP - Transit Capital Reserve</td>
<td>$4,500,000</td>
</tr>
<tr>
<td>To be funded from Gas Tax Reserve through 2005, 2006 and 2007 Capital Requests</td>
<td>$3,600,000</td>
</tr>
</tbody>
</table>

| Fare System Total Capital Costs           | $8,100,000 |

**NOTE TO TABLE 3** - up to 33.33% of Fare System capital costs are eligible for Provincial subsidy under the terms of GTA Fare System Procurement Governance Agreement, and will flow back to the Gas Tax Reserve upon subsidy recovery.
SUBJECT: GTA Fare System Project  
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As noted in Table 3, there will be a requirement to fund a total of $3.6 million in Capital Requests from the Gas Tax Reserve; Table 4 below details the anticipated requirements in each of 2005, 2006 and 2007.

TABLE 4: ANTICIPATED IMPACT ON GAS TAX RESERVE

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$4,500,000</td>
<td>$500,000</td>
<td>$500,000</td>
<td>$2,600,000</td>
<td>$8,100,000</td>
</tr>
</tbody>
</table>

Table 5 below provides the projected Gas Tax Reserve balances based on projected Gas Tax revenues and commitments to date.

TABLE 5: GAS TAX RESERVE PROJECTION

<table>
<thead>
<tr>
<th>(000's)</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Gas Tax Revenues</td>
<td>1,477</td>
<td>5,900</td>
<td>9,600</td>
<td>11,800</td>
</tr>
<tr>
<td>Operating Requirements</td>
<td>(1,444)</td>
<td>(3,975)</td>
<td>(3,975)</td>
<td>(3,975)</td>
</tr>
<tr>
<td>Capital Requirements:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OHRC Settlement</td>
<td></td>
<td></td>
<td></td>
<td>(665)</td>
</tr>
<tr>
<td>HSR Service Enhancement</td>
<td></td>
<td></td>
<td></td>
<td>(780)</td>
</tr>
<tr>
<td>ATS Service Enhancement</td>
<td></td>
<td></td>
<td></td>
<td>(339)</td>
</tr>
<tr>
<td>McMaster Bus Pass Prog.</td>
<td></td>
<td></td>
<td></td>
<td>(780)</td>
</tr>
<tr>
<td>GTA Fare System</td>
<td></td>
<td>(500)</td>
<td>(500)</td>
<td>(2,600)</td>
</tr>
<tr>
<td>Gas Tax Reserve Balance</td>
<td>33</td>
<td>(1,106)</td>
<td>4,019</td>
<td>9,244</td>
</tr>
</tbody>
</table>

Moving forward with the GTA Fare System Procurement Governance Agreement will enable the Province to proceed with the necessary procurement steps on behalf of the participants. In parallel with this activity, the City of Hamilton will proceed with the procurement of the replacement registering fare boxes to meet the overall implementation strategy.

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 being led by the Government of Ontario to establish an integrated system of fare collection for public transit services within the Greater Toronto Area (GTA). The project is central to the government’s goals of strengthening Ontario’s communities by improving public transit; making transit a more attractive choice for commuters; facilitating an integrated, seamless inter-regional transit system for GTA users and working together with local governments to invest prudently in public transit infrastructure.

The Minister of Transportation has established aggressive targets for implementing the project. The Province has taken the lead in the design phase of the project, committing
significant internal and external resources to moving the project through the procurement and implementation phases by the end of 2007.

The City has been an active participant in the project since 2002 and staff members continue to invest significant time and expertise in the project, as there are substantial local benefits to be derived from participation. These benefits include potential reductions in the future cost of fare collection; improved customer service through a more convenient fare payment system; and leveraging of senior government funding to reduce capital infrastructure costs associated with replacement of the existing fare collection system. Hamilton is viewed as a key participant in this project, as there is a local need to replace the current fare system, which is well beyond its expected useful life cycle, and Hamilton presents an “early adopter” opportunity for the participants to gauge the operational effectiveness of the GTA Fare System in a larger system with unique operating characteristics.

Work on the project to date has been governed by an Administrative Accord, which does not commit the participants beyond the development of the operational concept and system design, with no legal or financial liabilities. Work on the project is now at the stage where prospective partners need to formally agree to participation in the procurement and implementation of the GTA Fare System. This agreement will be defined through a GTA Fare System Procurement Governance Agreement.

A previous report PW04117 (GTA Fare System Project: Information Update) provided Council with an overview of the project in October, 2004 and the Public Works, Infrastructure and Environment Committee was provided with a comprehensive presentation on the direction and scope of the GTA Fare System Project at that time.

**ANALYSIS OF ALTERNATIVES:**

The GTA Fare System Project has been under development for several years, under the leadership of the Province of Ontario, as represented by the Ministry of Transportation of Ontario (MTO), with the active participation of GO Transit and municipal transit representatives, including the City of Hamilton. The vision underlying the project is the development of a common fare card that would allow customers to ride on any participating GTA transit system without pre-purchasing tickets or passes and without knowing in advance the fare policies or having the exact cash fare for each transit system.

There are a number of significant key benefits for the City of Hamilton in participating in this project, as follows:

- Adopting and implementing a universal fare card will enable a high level of service integration to be achieved with GO Transit and other participating municipal transit operators in the GTA. A Hamilton transit customer with the common fare card could use the card as an automatic payment mechanism for the Hamilton Street Railway (HSR) services and could also use the same card to pay for their fare on GO Transit or other GTA municipal transit services. The different fare programs of each transit system are accommodated but are transparent to the customer in using each service.

- The existing HSR fare boxes are at the end of their service life. This is resulting in continually reduced reliability of the equipment in service and increasing maintenance costs to support the system. Council has previously approved an
allocation of $4.5 million in the 2003 Capital Budget for the replacement of the existing fare boxes. Participation in the GTA Fare System project will provide an opportunity to retire the existing farebox system, replace it with a new system in combination with the fare card and to gain access to Provincial funding available to implement this system.

- A new fare collection system based on the fare card will provide improved customer convenience in purchasing transit fare media and in paying service fares. The fare card can be purchased by the internet, through 3rd party agencies and from transit ticket outlets and the value stored on the card can be updated using any of these venues. Boarding a transit vehicle only requires that the card be presented near the fare box card reader. Many system features are available to enhance card security.

- The Provincial Government has committed to provide funding assistance to municipal transit operators in the implementation of the GTA Fare System. Under the draft agreements, the Provincial Government will fund the entire cost (100%) of implementing and operating the Central System used to manage allocation of revenues to each transit system and to support the overall system. The Provincial Government will also fund 33.33% of the capital costs for equipment acquisition, installation and start-up at each municipal transit system for the Fare card system as well as an upgraded or new fare box system. Participation in the GTA Fare System project is also a condition of receiving the Provincial gasoline tax allocation to municipal transit systems.

- The full implementation of the GTA Fare System is expected to reduce the future costs of fare collection at HSR. The current ongoing annual operating costs associated with fare collection are approximately $1.4 million annually. The investigations to date indicate that implementation of the GTA Fare System and the associated replacement of existing fare box equipment may result in operating cost savings and improved revenue recovery of up to 30% when the system is fully operational in future.

- The proposed fare card will enable different fare strategies to be implemented. For example, discounts can be provided to customers making a greater number of trips to encourage transit loyalty or service discounts by day of week or time of year can be provided.

- The fare card will provide more detailed transit ridership data that can enhance the planning and design of transit services.

A more rigorous assessment of the system is provided below under the areas of business case, funding, governance, procurement and implementation strategy.

Business Case:

The key elements of the business case for a new fare system based on the fare card in combination with new electronic registering fare boxes are:

- The existing fare collection system must be replaced now to minimize the risk of widespread failure.
- Provincial funding is available to reduce the City's costs for the GTA Fare System as well as for purchase of new fare boxes. This funding is, however, only available if the City participates in the GTA Fare System Project.
- Benefits of the recommended new fare system that include improved customer service, security of transit revenues and improved driver safety and security.
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- The new fare system will reduce ongoing operating costs and improve revenue recovery.

Attachment A of this report provides a detailed business case analysis of the different fare system options. It is noted that the GTA Fare System Procurement Governance Agreement will make provision for Hamilton or other parties to withdraw from the project if bid prices are more than 15% higher than the estimated costs.

Funding:
The funding of the fare system will be as follows:

- The Provincial Government has committed to fund 33.33% of the capital cost of the new fare system, including both the GTA Fare System and new fare boxes, provided that the GTA Fare System is part of the new fare system.
- The Provincial Government will fund 100% of the GTA Fare System Central System set-up and maintenance costs and will provide an overall coordinating role in the procurement of the new system.
- The City of Hamilton will be responsible for 66.67% of the capital cost of the new fare system and 100% of the operating costs of fare collection.
- GTA municipalities not participating in the GTA Fare System will not be eligible to receive the transit share of the Provincial gas tax.

Governance:
The framework for governance of the GTA Fare System during the procurement and implementation phase will be the GTA Fare System Procurement Governance Agreement (previously referred to as the Agency Agreement). The terms of this agreement have been under development for some time by the Legal Subcommittee, comprised of Provincial and Municipal representatives including the City of Hamilton Legal Services Division. The purpose of the agreement is to enable the Province, GO Transit and the municipalities to proceed with the procurement of the fare card system within a well defined framework that recognizes each party’s interests.

The key provisions of the GTA Fare System Procurement Governance Agreement are as follows:

- The parties to the agreement will be the Province of Ontario, the participating GTA municipalities providing public transit service and GO Transit. HSR would be a signatory to the agreement as the transit corporation on behalf of the City of Hamilton and deemed to be a "Municipality" for the purpose of the agreement.
- The Ministry of Transportation of Ontario (MTO), on behalf of the Province of Ontario would act as the “agent” with the responsibility to procure the GTA Fare System on behalf of the parties, acting within the terms and conditions of the agreement.
- The municipalities and GO Transit would be committed to acquire and implement the GTA Fare System within the terms and conditions of the agreement and within approved cost thresholds.
- A transit service provider, such as the HSR, may withdraw its participation in the procurement under several conditions: (i) prior to the issuance of a request for proposals (RFP) to acquire the fare card system; (ii) prior to the execution of a contract with a supplier if the bid price in response to the RFP is more than 15% in excess of the estimated capital cost amount; (iii) prior to the execution of a contract with a supplier if the projected cost of operating the central system is more than 15%...
in excess of the estimated cost; or (iv) if the service provider fails to enter into an operating agreement prior to the execution of a contract with a supplier.

