

**Authority:** Item e, Committee of the Whole  
Report 05-017  
CM: October 26, 2005

**Bill No. 331**

**CITY OF HAMILTON**

**BY-LAW NO. 05-331**

**A By-law to Approve the Municipal Funding Agreement between the Association of Municipalities of Ontario and the City of Hamilton with respect to a new revenue sharing deal with the Government of Canada.**

**WHEREAS** in the 2005/06 Federal Budget, the government answered the call of municipalities across the nation for a new revenue sharing deal;

**AND WHEREAS** on June 17, 2005, the Government of Canada, the Government of Ontario, the City of Toronto, along with the Association of Municipalities of Ontario (AMO), signed an agreement for the transfer of Federal gas tax revenues under the new deal for cities;

**AND WHEREAS** the Federal Government is expected to provide 1.5 cents per litre in 2005-06, 1.5 cents per litre in 2006-07, 2 cents per litre in 2007-08, 2.5 cents per litre in 2008-09, and 5 cents per litre from 2009-10.

**AND WHEREAS** these funds will be allocated to all 445 Ontario municipalities on a per capita basis;

**AND WHEREAS** these funds are intended to provide Ontario communities with a source of stable, predictable and long-term funding towards Environmentally Sustainable Municipal Infrastructure;

**AND WHEREAS** the AMO as fund administrator in Ontario, is required to produce a Municipal Funding Agreement (MFA) that will implement the terms of the June 17<sup>th</sup> agreement between Canada, Ontario and AMO;

**AND WHEREAS** the Municipal Financing Agreement will set out the terms and conditions of receiving the federal funding, including reporting requirements;

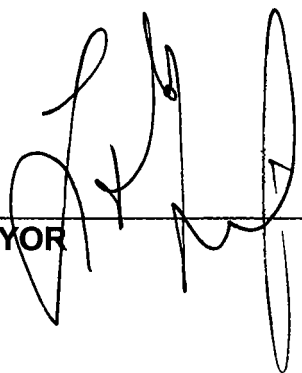
**AND WHEREAS** the terms and conditions for each municipality will reflect the terms and conditions set out in the June 17<sup>th</sup> agreement between the Government of Canada, the Government of Ontario, the Association of Municipalities of Ontario (AMO), including eligible projects, eligible expenses etc.;

**AND WHEREAS** each Municipal Council will need to pass a by-law authorizing the signing of the Municipal Financing Agreement.

**NOW THEREFORE** the Mayor and Clerk are hereby authorized to execute this Municipal Funding Agreement for the Transfer of Federal Gas Tax Revenues under the New Deal for Cities and Communities between the Association of Municipalities of Ontario and The City of Hamilton as in Schedule A attached hereto.

Schedule A shall form part of this by-law.

**PASSED and ENACTED** this 10<sup>th</sup> day of November, 2005.

  
MAYOR

  
CLERK

**MUNICIPAL FUNDING AGREEMENT  
FOR THE TRANSFER OF FEDERAL GAS TAX REVENUES UNDER  
THE NEW DEAL FOR CITIES AND COMMUNITIES**

This Agreement made in duplicate as of \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**BETWEEN:**

**The Association of Municipalities of Ontario**  
(referred to herein as "AMO")

**AND:**

**The Corporation of the City of Hamilton.**  
(referred to herein as the "Recipient")

**WHEREAS** Ontario municipalities recognize that all governments must work together collaboratively and in harmony to ensure that investments in communities are strategic, purposeful and forward-looking.

**WHEREAS** this Agreement includes the specific provisions on the utilization of the transfer of federal gas tax for environmentally sustainable municipal infrastructure to primarily support environmental sustainability objectives under Canada's New Deal for Cities and Communities.

**WHEREAS** Ontario municipalities agree that open communication with the public will best serve the right of Canadians to transparency, public accountability, and full information about the benefits of New Deal investments in communities.

**WHEREAS** the Recipient wishes to enter into this Agreement in order to participate in the transfer of federal gas tax as part of the New Deal for Cities and Communities.

**WHEREAS** AMO is carrying out the fund administration and coordinating role as is obligated in the Canada-Ontario-AMO-City of Toronto Agreement for the Transfer of Federal Gas Tax Revenues under the New Deal for Cities and Communities to undertake certain activities and requires Recipients to undertake activities as set out in the Agreement.

**THEREFORE** the Parties agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** When used in this *Agreement* (including the cover and execution pages and all of the schedules), the following terms shall have the meanings ascribed to them below unless the subject matter or context is inconsistent therewith:

**“Agreement”** means this *Agreement*, including the cover and execution pages and all of the schedules hereto, and all amendments made hereto in accordance with the provisions hereof.

**“Annual Expenditure Report”** means the written annual report to be prepared and delivered to AMO as set out in Section 7.1 hereto.

**“Association of Municipalities of Ontario (AMO)”** means a legally incorporated entity under the *Corporations Act* (Ontario).

**“Audit Statement”** means a written audit statement to be prepared and delivered to AMO as set out in Section 7.1 hereto.