- The project will have a Steering Committee and Executive Committee. The staff positions representing each party on each of these committees must be confirmed by resolution of Council.
- The Steering Committee will provide the ongoing management of the project and will report to the Executive Committee on key issues, including approval of the final procurement document, the budget, award of a contract, implementation schedule and payments to the contractor. Members of this committee will typically be transit management staff with responsibilities for fare collection.
- The Executive Committee will be responsible for overall direction of the project including approval of the final procurement document, the capital budget and award of the contract for the fare card system. Members of this committee will typically be the manager of the public transit services.
- Approval of key matters by the Executive Committee requires the support of the MTO, GO Transit and a majority of the municipal transit members. In cases of dispute that require higher level negotiation, the Agreement contains provisions for involvement of the CAO or equivalent, and in specific cases the Minister, Regional Chairs and Mayors.
- The transit systems (i.e., users) must ensure that the necessary bylaws or resolutions have been passed to enter into the agreement and that the necessary steps have been taken to participate in the procurement process.

With regard to the "Dedicated Gas Tax Funds for Public Transportation Program", beginning in 2005, the MTO have advised that the City of Hamilton, through HSR's participation, will have demonstrated their "participation in the GTA Fare System Project" by having directed the HSR to enter into the GTA Fare System Procurement Governance Agreement.

Following the procurement and implementation of the system, the ongoing operation of the GTA Fare System and coordination between the parties will be governed by one or more Operating Agreements between the parties. The provisions of this agreement will be negotiated during the initial phases of the project implementation.

**Procurement**

The procurement of the GTA Fare System will be undertaken by the MTO following Provincial Government procurement guidelines and with the assistance of the project Steering Committee and under the direction of the project Executive Committee. The key steps in the process will include:

- Development and release of a Request for Qualifications (RFQ) to identify those system integration suppliers interested and qualified to supply the system.
- Pre-qualification of system integration suppliers for further procurement competition.
- Release of a Request for Proposals (RFP) with system design specifications to pre-qualified system integration suppliers.
- Evaluation of proposals, selection of supplier and negotiation of contract provisions.
- Award of contract to successful supplier.

The Request for Qualifications has been issued with the remaining steps in the procurement process to follow during year 2005.
A separate procurement process will be required to procure new electronic registering fare box system for HSR. This procurement will be the responsibility of the City of Hamilton but will be coordinated with implementation of the GTA Fare System. A project team with staff representatives of HSR, Purchasing, Legal Services, Information Systems and other divisions/departments will be involved in carrying out the procurement following the City’s established purchasing policies and procedures. The fare box system procurement will require the development of system specifications and a request for proposals, evaluation of supplier qualifications and product performance capabilities as well as the bid price, selection of a supplier and negotiation of a suitable contract with a recommendation to Council for a contract award. This process should be carried out in parallel with or in advance of the GTA Fare System procurement activities such that the new fare box system is in place when the GTA Fare System equipment becomes available. There may be an opportunity to undertake a joint fare box system procurement with one or more partner municipalities, subject to their needs and the timing of such a procurement.

**Implementation**

The implementation of the GTA Fare System is planned to take place in a number of steps that will move towards a GTA wide application of the full system. The key steps are as follows:

- **Finalization of the agreements between the parties and the system procurement.** Much of the work in developing the agreements has been carried out and the MTO is ready to proceed with the planned procurement steps. The plan is to have a contract in place with a vendor by the fall of 2005.

- **The implementation plan is to move forward with an initial limited system deployment to test and refine the fare card system as a “Launch One” initiative.** The current plan is to have Mississauga Transit participate in the Launch One initiative in early 2007 utilizing the GO shuttle buses on the Cooksville and Meadowvale routes and connecting to the GO train station.

- **The full scale roll out of the system would occur next.** Options are being considered, including the option of HSR being one of the early implementers. The early implementer systems are expected to have the fare card technology throughout their whole systems by late 2007.

- **The system would then be implemented across the rest of the Greater Toronto Area (GTA) by year 2010.** A dedicated HSR senior project manager will be required over the procurement and implementation period. Also, considerable assistance from staff from other City departments will be necessary to assist in the various project activities and to provide the necessary range of expertise.

**Financial/Staffing/Legal Implications:**

**Financial Implications:**

The primary financial implication is the need to invest approximately $8.1 million, inclusive of capital cost and implementation cost contingency, and before Provincial subsidy, over the next three years for implementation of the recommended system. This will be funded by a contribution of up to 33.33% from the Province with the remaining 66.67% to be funded by the City of Hamilton. The cost of providing and operating the
Central System of the GTA Fare System will be funded 100% by the Province. This capital investment will provide a new fare collection system for HSR that is also expected to result in savings in future fare collection costs and improved revenue recovery. Execution of this agreement will commit the City to participation in the project within the terms and conditions of the agreement, although there are provisions for the City’s withdrawal from the project under certain conditions such as the system bid costs being over 15% higher than estimated costs. Summaries of life cycle cost and funding analyses for various fare system options are provided in Attachment A to this report. Summaries of expected capital costs and funding sources are provided in the Executive Summary to this report.

Participation in the GTA Fare System Project is a condition of the City of Hamilton and other GTA municipalities receiving the Provincial gas tax funds from the Province. These funds will become available in 2005 for use in a range of transit service improvements in Hamilton. Capital expenditures under this initiative are eligible under Gas Tax Funding.

Legal Implications:

i) Purpose and Effect of the Relationship of the Parties reflected in the Procurement Agreement: In an effort to encourage use of public transportation, the Province of Ontario has undertaken to organize and assist the GTA Fare System project with administrative, staffing, public communications and financial support. Various municipalities and transit authorities, including GO Transit are participating to further their own similar goals and their need for fare systems. The combined efforts are intended to integrate, simplify and strengthen the system for riders and participants. As well, the larger procurement is intended to aid purchasing and lower costs. Each municipality or transit authority will be on their own in certain decisions, like fare registering/collecting equipment. However the combined purchasing, operations and funding support the selection of a compatible system and participation over the longer term. Procurement is merely an initial step in establishing the new fare system, and the agreement being considered in this report deals with two primary issues: the rights and obligations of the parties during the procurement and that continued provincial funding (including provincial share of gas tax revenue) now requires a formal agreement.

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

(a) Provincial Commitment for Funding: Provincial commitment is for particular funding of the central system and partial capital costs of municipalities and transit authorities, as well as an indication of general provincial funding support and gas tax revenues (until further agreements are required for funding beyond 2005). The HSR (and the City through its funding of public transit, now aided by provincial gas tax revenues) is committing to expenditures for its share of costs and operation.

(b) Ministry as Procurement Agent for Participants: The Ministry of Transportation will have the authority to follow a process of procurement on behalf of the HSR and other participants for the contractor to establish
and operate central fare card system subject to the agreements terms. The powers of agent may be assigned by the Ministry, and the agent is subject to some control through the approvals and directions of the executive committee, in which the HSR has voting rights.

(c) Ontario Procurement Policies: In adopting the recommendations, the City and HSR are accepting the Province’s policies will be the guiding procurement policy, but these are similarly designed to ensure competitive pricing and public involvement, and the procurement will involve City or HSR designates on committees involved in setting specifications and reviewing bids. Any such process will involve protection for confidential bidder/contractor information, and so may require specific staff to sign confidentiality agreements. The HSR as a whole is bound by a specific confidentiality agreement contained in the proposed procurement agreement.

(d) Term: The proposed procurement agreement is effective for 60 months, but the HSR’s schedule of implementation is likely to see a much earlier end to this proposed agreement. If procurement results in implementation sometime in 2007, the expected term could be less than 24 months, subject to some terms which survive the HSR’s exit. Note again that a future operating agreement is expected to result from a successful procurement, so that the HSR’s obligations will be set by that future document still to be developed by the project participants and approved by Council. A longer term may be used if implementation is delayed or initial procurement efforts are unsuccessful, and the agreement contains a right of renewal for a further 60 months.

(e) Rights of Termination: The proposed agreement contains rights of termination for the Ministry and other participants on advance notice, including those decisions to terminate that might be based on funding (budget) decisions reserved by law to the Ministry and Councils/Boards. The withdrawal of the Ministry is likely to result in a wholesale review of the project, using information collected, such as whether the RFP results and bids make the project economically or otherwise feasible, and subject to conflict of interest protections (for instance, signing a contract direct with the vender requires written Ministry approval). Different rights arise depending on the timing of the termination in relation to other events (i.e. if the Ministry terminates after entering into a contract with a contractor under the procurement, than the Ministry is responsible for certain close out costs, and the municipalities, including the HSR must assist in limiting the amount of those costs to the Ministry). The Ministry may also be responsible for selling and distributing the proceeds of certain assets to municipalities based on their 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. Municipal Rights of termination require notice, and are based either upon funding decisions which carry cost implications for withdrawal being amounts as may become due or are due under the agreement, or
upon the following four circumstances: (a) prior to issuance of the Request for Proposals ("RFP"), and after the RFP but before the contract with the successful vendor is entered, if (b) the bid price is above a capital cost threshold, (c) the bid price is above an operating cost threshold, and (d) if the HSR (Council) fails to approve the operating agreement expected to follow procurement, which four circumstances also have some obligations surviving.

(f) Appointees and Committee Structures: Under the proposed agreement the HSR will have appointees on a Steering Committee which committee has a management function for procurement activities, and on an 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 procurement and agreement, and each municipality and transit authority will have one such voting member as well. These appointees also have delegated authority to assist the agent (Ministry) in carrying out their role in implementing the procurement as designated contacts under the proposed agreement. Each committee allows one vote for the Ministry and qualified users. The municipal membership of the Executive Committee also has a power to vote on termination of the Ministry or its agent. Steering committee meetings operate with a quorum of 60% of the membership, and votes similarly require 60% support of members present. The appointment of alternate members will help ensure representation for the HSR. The executive committee also requires a 60% quorum, but due to the major decisions it makes requires full (100%) support of members present. Executive committee approval is required in order to enter a contract with the successful vendor in the procurement. 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, per recommendation “a”, and recommendation “c” allows signature of a HSR resolution as required by the agreement. 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 “d”.

(b) The timing of entry by other participants, i.e. the Toronto Transit Corporation, will vary, and a new procurement agreement will be executed for late entering municipalities and transit authorities. Recommendation “b”
gives authority to execute further copies of the procurement agreement as a way to ensure further participants become parties to the agreement. Added parties are intended to increase the benefits of the joint procurement and expanded public benefits of the GTA/Hamilton fare system, and under the proposed agreement the Ministry can solely decide to add new parties.

iv) Future Steps:
Providing suitable pricing and compliance, the procurement will be followed by an operating agreement between the participants and successful bidder. In Hamilton's case, like other authorities that are participating through a transit authority, there may be an additional agreement between the province and City dealing with future provincial gas tax revenues, or the Province may find that the HSR's entry into an operating agreement may also suffice for that purpose.

Staffing Implications:
Hamilton's participation in the GTA Fare System Project as well as the recommended procurement of new electronic registering fare boxes will require significant staff time and resources over the next several years. The staffing plan is to contract for a new dedicated senior project manager position to manage the project over the procurement and implementation period. This senior project manager will provide municipal requirements and technical input to the Project team, and will coordinate activities within the City to procure and implement both the fare box system and GTA Fare System. It is expected that this senior project manager will be required for a period of up to 6 months after expected system acceptance in 2008. Other in-house resources will be provided by City departments and outside specialist services will also be contracted for specific tasks where required. These staffing and outside specialist service costs have been reflected in the estimates of capital and operating costs for the implementation and operation of the recommended fare system in Capital Account 5300351100 (Fare Box Replacement).

Policies Affecting Proposal:
The procurement of the GTA Fare System will be carried out under Provincial Government purchasing policies but these policies are consistent with City of Hamilton purchasing policies, and are designed to ensure competitive pricing and proper procedures for bidding and evaluation. A representative of the City's Purchasing section has been actively participating in the GTA Fare System procurement subcommittee activities. The procurement of the new electronic registering fare boxes will be conducted by the City, following established purchasing policies of the City.

The Provincial representatives have advised that participation in the GTA Fare System project by Hamilton and the other GTA Municipalities operating public transit services is a condition of receiving the Provincial gas tax funds for transit in 2005 and future years.

The current fare policies approved by Council may require some future reconsideration to allow for HSR integration with the harmonized fare policies that all participants have agreed are integral to the Business Rules that have been developed for the GTA Fare System. Differences between current City of Hamilton fare policies and the GTA Fare System harmonized policies are minor, and will not inhibit the ability of Council to set
fares at a local level. Two particular fare policies that Council will be asked to consider in a future report, prior to implementation of the GTA Fare System, are a $5 user fee for purchase of the fare card, intended to offset the production and distribution costs of the card; and the discontinuance of most, if not all, single use tickets in favour of the electronic purse and loyalty program features of the fare card.

CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:

During the Operational Concept and Design phases of the project, staff from Public Works (Transit, Finance and Administration), and Corporate Services (Legal Services, Purchasing, Internal Audit, IT Services, Communications) have been consulted.

The project team and participating agencies include the Province; GO Transit; and municipalities including Burlington, Oakville, Mississauga, Brampton, York Region, Toronto (TTC) and municipalities within Durham Region. Other agencies consulted have included several major transit districts throughout the world including London (UK), Hong Kong, San Francisco, Washington, and others.

CITY STRATEGIC COMMITMENT:

Participation in the GTA Fare System Project meets the following City Strategic Commitments.

Value: Fiscal Responsibility

The recommendations increase the efficiency of city government through fiscal responsibility and prudence by supporting the development of a lower cost means for carrying out Transit fare collection.

Goal: A City of Growth and Opportunity

The recommendations provide a platform for effective reinvestment in the Transit strategic infrastructure which helps Hamilton integrate with other municipal and provincial government agencies, thereby enhancing our ability to attract and maintain business.

The recommendations develop an effective partnership with the Provincial government to support the City in its efforts, through recognition of mutual goals and opportunities, and development of a supportive cost sharing structure.

The recommendations help to attract and retain business through improved public transit infrastructure.

The recommendations keep Hamilton connected to other GTA municipalities through the deployment of an innovative, seamless fare payment technology.

Goal: A Great City in Which to Live

The recommendations support the VISION 2020 goal of Changing our Mode of Transportation through encouraging the increased use of public transit, and the further VISION 2020 goal of Safety and Security by providing a fare payment medium which is secure and lessens personal risks for residents and employees of the City.
Goal: A Healthy, Safe and Green City

The recommendations support the objective of Public Safety for the Community, with the Community through improved fare payment means that are less prone to loss, theft, and fraud.

Goal: A City That Spends Wisely and Invests Strategically

The recommendations support the objectives of Maintaining Service Levels and Best Practices - Best Values through an innovative initiative that will utilize public-private partnerships, advanced technologies, and economies of scale to provide an improved service at a lower cost.
ATTACHMENT A - PW04117a
ASSESSMENT OF FARES SYSTEM OPTIONS

Introduction

HSR staff has carried out an extensive assessment of fare system options for Hamilton's public transit services. This assessment has benefited from information and data provided through the GTA Fare System Project currently underway with coordination of the Provincial Government. The assessment has been conducted for two primary reasons:

- The existing HSR fare box system is almost 20 years old and has surpassed its service life. Replacement of this system will be required within the next 2 to 3 years.

- The GTA Fare System Project offers the opportunity for Hamilton to obtain new fare system technology that will be a part of an integrated GTA-wide system and will provide significant benefits to Hamilton. Provincial funding assistance towards a new fare system will be available through participation in this project.

The assessment of different fare system options for Hamilton is summarized in this report. The determination of a preferred option is necessary for the further participation in the GTA Fare System Project.

Current Situation

Hamilton currently uses electronic registering fare boxes that enable payment of customer fares to be monitored and recorded through cash counting device, ticket reader and pass reader components of the fare box on each bus. The cash and tickets are held within a secure container within the fare box and are transferred to a central vault by a mechanical operation that maintains security of the contents. The system provides electronic records of transactions that are transferred to the central system for the provision of summary reports on transactions and revenues.

The current system was installed in 1986 and has been in use for close to 20 years. This system has surpassed its service life. The reliability of the system is declining, the ongoing equipment maintenance costs are significant, at about $200,000 annually, and increasing, and the physical elements of the system are deteriorating. This system requires replacement now to avoid widespread failures that could severely impact transit operations.

In conjunction with the current fare system, there are various ongoing operating costs that include the production and distribution of fare media (passes and tickets) to 3rd party vendors, collection of revenue from vendors, payment of commissions to vendors, operation of a HSR ticket office for direct sale of fare media to the public, handling of revenues from the ticket office, collection and processing of revenues received through the fare boxes, maintenance of the fare boxes and related equipment and the reporting of transit revenues. The current ongoing costs of these various activities related to the current fare system are about $1.4 million annually.

GTA Fare Card

The fare card concept is based on the use of a pre-purchased electronic stored value card that can be used to pay transit fares on boarding the vehicle or entering a transit station. A fare card reader detects and registers a card placed in close proximity and deducts the appropriate fare from the value stored on the card. The customer can periodically purchase additional value to be stored on the card for future use (i.e.,
recharge the card). The card can be recharged through various mechanisms including the internet, at a 3rd party vendor, at a station or outlet or at the farebox on the bus. The system software can maintain various records centrally, update the fare card data, provide for different fare provisions and so forth.

The significant feature of the fare card system is the use of an integrated common fare card across all GTA transit systems to enable seamless travel on different transit services by fare card users and to account for revenues due each transit system for use of that particular service. A central clearing house will be established by the Provincial Ministry of Transportation to distribute revenues to each transit system and to provide central coordination and support for the system.

For a municipal transit system such as HSR, the fare card will not provide a complete fare collection system. Since the fare card requires the use of a pre-purchased card and the maintenance of sufficient stored value on the card, many transit customers will need or wish to pay their fare using cash or fare media such as tickets. It is anticipated that the use of the fare card will increase over time but that the capability to also collect cash and ticket fares will continue indefinitely. Therefore, a fare box system will be required along with the fare card system to provide a complete fare collection system.

Fare System Options

The assessment has identified five fare system options for Hamilton, as follows:

- Option 1 is the GTA fare card in combination with new electronic registering fare boxes. This option would maintain the functionality of the existing equipment in regards to fare payment and security while adding the capabilities of the GTA fare card system.

- Option 2 is the GTA fare card system in combination with a basic mechanical farebox for the collection of cash and ticket fare media. With this type of system, the mechanical farebox cash and tickets would have to be extracted and counted by staff. Customers would however, be able to pay by cash or tickets while the full functions of the fare card system would be available.

- Option 3 is the GTA fare card system in combination with a secure mechanical farebox. This option would have the full functionality of the fare card system and would also accommodate fare payment by cash or ticket. The fare box system would have a secure extraction and dumping mechanism that did not involve the direct handling of cash by staff.

- Option 4 is the GTA fare card system in combination with used retrofitted electronic registering fare boxes. This option would generally have the functionality of the existing equipment in regards to fare payment and security while adding the capabilities of the GTA fare card system. The details of this option assume that the required quantity of suitable quality electronic registering fare boxes can be purchased in North America.

- Option 5 is the replacement of the existing fare collection system with new electronic registering fare boxes. This option generally would have the functionality of the existing equipment in regards to fare payment and security but does not include the addition of the GTA fare card system.
Cost Comparison of Fare System Options

HSR staff has prepared a detailed life cycle cost analyses of the fare system options, considering the capital cost of procuring, installing and commissioning the system, the one-time ramp up capital costs (e.g., staff training, marketing) and the ongoing operating costs of fare collection over a ten period. Changes in revenue collected due to different levels of fare evasion have been considered in the ongoing operating costs. The life cycle cost analyses are based on actual HSR costs where relevant, cost estimates provided through the GTA Fare System Project, cost data from other transit systems and cost data collected by HSR staff. It is recognized that there are different levels of uncertainty associated with specific elements of the cost estimates. For example, in Option 4 it was assumed that the appropriate quantity of refurbished used fare boxes with the desired functionality can be purchased in North America within the next couple of years. The uncertainty related to this assumption will be discussed further below.

The life cycle cost analyses are summarized in Table 1 below for each option. As indicated in this table the estimated total capital costs of the different options ranges from $4.07 million (Option 2) to $6.68 million (Option 1). The lowest capital cost is associated with the fare card in combination with a basic mechanical fare box as utilized in Option 2. The highest capital cost is associated with the new registering fare boxes in combination with the fare card system. These estimates do not include capital cost and implementation cost contingencies, which may bring the total high range of the capital cost to $8.1 million.

The life cycle cost analyses indicate clearly that the ongoing operating costs, including revenue loss related to fare evasion, associated with all of the options is lower than the existing fare system operating costs. The ten year costs in 2004 dollars range from $9.22 million to $13.04 million as compared to the existing costs of $14.83 million over a ten year period. Option 5, which is very similar in functionality to the existing system, has lower ongoing operating costs since the system maintenance costs for new equipment are lower.

The life cycle cost analyses also indicate that the use of the fare card system in combination with any of the fare box options will reduce the ongoing annual operating costs compared to either the existing system or Option 5 (i.e., the replacement of the existing system). For example, Option 1 is estimated to provide an operating cost saving over the 10 year period of $3.8 million in comparison with Option 5 and $5.6 million in comparison to the existing fare system.
ATTACHMENT A - PW04117a
ASSESSMENT OF FARES SYSTEM OPTIONS

TABLE 1: Life Cycle Cost Comparison of Fare System Options

<table>
<thead>
<tr>
<th>Cost Component</th>
<th>OPTION 1 Fare Card &amp; New Registering Fareboxes (Millions of Dollars)</th>
<th>OPTION 2 Fare Card &amp; Basic Mech Fareboxes (Millions of Dollars)</th>
<th>OPTION 3 Fare Card &amp; Secure Mech Fareboxes (Millions of Dollars)</th>
<th>OPTION 4 Fare Card &amp; Retrofit Registering Fareboxes (Millions of Dollars)</th>
<th>OPTION 5 New Registering Fareboxes (w/o Fare Card) (Millions of Dollars)</th>
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<tr>
<td>Total Capital Cost</td>
<td>$6.68</td>
<td>$4.07</td>
<td>$4.82</td>
<td>$4.45</td>
<td>$4.57</td>
</tr>
<tr>
<td>10 Year Operating Costs (inflated $ NPV)</td>
<td>$9.15</td>
<td>$11.95</td>
<td>$10.48</td>
<td>$9.39</td>
<td>$12.94</td>
</tr>
<tr>
<td>Total Capital Costs &amp; 10 Year NPV Operating Costs</td>
<td>$15.83</td>
<td>$16.02</td>
<td>$15.31</td>
<td>$13.84</td>
<td>$17.51</td>
</tr>
</tbody>
</table>

Funding Implications

The Provincial funding provisions have a significant impact on the selection of a preferred fare collection system for HSR. The Provincial position on funding towards the fare system is as follows:

- The Provincial Government will fund 33.33% of the capital cost of the GTA fare card system and 33.33% of the capital cost of a new fare box system, provided that the GTA fare card is part of the overall fare system.
- The Provincial Government will fund 100% of the GTA Fare System Central System set-up and maintenance costs and will provide an overall coordinating role in the procurement of the new system.
- The municipality will be responsible for 100% of the operating costs of the fare collections system.
- GTA municipalities not participating in the GTA Fare System will not be eligible to receive the transit share of the Provincial gasoline tax.

Based on the foregoing funding structure, the resulting Provincial and City costs for each fare system option are as shown in Table 2 below. This comparison clearly indicates that replacement of the existing fare system without participation in the GTA Fare System Project (Option 5) is substantially more costly to the City of Hamilton. Further, this higher City cost is understated since it does not reflect the loss of the transit share of the Provincial gasoline tax that will be available to fund other transit improvements in Hamilton. Essentially, these funding implications remove Option 5 from further consideration.

In considering the City costs of the other options, it is noted that the cost of Option 2 (i.e., fare card and basic mechanical fare box) is higher than the other options due to the higher operating costs. The City costs of Options 1 (i.e., fare card and new registering fare boxes), Option 3 (fare card and secure mechanical fare box) and Option
4 (i.e., fare card and retrofitted registering fare boxes) are generally similar although Option 4 is somewhat lower.

<table>
<thead>
<tr>
<th>TABLE 2: Funding of Fare System Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding of Options</td>
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<tr>
<td>---------------------</td>
</tr>
<tr>
<td>Provincial Contribution to Capital Cost (33.33%)</td>
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<tr>
<td>City Contribution to Capital Cost (66.67%)</td>
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<tr>
<td>NPV of 10 Year City Operating Cost (100% City Cost)</td>
</tr>
<tr>
<td>Total City Contribution over 10 Years (Capital + NPV Operating)</td>
</tr>
</tbody>
</table>

Other Implications of Fare System Options

Options 1 to 4 have some other significant implications relating to customer service, security and feasibility that warrant further consideration.

- Option 1 offers the full functionality of the existing fare collection system with the added benefits related to the GTA fare card system. The new registering fare boxes offer the same customer service features as the existing fare box system, fare payment can continue to be monitored by transit operators as with the present system and there is a high level of security associated with the management of cash and ticket revenues. This option does not have any major disadvantages in terms of customer service, transit operators’ responsibilities and security of revenues. It serves as a basis for comparison with Options 2, 3 and 4.

- Option 2 has some serious disadvantages in terms of security and customer service. The requirement for staff to manually dump and count the cash and tickets from each fare box without a record of fare payments presents a situation that is open to abuse and does not have a basis for an independent audit of revenues collected. Further, the fare box does not have the capability to count cash fare payments or validate tickets. This requires the operator to visually check and verify the fares deposited in fare boxes. This will slow fare payment and boarding and create situations of potential operator – customer conflict. This option is expected to result in higher levels of fare evasion. Overall, the reduced security of transit revenues and the lower level of customer service are serious disadvantages of this option.

- Option 3 would have higher levels of security of cash and ticket revenue since the direct handling by staff is greatly reduced through mechanical devices. However, these fare boxes do not have a means of an independent audit check of the actual revenues deposited in the fare box (as with a registering fare box). Further, the verification of the proper payment of individual cash and ticket fares is through a visual examination by the operator. Similar to Option 2, this will slow fare payment and boarding, create situations of potential operator – customer conflict and is expected to result in higher levels of fare evasion. The lower level of customer service is the main disadvantage of this option.

- Option 4 provides a similar functionality as Option 1. However, the actual feasibility of this option is doubtful. There have been some past instances of North American
transit properties selling used electronic registering fare boxes that still have reasonable service life remaining. However, the current availability of a fare box system with the required number of fare boxes and the desired functionality for Hamilton at reasonable prices and in reasonable condition is unknown and is expected to be very limited. Since replacement fare boxes are needed within the next two years, the availability of suitable fare boxes is doubtful. At this time, this option is not considered feasible in the short term.

Conclusions

The preferred fare system option for HSR is Option 1, a new fare system based on the GTA fare card system in combination with new electronic registering fare boxes. This option has lower life cycle costs to the City of Hamilton than all the other options except Option 4. The feasibility of Option 4, especially within the required time frame for replacement of the existing fare system, is doubtful and this precludes it from further consideration. Option 1 will provide Hamilton with the benefits of the GTA Fare System while maintaining the functionality and flexibility inherent in a new electronic registering fare box system.
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
CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Transit Division

Report to: Chair and Members Public Works Committee
Submitted by: Scott Stewart, C.E.T.
General Manager
Public Works Department

Date: May 1, 2007
Prepared by: Andy McLaughlin
Extension 1809

SUBJECT: Eastgate Transit Terminal Reconstruction (Ward 5) (PW07070)

RECOMMENDATION:

(a) That the City of Hamilton enter into a transportation services licence agreement,
in a form acceptable to the City Solicitor, between The Hamilton Street Railway
Company (HSR) and Eastgate Square Holdings Inc. for the operation and
maintenance of the Eastgate Transit Terminal for the period September 1, 2007
to August 31, 2027;

(b) That the Mayor and City Clerk be authorized to execute as signatories to the
licence agreement, consistent with their respective roles as President and
Secretary of The Hamilton Street Railway Company;

(c) That the General Manager of Finance & Corporate Services be authorized and
directed to provide $1,600,000 in capital funding, representing the City share of
the construction and maintenance cost of the works, and that these funds be
drawn from the one-time dedicated Federal Public Transit Gas Tax Reserve;

(d) That items related to Tierra Apartments and traffic improvements at Eastgate
Square be removed from the Outstanding Business List of the Public Works
Committee.

_______________________
Scott Stewart, C.E.T.
General Manager
Public Works

EXECUTIVE SUMMARY:
The City of Hamilton is embarking on its Transportation Master Plan, which includes an
ambitious 25-year transit ridership growth initiative. Ambitious transit expansion plans
have been developed, along with other transportation demand management measures, as the preferred approach to prevent severe congestion, gridlock and air quality degradation that has been modelled to occur by 2031 if the transportation trends continue to evolve without intervention. One of the key strategic elements to grow ridership is the development of Bus Rapid Transit (BRT) in several mixed use corridors. Phase 1 of the BRT program, which will eventually result in higher speed bus lines operating along arterial roads, featuring engineering measures to ensure that the buses will have priority over private vehicle traffic, requires that terminals be created at each end of the BRT corridors.

Eastgate Square Shopping Centre, located at Queenston Road and Centennial Parkway will be reconstructing their southeast parking lot and ring road in 2007. This will require the relocation and new construction of the existing Eastgate Transit Terminal used by five Hamilton Street Railway (HSR) bus routes, including the Beeline Express route which will evolve into the lower city east-west BRT route. Since Eastgate is one of the primary mixed use centres at the east end of the lower city BRT corridor, it makes sense to establish a permanent terminal for the BRT at this site.

Eastgate Square has updated their shopping centre to create an attractive destination for shopping. The mall’s management are enthusiastically supporting a unique public private partnership that cements a long-term transit presence at the shopping centre and supports the integration of transportation infrastructure with land use changes. Experts cite this type of integration as critical in changing the mindset of consumers in terms of their choice of travel mode for day-to-day trip making. The goal is to make using transit as easy as using a car for the majority of trips in the urban area of the city.

The terminal will reflect the latest in Canadian contemporary design for bus transit terminals. It features state-of-the-art amenities for passengers including fully accessible platforms, modern, low maintenance shelters, attractive landscaping and high security lighting.

In exchange for a 50% contribution by HSR for the transit terminal reconstruction costs and an up front payment by the City for the net present value of the estimated transit terminal maintenance costs, Queenston Road Investment Inc., owners of the shopping centre, through their holding company, Eastgate Square Holdings Inc. are prepared to enter into a twenty year transportation services licence agreement that will permit Transit to operate routes into the transit terminal until August 31, 2027.

A twenty year agreement provides an enhanced level of predictability to ensure a stable eastern node for Hamilton’s future Bus Rapid Transit network. As the urban area undergoes intensification through to 2031, this network will be a crucial element in helping to increase transit’s mode share from forty annual trips per capita to the Transportation Master Plan target of between eighty and 100 annual trips per capita.

The licence agreement fee of $1,600,000 represents an effective use of resources, in that there presently are funds available for transit capital improvements in the one-time dedicated Federal Public Transit Gas Tax Reserve. Relieving HSR of ongoing maintenance expenditures will cost avoid future operating budget expenditure increases.

Staff has been negotiating with the owners and a suitable terminal design that promotes efficient and effective transit operations has been developed. The project is subject to
site plan control and approval by the Development Planning Section, with specific conditions attached, is anticipated shortly in advance of the start of construction in May 2007. The owners have a target completion date of August 2007.

Transit staff has consulted with and received assistance from a range of municipal divisions with respect to the wording of the terminal licence agreement, site plan considerations and a funding strategy.

Changes at Eastgate Transit Terminal will put a fresh face on this important transit node and compliment the recent introduction of hybrid articulated buses to the Beeline Express bus route that has its east end terminus at the facility.

**BACKGROUND:**

The information/recommendations contained in this report primarily affects Ward 5.

The City has been operating various bus routes from Eastgate Square Transit Terminal since the mid 1980’s, when a transit facility containing passenger amenities and bus turnaround functions was constructed on a portion of the southeast parking lot. Queenston Road Investment Inc., owners of the Eastgate Square Shopping Centre, have embarked on a multi year renovation plan for the shopping centre and in 2007 will be reconstructing a portion of the mall’s ring road at the food court entrance, necessitating the demolition of the existing transit terminal. The reconstruction will require that the transit terminal be relocated southerly.

The mall owners, through their holding company, have agreed to enter into a twenty year licence agreement with the City that will provide for access and egress to the shopping centre property in order to provide off-road local and express bus services for transit customers. The owners will undertake the construction and ongoing maintenance of the new transit terminal. Upon execution of the licence agreement, the City will pay a one-half share of the capital costs associated with the terminal construction, along with an up-front payment for the estimated twenty year maintenance costs for the transit terminal.

The new terminal will be situated just north of the mall’s Queenston Road property line, midway between Kenora Avenue and Centennial Parkway. As part of the reconstruction, a new signalized intersection will be installed on Queenston Road to facilitate the safe movement of vehicles, including buses, and pedestrians in/out of the shopping centre property and the Tierra Apartments and adjacent strip plaza located on the south side of Queenston Road. The signal will effectively address the pedestrian safety concerns that have been raised by the senior citizens at this location for a number of years. The costs for the new traffic signal are included in the capital costs being shared by the City and Eastgate Square.

**ANALYSIS/RATIONALE:**

The new terminal will provide simultaneous accommodation for up to eight buses and will replicate the end-of-line function currently provided at the existing terminal for the King, Beeline, Stoney Creek Central, Stoney Creek Local and Confederation Park bus routes. Egress for the Stoney Creek routes will be improved, in that they will be able to re-enter the adjacent arterial roadways via the new signalized intersection, avoiding a large portion of the mall’s ring road system.
Other operational features will include all-day access to secure washroom facilities for all HSR bus Operators. This improvement in Operator working conditions will make a positive contribution to employee morale that will enhance employee relations.

Portions of the bus platforms will be constructed to accommodate newly acquired 18.3m long articulated hybrid buses. Passenger amenities will include accessible concrete platforms, shelters, benches, litter containers and lighting. Although terminal passengers will be required to walk further to access the shopping centre doors, a new concrete walkway will feature a fabric-covered canopy to provide protection for adverse weather conditions.

The new licence agreement, attached in Appendix A, outlines the terms, conditions and responsibilities of the City and the mall’s owners. It replaces an expired licence agreement that has been extended on a month-to-month basis, pending the relocation of the transit terminal.

The new licence agreement obligates Eastgate Square to undertake the entire responsibility for site maintenance at the transit terminal, which incorporates a bigger footprint and more amenities than the existing facility. Timely maintenance is important in attracting customers to the bus. Bus stops at a terminal are the first point of physical contact a customer has with the transit system. Platforms should be clean and free of litter and graffiti. Shelter glass should be clean. Benches should be clean and comfortable. In winter, platforms should be ice-free and the facility should be illuminated at night.

Eastgate Square’s maintenance staff are on site 24 hours per day, seven days per week. Eastgate has established property maintenance standards that meet or exceed existing HSR standards for transit terminals. For example, litter is picked up daily throughout the Eastgate property. At the present HSR terminal, litter is removed three days per week by HSR’s contractor. Eastgate cleans up broken glass on its property within one hour. The present response time for broken shelter glass removal by HSR’s contractor is four hours. With respect to maintenance directly affecting HSR employees, the present HSR standard for Operator washroom cleaning at transit terminals is 3 days per week. At Eastgate, the washroom to be shared by HSR Operators and Eastgate food court workers will be cleaned daily. Modern, clean facilities help to maintain Operator morale.

Any disputes between the parties in connection with the licence agreement are to be resolved by arbitration. In the event that the arbitration process does not resolve matters and Eastgate moves to terminate the licence agreement prior to 2027, HSR maintains the right to hold Eastgate in default and commence legal action to recover damages. Additionally, the City may elect to revoke the parking credits that it provided in return for the transit terminal. Any redevelopment of the transit terminal lands prior to 2027 would be subject to the City approving a new site plan.

**ALTERNATIVES FOR CONSIDERATION:**

There are no suitable alternative off-street sites available for the transit terminal at the Queenston/Centennial node.

An on-street terminal using the curb lanes of Queenston Road, or another street in the vicinity of Eastgate Square, would reduce the amount of usable traffic lanes, require
customers to cross the road to transfer between routes or access the shopping centre and require buses to follow circuitous routes in order to turnaround, contributing to increased operating costs.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial**

At the conclusion of the 2007 Capital Budget deliberations, an amount of $1,000,000 was approved by Committee of the Whole for the Eastgate Terminal project (Project # 5300685003), in addition to $100,000 approved in the 2006 Capital Budget.

On March 30, 2007 Committee of the Whole approved funding the Eastgate Terminal and the Downtown Terminal from the Federal Public Transit Gas Tax Reserve instead of Provincial Gas Tax. The City cost to cover its share of the construction and twenty year maintenance of the transit terminal facility will be $1,600,000.

The City received $16,136,501 from Federal Public Transit Gas Tax Fund of which $6.035 million has been allocated for bus replacement, $600,000 for a Rapid Transit office, $3.4 million for the Downtown Transit Terminal, and $1.1 million for the Eastgate Terminal, leaving an unallocated reserve balance of approximately $5.0 million.

With the completion of the Eastgate Terminal project, the unallocated reserve balance will be $4.5 million.

**Staffing**

None. The licence agreement obligates the mall’s owner to provide all maintenance services at the transit terminal throughout the twenty year life of the agreement. This will relieve HSR of providing a workforce to undertake responsibilities related to snow/ice control, litter control, shelter cleaning, Operator washroom cleaning, lighting maintenance, shelter and bench repair, landscaping and pavement maintenance.

**Legal**

Legal Services has reviewed the draft Transportation Services Licence Agreement that will permit the HSR to conduct its operations at the terminal through to August 31, 2027 and has approved it as to form. Legal Services will be reviewing the separate easement agreements for traffic signal hardware and providing the necessary assistance to the Traffic Engineering and Operations Section prior to their execution.

**POLICIES AFFECTING PROPOSAL:**

The City of Hamilton’s Transit Ridership Growth Plan and Transit Asset Management Plans, approved by Council in 2006, has identified Eastgate Square as a key transit node in the lower City east-west corridor. This corridor is targeted for land use intensification in support of the Growth Related Integrated Development Strategy and the Provincial Places to Grow policies. The Plan has identified the upgrading of transit terminals, including Eastgate, as a key initiative and priority to support ridership growth.

The March 2007 final draft of the Hamilton Transportation Master Plan proposes development of a higher order transit network as a policy to support a doubling of transit ridership in 25 years time. Bus Rapid Transit (BRT) is a key element in the network and the eastern terminus of the lower city east/west BRT line and a proposed future
north/south BRT or transit priority corridor is Eastgate Square. Convenient, attractive and accessible transit infrastructure is crucial in encouraging a societal shift that will result in public transit carrying the targeted 12% of all trips by 2031. Clean and well-maintained terminals contribute to a heightened sense of safety, security and comfort and influence travel decisions.

The Canadian Urban Transit Association (CUTA) has published Position Paper #5, The Economic Cost for Public Transit in Canada. Based on CUTA-sponsored studies it is estimated that for every $1.00 invested in modest transit infrastructure improvements, $1.40 is returned to the economy. CUTA believes that up-to-date, well-maintained public transit infrastructure not only supports economic growth, it also enhances community health and well-being and promotes environmental responsibility.

On March 5, 2007, a National Transit Strategy, developed by the Big City Mayors of the Federation of Canadian Municipalities, was announced. As a key strategic element, it has identified the integration of land use and transportation planning, to ensure that development supports transit and is oriented toward it. The Eastgate Transit Terminal project supports the continued integration of a bus terminal with a shopping centre.

RELEVANT CONSULTATION:

Public Works Department
The Eastgate Terminal project is the result of exceptional cross-sector cooperation within the Public Works Department. A number of divisions have been consulted.

Capital Planning & Implementation Division
Capital Planning & Implementation Division have agreed to provide construction oversight and related services for the Transit Division during the terminal reconstruction project to ensure that the completed facility will provide HSR with the intended functionality, in terms of transit operations and customer use.

Traffic Engineering & Operations Section
Traffic has worked with Queenston Road Investment Inc.’s consultant to approve final traffic impact studies related to the new signalized intersection. They will be preparing easement agreements with the mall’s owners and the owners of the properties on the south side of Queenston Road that are served by the new signalized intersection that will permit the City to enter upon private property to maintain traffic control hardware.

Planning and Economic Development Department
Development Planning Section
Queenston Road Investment Inc. has made application for site plan control and is planning to commence the construction in May 2007 so that the project will be completed and open for bus traffic in August 2007. Development Planning Section have completed a circularization of municipal divisions and is preparing a standard site plan approval, subject to specific conditions that may be warranted.

Corporate Services Department
Risk Management Services have been consulted and have thoroughly scrutinized the contents of the licence agreement to ensure that the insurance requirements of the HSR
are provided for and that the best interests of the City of Hamilton are reflected in clear and complete terms.

Financial Services have reviewed the request from HSR for capital funding and have determined that a draw from the one-time dedicated Federal Public Transit Gas Tax Reserve would be appropriate to cover the cost of the project.

**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.

- **Environmental Well-Being is enhanced.** ☑ Yes ☐ No
  A sustainable transportation network provides many options for people and goods movement; vehicle-dependency is reduced.

- **Economic Well-Being is enhanced.** ☑ Yes ☐ No
  Infrastructure and compact, mixed use development minimize land consumption and servicing costs.

- **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

  Bus Operator morale is addressed.
TRANSPORTATION SERVICES LICENCE AGREEMENT

AGREEMENT MADE the _____________ day of , 2007

B E T W E E N:

EASTGATE SQUARE HOLDINGS INC.

(the "Licensor")

- and -

THE HAMILTON STREET RAILWAY COMPANY

(the "Licensee")

WHEREAS:

A. Queenston Road Investment Inc. (the "Owner") owns the Property.

B. The Licensor has leased the Property from the Owner.

C. The Licensee wishes to continue to operate Transportation Services from the Property on the terms and conditions contained in this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

"Agreement" means this licence, together with all Schedules hereto, as amended from time to time in accordance with the terms hereof; "hereof", "hereto" and "hereunder" and similar expressions refer to this Agreement and not any particular Section of this Agreement; "Article", "Section" and "Schedule" mean and refer to the specified Article, Section or Schedule of or to this Agreement.
"Applicable Laws" means, with respect to any Party, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgements, decrees, decisions or other requirements having the force of law relating to or applicable to such Party, property, transaction or event.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario or other day where the administrative offices for the City of Hamilton are closed.

“Corrective Work” means all work required to re-construct the existing parking areas, curbs and internal roads in accordance with the Plans and in compliance with all federal, provincial and municipal legislative enactments, by-laws and regulations so as to conform to the Project.

"Event of Default" means a default by a Party in the performance or observance of any of its obligations under this Agreement and which default continues uncured after the Party in respect of which such default has occurred has failed to cure such default within ten (10) days after having received written notice thereof from the other Party.

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, board, tribunal or court or other law, rule or regulation-making entity having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof.

“Notice” has the meaning ascribed thereto in Section 9.1.

“Operator Washrooms” means one (1) male self-contained room and one (1) female self-contained room, each containing a flush toilet, a lavatory and a mirror, stocked with appropriate hygiene products, located within the shopping centre building. The rooms will be accessible through a secure, keyed or keypad access door located to the west of the shopping centre’s food court public entrance and will be shared with tenants of the Shopping Centre.

"Party" means either:

(a) the Licensor, its successor or successors and subsequent owners of the Property; or

(b) The Licensee and its successor or successors.

“Plans” means all construction drawings, plans, specifications and other documents satisfactory to the Licensor and necessary for the design, construction and completion of the Project and the Corrective Work, including structural, mechanical, electrical engineering and landscape design in compliance with all local building by-laws and other applicable governmental requirements and prepared by Pellow + Associates Architects Inc. dated March 9, 2007 and attached hereto as Schedule "B".

“Project” means the Roadways, Shelters, Transit Islands, Operator Washrooms and the curbs and sidewalks necessary for the provision of the Transportation Services.
"Property" means the lands and premises comprising the Eastgate Square Shopping Centre, Hamilton, Ontario, as more particularly described on Schedule "A" annexed hereto.

"Regulations" means reasonable rules and regulations established from time to time by the Licensor respecting the Property, written notice of which is provided by the Licensor to the Licensee, from time to time.

“Roadways” means the portions of the Property outlined in green on Schedule "B" attached hereto.

“Shelters” means the bus shelters to be constructed in accordance with the Plans on the Transit Islands.

“Shopping Centre” means the Eastgate Square Shopping Centre.

“Transit Islands” means the portions of the Property outlined in red on Schedule "B" attached hereto upon which the Licensee shall construct concrete curbs and a slab in accordance with the Plans.

"Transportation Services" means:

(a) the transportation of persons by Transportation Vehicles over, upon and along the Roadways; and

(b) the use of Shelters by persons using the Transportation Vehicles.

“Transportation Vehicles” means the motor vehicles operated by the Licensee or a duly authorized employee or agent of the Licensee in providing the Transportation Services.

1.2 Business Days

Where anything is required to be done under this Agreement on a day that is not a Business Day, then the day for such thing to be done shall be the next following Business Day.

1.3 Schedules

The following Schedules are attached to and form part of this Agreement:

Schedule "A" - The Property
Schedule "B" - The Plans

1.4 Interpretation

(1) **Headings and Table of Contents:** The division of this Agreement into Articles and Sections, the insertion of headings, and the provision of any table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
(2) **Number and Gender:** Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

(3) **Entire Agreement:** This Agreement and all of the Schedules to this Agreement, together with any other agreements, instruments, certificates and other documents contemplated to be executed and delivered pursuant to this Agreement, constitute the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and any of the Schedules to this Agreement and in the other agreements, instruments, certificates and other documents to be executed and delivered pursuant to this Agreement, contain all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.

(4) **Currency:** All references to money shall refer to Canadian funds. All certified cheques or bank drafts to be tendered pursuant to this Agreement shall be drawn on one of the 6 largest Canadian chartered banks.

(5) **Severability:** If any provisions contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

(6) **Statute Reference:** Any reference in this Agreement to any statute or any Section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or Section as amended, restated or re-enacted from time to time.

(7) **Time:** Time shall be of the essence of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.

(8) **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada.
ARTICLE 2
ACCESS RIGHTS

2.1 Grant of Access Rights

Subject to the terms and conditions contained in this Agreement, the Licensor grants to the Licensee a licence to enter upon and exit the Property at the locations designated on the Plan attached hereto as Schedule B and proceed over Roadways for access and egress to and from the Transit Islands to and from the adjacent public streets for the purposes of providing the Transportation Services. The term of this licence shall commence on September 1, 2007 for a period of twenty (20) years and expiring on August 31, 2027, unless terminated earlier in accordance with the provisions of Sections 11.1 and 14.10.

2.2 Payments for Licence

The Licensee shall pay to the Licensor a fee of $1,600,000 upon execution of this License Agreement for the permissions granted hereunder.

2.3 Conditions

This Agreement and the Grant of Access Rights set out in Section 2.1 above are subject to the fulfillment, prior to the opening of the new Transit Islands and Roadways, of a complete and operational traffic signal in the approximate location shown on the Plans attached hereto as Schedule "B". This condition is inserted for the sole benefit of the Licensor and may be waived in its discretion at any time.

ARTICLE 3
CONSTRUCTION

3.1 Design

The Licensee acknowledges having reviewed the Plans attached hereto as Schedule "B" and approves of the Plans for the purposes of the Project.

3.2 Construction

The Licensor shall arrange for the construction of the Project and the Corrective Work in accordance with the Plans.

ARTICLE 4
ROADWAYS, SHELTERS, TRANSIT ISLANDS AND OPERATOR WASHROOMS

4.1 Maintenance

The Licensor, at its sole cost and expense, agrees to maintain, repair and keep in a good and tidy manner the Transit Islands, Operator Washrooms, Shelters and the Roadways.
4.2 Shelter and Transportation Vehicle Advertising

Neither the Licensor nor the Licensee shall be entitled to sell or lease advertising space on the Shelters, provided, however, the Licensee shall be permitted to post transit information regarding the Licensee’s routes and times therein. The Licensee agrees to make a reasonable effort, subject to daily Transportation Vehicles availability, not to permit any fully painted or fully vinyl wrapped Transportation Vehicles advertising any shopping centre or food store on the Property.

4.3 Use of Shelters

The Licensee and the Licensor agree that the Shelters shall be used solely for the protection of persons waiting for Transportation Vehicles from rain, snow and other unfavourable weather conditions and for no other purpose.

4.4 Utilities

The Licensor shall be responsible for the cost of all electricity, water, power and other utilities (the “Utilities”) used in or for all or any part of the Project.

4.5 Operator Washrooms

The Licensor and the Licensee agree that the Operator washrooms shall be used solely by on-duty HSR Operators and tenants of the Shopping Centre. The Licensee shall provide individual HSR Operators with the appropriate washroom key or keypad combination and shall provide locksmith services to repair and maintain the locks when necessary.

ARTICLE 5
TRANSPORTATION SERVICES

5.1 Hours of Operation

The Licensee shall provide the Transportation Services Monday through Sunday, including routes such as the King, Beeline, Stoney Creek Local, Stoney Creek Central and Confederation Park on Schedules produced by the Licensee’s General Manager from time to time or at such other times or intervals as the parties hereto may agree upon from time to time.

5.2 Personnel

The Licensee shall only allow qualified personnel authorized under governing legislation to operate the Transportation Vehicles on the Property.

5.3 Operating Costs

The Licensee shall be responsible for all operating costs necessary for the provision of the Transportation Services, including without limiting the generality of the foregoing, fuel and electrical power necessary to operate Transportation Vehicles and any business taxes in respect of the Transportation Services.
5.4 **Use of Roadways**

The parties hereto agree that nothing herein contained limits the use of the Roadways by the public at large except for those areas designated and marked for Transportation Vehicles only, which areas the Licensor shall use its reasonable efforts to prevent the use thereof by the public at large.

5.5 **Delivery Vehicles**

Nothing in Section 5.4 shall prohibit the use of those areas designated and marked for Transportation Vehicles only, by service and delivery vehicles that directly relate to the Shopping Centre provided however service and delivery shall not disrupt the Transportation Services.

**ARTICLE 6**

**TRANSPORTATION VEHICLES**

6.1 **Rules and Regulations**

The Licensee agrees that:

(a) no Transportation Vehicle entering upon the Roadways may exceed fifteen (15) feet in height or one hundred (100) feet in length.

(b) Transportation Vehicles shall be permitted to idle while on the Property, in accordance with the City of Hamilton Idling Control Policy.

(c) without the prior written consent of the Licensor, the Transportation Vehicles are to be used only for the provision of the Transportation Services by the Licensee during the term of this Agreement and under the conditions set out herein and not for the provision of any charter or special event services.

**ARTICLE 7(D)**

THE TRANSPORTATION VEHICLES MAY STOP AT THE TRANSIT ISLANDS TO ALLOW PASSENGERS TO ENTER THEREON, EXIT THEREFROM OR EXPEND ROUTE RECOVERY TIME.

LIABILITY, INDEMNIFICATION AND INSURANCE

7.1 **Release**

The Licensee hereby releases the Licensor, the Owner, Redcliff Realty Advisors Inc., Redcliff Realty Management Inc. and each of their officers, directors, shareholders, employees, agents (collectively the “Released Parties”) for any personal injury, bodily injury, death or property damage caused by, or arising out of, the operations of the Licensee at the Property. The Licensee agrees that the Released Parties shall not be liable or responsible in any way for any personal injury, bodily injury, death or personal damage to any property of the Licensee or any persons, including employees of the Licensee or others arising from or out of any occurrence in, upon or relating to the Transportation Services unless such damage, loss, injury or death results from the negligence or willful misconduct of the Licensor and/or the Owner.
7.2 **Indemnification by Licensee**

The Licensee agrees to defend, indemnify and hold harmless the Released Parties from and against all claims, demands, losses, costs, damages, actions, suits or proceedings relating to personal injury, bodily injury, including death, or property damage, including loss of use thereof, that arise out of or from the Licensee’s use of the Property (hereinafter called the “Claims), including any and all reasonable legal fees, costs and expenses incurred by the Released Parties in defending any such Claims. This indemnity shall not apply where such Claim is attributable to the negligence or willful misconduct of the Released Parties. The Released Parties will give prompt written notice to the Licensee of any and all Claims, including any claims which may give rise to a claim for indemnification pursuant to this Section 7.2. The Licensee undertakes and agrees, upon request therefor by the Licensor, to execute a separate written release and indemnity to and in favour of any of the Released Parties as provided in this Section 7.2 who or which are not parties to this Agreement, whereby such release and indemnity shall be in strict accordance with only the Licensee's obligations under this Agreement.

7.3 **Indemnification by Licensor**

The Licensor agrees to defend, indemnify and hold harmless the Licensee (including its directors, officers, employees, shareholders, contractors, agents and representatives) and City of Hamilton (including its directors, officers, employees, officials, contractors, agents, and representatives) from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties relating to personal bodily injury, including death, or property damage, including loss of use thereof that arise out of or are attributable to the negligence or willful misconduct of the Licensor and for which the Licensor has not been released pursuant to Section 7.1 of this Agreement, including any and all reasonable legal fees, costs and expenses incurred by the Licensee in defending any such claims. The Licensor will give prompt written notice to the Licensee of any and all third party claims which may give rise to a claim for indemnification pursuant to this Section 7.3.

7.4 **Licensee’s Insurance**

The Licensee shall procure and maintain, with reputable insurance companies authorized to do business in Ontario, the following insurance coverages:

(a) **Liability Insurance:** Commercial General Liability Insurance, reasonably acceptable to the Licensor, written on a comprehensive basis, insuring against liability for bodily injury, personal injury, including death and damage to property of others, including loss of use thereof, broad form property damage, non-owned automobile liability, owners’ and contractors’ protective insurance coverage, and products and completed operations coverage, all with respect to all business and activities of the Licensee at the Property. The aforementioned policy or policies shall be written with inclusive limits of not less than ten million dollars ($10,000,000) per occurrence or such higher limits as the Licensor shall reasonably require from time to time. The Licensee agrees to a waiver of
its rights of subrogation for recovery of insurable losses in favour of the Released Parties (as defined in Section 7.21 above).

The policy shall provide for severability of interests, cross liability, contain a waiver of the insurer's right of subrogation in favour of the Indemnified Released Parties and an endorsement providing sixty (60) days advance written notice to the Licensor prior to any cancellation of the policy or a change or amendment restricting coverage. Such insurance shall include the Released Parties as additional insureds.

(b) **Automobile Liability Insurance**: Owned automobile public liability insurance for death and bodily injury and property damage to third parties for a comprehensive limit of not less than ten million dollars ($10,000,000.00) per occurrence.

### 7.5 Survival of Indemnification Obligations

The parties hereto agree that the obligations to indemnify provided for in this Article 7 shall survive the expiration or termination of this Agreement and continue in full force and effect thereafter for an indefinite period.

### ARTICLE 8

**WARRANTIES**

8.1 Each party respectively warrants the following is true as at the time of execution of this Agreement:

(a) It is a legal corporation with all requisite powers, capacities, licenses and permissions under its governing legislation and the other laws applicable to it and/or by-laws under which it is organized, to enter into and exercise its rights and perform and comply with its obligations under this Agreement, and that all actions, conditions and things have been done, taken or fulfilled with respect thereto, that are required by law, contract or otherwise;

(b) It is not prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted under this Agreement, by any agreement, constituting documents, constitution, legislation, statute, act, regulation, order or otherwise; and

(c) To the best of its information and belief, after making diligent inquiries, it is not aware of any material facts or circumstances having a bearing upon its ability to perform its obligations under this Agreement which have not been disclosed to the other party in writing.
ARTICLE 9
NOTICES

9.1 Notice

Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement (a “Notice”) shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service, or (iii) sent by fax or other similar means of electronic communication, in each case to the applicable address set out below:

(a) in the case of the Licensor addressed to it at:

40 University Avenue, Suite 1200
Toronto, Ontario M5J 1T1
Attention: George S. Schott, President
Fax: (416) 362-9646

with a copy to:

Borden Ladner Gervais LLP
40 King Street West, Suite 4100
Toronto, Ontario M5H 3Y4
Attention: Morton G. Gross
Fax: (416) 361-2429

(b) in the case of the Licensee addressed to it at:

2200 Upper James Street, RR #1
Mount Hope ON L0R 1W0

Attention: Director of Transit
Fax: (905) 679-7305

with a copy to:

City of Hamilton
Public Works Department
#320 - 77 James Street North
Hamilton ON L8R 2K3

Attention: General Manager of Public Works
Fax: (905) 546-4481
9.2 **Receipt of Notice**

Any communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent prior to 5:00 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

9.3 **Change of Address**

Any party may from time to time change its address under this Section by notice to the other party given in the manner provided by this Section.

**ARTICLE 10**
**ASSIGNMENT AND SUB-LICENSING**

10.1 This Agreement and the licence and privileges granted to the Licensee hereunder are personal to the Licensee and shall not be assigned or sub-licensed either in whole or in part by the Licensee without the consent in writing of the Licensor, which consent by the Licensor may be unreasonably withheld.

10.2 The Licensor shall have the right to assign all of its rights hereunder to any transferee or mortgagee of the Property, upon prior notice to the Licensee.

**ARTICLE 11**
**EARLY TERMINATION**

11.1 The parties hereto agree that the Licensee may terminate this Licence Agreement, without cause, on not less than twelve (12) months prior written notification to the other party.

11.2 Nothing contained herein in any way affects or limits the indemnity obligations of the Licensee or Licensor contained in Article 7 hereof which shall survive termination of this Licence Agreement.

**ARTICLE 12**
**REMOVAL AND RESTORATION**

12.1 Upon termination or expiry of this Licence Agreement, the Licensee shall:

(i) remove the Shelters the Transit Islands and such portion of the Roadways and related curbs and sidewalks as the Licensor may require.

(ii) restore the portion of the Property affected by the removal required by sub-section (i) hereof to the condition such areas were in immediately prior to the construction of the Project hereunder.

(iii) construct a new roadway and related curbs and sidewalks in the locations determined by the Licensor, acting reasonably, to the Shopping Centre.
ARTICLE 13
ENVIRONMENTAL MATTERS

13.1 The Licensee shall not cause or allow any Hazardous Materials to be used, generated, treated, processed, handled, labelled, or stored, on, under or about, or transported to or from the Project or the Property except in strict compliance with all applicable Environmental Laws, as hereunder defined, and using all necessary and appropriate precautions which a prudent owner or operator of property would exercise.

13.2 The Licensee shall indemnify, defend with counsel, and hold the Released Parties harmless from and against any claims, actions, damages, costs and liabilities, prosecutions and administrative or other orders, directives, including any appeals thereof, arising out of any activities conducted by the Licensee on the Project or the Property, including without limitation, any leaks or spills from the Licensee’s vehicles, except to the extent that same arise out of the negligent or wilful acts of misconduct of the Licensor or Owner (including its directors, officers, employees, shareholders, contractors, agents, mortgagers, mortgagees and representatives).

13.3 For purposes hereof, Hazardous Materials shall be defined as hazardous, toxic or dangerous substances or contaminants or pollutants under the Canadian Environmental Protection Act and the provincial environmental legislation and all other laws and ordinances governing matters relating to the natural environment, the man-made or structural environment or matters affecting human health or safety in effect in the Province; and any regulations, orders or directive promulgated pursuant thereto (collectively the “Environmental Laws”), as they may be amended from time to time.

13.4 The Licensee shall immediately notify the Licensor should the Licensee or its activities be the subject of any regulatory order or directive or be the subject of any investigation by regulatory officials with respect to environmental or health and safety matters.

ARTICLE 14
GENERAL

14.1 Non-Waiver

No consent to or waiver of any breach or default by any Party in the performance of its obligations herein or therein shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such Party of the same or any other obligations of such Party or waiver of any right to complain of any act or failure to act of any other Party or a waiver of any right to declare any other Party in default irrespective of how long such failure continues.

14.2 Cumulative Remedies

No remedy conferred upon or reserved to any Party is intended to be exclusive of any other remedy herein or at law, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law or by statute or in equity.
14.3 **Registration**

Registration of this Agreement against title to the Property shall not be permitted.

14.4 **Successors**

All of the warranties, covenants and agreements contained in this Agreement shall be binding upon the parties and their respective successors and shall enure to the benefit of and be enforceable by the parties and their respective successors pursuant to the terms and conditions of this Agreement.

14.5 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed. This Agreement may be executed by any person who has from time to time become a party hereto by his signing a counterpart hereof, each of which counterparts so executed shall be deemed to be an original and such counterparts together shall constitute a single instrument.

14.6 **Right of Exclusion**

The Licensor shall be entitled to exclude vehicles which in its reasonable discretion present a potential danger to the Property including, without limitation, vehicles utilizing propane fuel. The Licensee shall be permitted to operate Transportation Vehicles on the Property that utilize fuel-efficient and environmentally friendly propulsion technologies, provided that such operations are in accordance with applicable Federal, Provincial and Municipal regulations.

14.7 **Control of Property**

The use by the Licensee of the Property is subject to the exclusive control of the Property by the Licensor.

14.8 **Licensee not a Lessee**

No legal title or leasehold interest in the Property shall be deemed or construed to have been created or vested in the Licensee by anything contained herein.

14.9 **Arbitration**

Any matter or dispute in connection with this Agreement shall be resolved by Arbitration. Arbitration proceedings shall be commenced by the Party desiring arbitration (the "Initiating Party") delivering to the other Party (the "Responding Party") a Notice referring such matter or dispute to arbitration, and the provisions of the *Arbitration Act, 1991, S.O. 1991, c. 17: as amended* ("Arbitration Act") and the following principles shall apply to such arbitration:
Upon Notice from the Initiating Party to the Responding Party, the Parties shall meet and attempt to agree upon an arbitrator. If the Parties are unable to agree on an arbitrator within ten (10) days from such Notice, then the arbitrator shall be appointed by a Judge of the Superior Court of Justice for Ontario pursuant to Section 10 of the *Arbitration Act*. The arbitrator so agreed upon or appointed, as the case may be, is herein referred to as an "Arbitrator".

The Arbitrator shall be an experienced arbitrator and shall be qualified by education and training to decide the particular question in dispute and shall be a person generally recognized in the business community as having familiarity with and expertise with the matter which is the subject of the dispute. No person who is then employed by any of the Parties or any person not dealing at arm's length with a Party, shall be appointed as the Arbitrator;

The Arbitrator will be required to render a decision and reasons to the Parties in an expeditious and prompt manner, and to set a schedule for the arbitration process which achieves this objective, while permitting all Parties due process and an opportunity to present their case and respond to the case presented by the other Party.

The decision and reasons of the Arbitrator shall be in writing and signed by the Arbitrator.

Such written decision and reasons of the Arbitrator shall be final and binding and the Parties agree that there will be no right of appeal with respect thereto except as provided in the *Arbitration Act*;

The compensation and expenses of the Arbitrator shall be paid in equal portions by the Parties hereto, unless otherwise determined by the Arbitrator, it being agreed that the Arbitrator has the power to allocate responsibility for such costs as he or she deems fit;

Notwithstanding anything herein contained and notwithstanding any failure to so state in any provision or provisions hereof, any dispute in respect of any matter set out in this Agreement shall be resolved by Arbitration at the request of any Party that is a party to such dispute; and

Where arbitration is required by this Agreement, commencement and completion of such arbitration in accordance with this Agreement shall be a condition precedent to the commencement of an action at law or in equity in respect of the matter required to be arbitrated.

14.10 **Events of Default**

Upon the occurrence of an Event of Default by a Party (the "Defaulting Party") the other Party (the "Non-Defaulting Party") shall have the right, in addition to any other remedies available to it at law or under this Agreement, to do one, any or all, either separately or simultaneously, of the following:
bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Parties that damages at law may be an inadequate remedy for a default or breach of this Agreement;

(ii) terminate this Agreement in the event that such Event of Default is not cured within a period of thirty (30) days following notice in writing by the Non-Defaulting Party to the Defaulting Party; and

(iii) bring any action at law or in equity as may be necessary or advisable in order to recover damages.

14.11 Further Assurances

Each of the parties hereto covenants and agrees to do all acts and things and execute and deliver such further and other papers and documents as are necessary and desirable or as may be reasonably required by a party hereto to carry out the intent and purpose of and give full effect to this Agreement and every part thereof.

14.12 Regulations

The Licensor shall be entitled to make, amend, add to, delete or change Regulations, from time to time provided that the Regulations do not interfere with the Licensee’s use of the Property for the provision of the Transportation Services.

14.13 Compliance with Applicable Laws

Each of the Parties agrees to comply with Applicable Laws.

14.14 Governing Law

This Agreement shall be governed by the laws of Ontario and the laws of Canada applicable therein.

14.15 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

14.16 Change in Project

The parties hereto further agree that the Licensor (in consultation with the Licensee, provided that such consultation shall not require the approval of the Licensee) may at its own cost and expense reconfigure or relocate the Project in the event those portion of the Property used for the Transportation Services are required by the Licensor and in such event this Licence Agreement shall be amended accordingly to take into account such reconfiguration or relocation.
ARTICLE 15
ENTIRE AGREEMENT

This Agreement constitutes and defines the entire contract between the parties hereto. No oral term or condition, warranty, collateral understanding or agreement other than expressly contained in this Agreement shall form a part of the contract or be binding upon any party hereto.

IN WITNESS WHEREOF the Parties have executed this Agreement in quadruplicate.

EASTGATE SQUARE HOLDINGS INC.

By: __________________________________________
George S. Schott, President

By: __________________________________________
I/We have authority to bind the Corporation.

THE HAMILTON STREET RAILWAY COMPANY

By: __________________________________________
Mayor Fred Eisenberger, President

By: __________________________________________
Kevin Christenson, Secretary
I/We have authority to bind the Corporation.
SCHEDULE “A”

THE PROPERTY

SCHEDULE “B”

THE PLAN
SUBJECT: Columbia International College - Transportation Program (PW07012) - (City Wide)

RECOMMENDATION:
That the General Manager of Public Works be authorized and directed to enter into a Transportation Program Agreement with Columbia Housing Services Inc. for a term ending on December 31, 2010, such agreement to include provision of an HSR bus pass under an annual fee arrangement and a dedicated school transportation component, subject to the approval of the City Solicitor as to form and content of the Agreement.

EXECUTIVE SUMMARY:
A Transportation Program between HSR and Columbia Housing Services Inc., representing Columbia International College (CIC), has been in place since 2003, providing a dedicated school transportation component funded through an annual fee arrangement utilizing HSR Elementary/Secondary Monthly Bus Passes. This program has worked well for the parties, and is now due for renewal, having remained in force through an automatic one year extension beyond the December 31, 2005 term of the Agreement.

CIC and HSR have agreed that the program continues to meet the needs of the students at CIC through a mandatory annual transportation fee program for all students living in residence, coupled with the existing dedicated school transportation which CIC provides through fixed cost subsidy from the bus pass program. The program provides
for recognition of the CIC academic year schedule and the similarity with the existing HSR programs involving institutions such as the Hamilton-Wentworth District School Board, to offer an attractive price to the students, which is based on the Elementary/Secondary Monthly Bus Pass price.

The annual transportation fee charged to students will be:

- $475 for all residence students (other than those at CIC Main West), whose use is primarily school purpose in nature; and
- $170 for those residents on Main Street West at the campus, recognizing that their use will primarily be outside of school hours.

These fees are mandatory, and involve about 700-800 students. Additionally, for those Columbia International College (CIC) students living outside of residence, an annual price of $540 has been set, but their participation will be optional, as many have private transportation arrangements and do not use HSR.

The structure of the agreement will again be such that pricing of the fee may be adjusted, upon defined notice, should Council direct a change in price of the Elementary/Secondary Monthly Bus Pass price. The agreement will be for a four year period ending on December 31, 2010. A fixed cost for the dedicated school transportation component in each of the four years will be identified within the agreement.

**BACKGROUND:**

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

Council had previously authorized staff to enter into a transportation program with CIC, which was to include a dedicated school transportation component and provision of an HSR bus pass, for a period ending on December 31, 2005 (subject to provision for automatic renewal). This program was developed in response to demands placed on HSR system capacity as a result of development of student residences by CIC in several City locations.

**ANALYSIS/RATIONALE:**

The 2005 revenues from the CIC program were about $335,000, against expenses for the dedicated school transportation component of about $245,000, resulting in a net revenue of some $90,000 for HSR. This net revenue aligns with previous estimates that had been reported to Council in 2003 upon conception of the program.

**ALTERNATIVES FOR CONSIDERATION:**

Council may choose to not accept this recommendation, in which case the current Agreement with CIC would be discontinued, and CIC students would revert to the purchase of regularly priced monthly bus passes, at their discretion. This arrangement is one that does not adequately address the needs of CIC, and does pose significant operational problems for the HSR, as the use of regular HSR service by CIC students living in residence has previously proven to overload HSR service at peak travel hours.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

There are no further legal or staffing impacts associated with this Agreement, and the necessary amendments to the existing Agreement will be fully reviewed by the Legal Services division of the City prior to the agreement being concluded.

POLICIES AFFECTING PROPOSAL:

There are no policies affecting this proposal.

RELEVANT CONSULTATION:

This recommendation is the result of consultation between CIC and HSR representatives, and will be subject to final consultation with the Legal Services Division of the City.

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
Access to the community by persons with disabilities is enhanced in a manner that complies with legislated requirements.

Environmental Well-Being is enhanced. ☒ Yes  ☐ No
Encourages the ongoing use of public transit in the alternative to the private automobile with much higher GHG emissions.

Economic Well-Being is enhanced. ☒ Yes  ☐ No

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