**“Base Amount”** means the total municipally-funded capital spending on *Municipal Infrastructure* by the Recipient in the period January 1, 2000 to December 31, 2004 less monies raised under the *Development Charges Act, 1997* (Ontario) and received under *Infrastructure Programs*.

**“Canada”** means Her Majesty in Right of Canada represented by the Minister of State (Infrastructure and Communities).

**“Capacity Building Projects”** means projects and activities that strengthen the ability of the *Recipient* to develop and implement *integrated community sustainability plans*, as more particularly described in Section 4.3.

**“Capital Investment Plan”** means a document, such as a capital plan, created through a public process, with approval from municipal elected officials, providing a detailed understanding of anticipated investments into tangible capital assets that are considered “priorities”, along with a rationale.

**“Environmentally Sustainable Municipal Infrastructure (ESMI) Projects”** means *Municipal Infrastructure* projects that:

- i. improve the quality of the environment and contribute to reduced greenhouse gas emissions, clean water, or clean air; and
- ii. fall within the category of projects described in Section 4.1 hereto.

“**Eligible Costs**” means those costs described in Schedule B attached hereto, incurred in respect of *Eligible Projects*.

“**Eligible Projects**” means *Capacity Building Projects* and *ESMI Projects* as defined in Section 4.1 hereto.

“**Eligible Recipient**” means:

- i. a *Municipality* or its duly authorized agent (including its wholly owned corporation);
- ii. a non-municipal entity, on the condition that the *Municipality* where the proposed *Eligible Project* would be housed has indicated support for the *Eligible Project* through a formal resolution of the municipal council.  
A non-municipal entity includes:
  - for-profit organizations or
  - non-governmental organizations, or
  - not-for-profit organizations.
- iii. Local Roads Boards and Local Services Boards in territory not within the jurisdiction of a *Municipality*.

Federal and provincial entities in the form of departments, corporations and agencies are not eligible recipients.

“**End of Funds**” means March 31, 2010.

“**Event of Default**” has the meaning given to it in Section 12.1 of this *Agreement*.

“**Fiscal Year**” means the period beginning April 1 of a year and ending March 31 of the following year.

“**Funds**” mean the *Funds* made available pursuant to this *Agreement* and includes any interest earned on the said *Funds*.

“**Infrastructure Program**” means *Canada’s* infrastructure programs in existence at the time of the execution of this *Agreement* including: The Canada Strategic Infrastructure Fund, The Border Infrastructure Fund, The Municipal Rural Infrastructure Fund and The Infrastructure Canada Program.

“**Integrated Community Sustainability Plan**” means a long-term plan, developed in consultation with community members that provides direction for the community to realize sustainability objectives, including environmental, culture, social and economic objectives, as defined in Schedule G.

“**Large Municipalities**” means those Municipalities with a 2001 National Census data population of 500,000 or more including the Regional Municipalities of Durham, Peel and York and the Cities of Mississauga and Ottawa.

“**Lower Tier Municipality**” means a municipality that forms part of an upper-tier *Municipality* for municipal purposes, as defined under the *Municipal Act, 2001* (Ontario).

“**Municipal Fiscal Year**” means the period beginning January 1 of a year and ending December 31 of the same year.

“**Municipal Infrastructure**” means tangible capital assets in Ontario primarily for public use or benefit owned by the *Recipient*.

“**Municipality**” means every municipality as defined in the *Municipal Act, 2001* (Ontario).

“**Outcomes Report**” means a written report prepared by the *Recipient* which reports on the outputs and outcomes of the use of the **Funds** according to Section 7.2 hereto.

“**Oversight Committee**” means the committee established to manage the implementation of the Canada-Ontario-AMO-City of Toronto Agreement for the Transfer of Federal Gas Tax Revenues Under the New Deal for Cities and Communities.

“**Parties**” means *AMO* and the *Recipient*.

“**Recipient**” has the meaning given to it on the first page of this *Agreement*.

“**Third Party**” means any person, other than a party to this *Agreement* that participates in the implementation of an *Eligible Project*.

“**Upper Tier Municipality**” means a Municipality of which two or more lower-tier municipalities form part for municipal purposes, as defined under the *Municipal Act, 2001* (Ontario).

## 1.2. Interpretations:

**Herein, etc.** The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this *Agreement* as a whole and not any particular schedule, article, section, paragraph or other subdivision of this *Agreement*.

**Currency.** Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

**Statutes.** Any reference to a federal or provincial statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.

**Gender, singular, etc.** Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.

## 2. TERM OF AGREEMENT

2.1, **Term.** Subject to any extension or termination of this *Agreement* or the survival of any of the provisions of this *Agreement* pursuant to the provisions contained herein, this *Agreement* shall be in effect from the date set out on the first page of this *Agreement* up to and including March 31, 2015.

2.2. **Notice.** Any Party may terminate this Agreement on two (2) years written notice.

2.3. **End of Funds.** Notwithstanding anything in this *Agreement* and regardless of the *Eligible Project's* state of completion, AMO shall not be obligated to provide *Funds* under this *Agreement* after the *End of Funds*.

## 3. RECIPIENT REQUIREMENTS

3.1. The *Recipient* agrees to undertake and:

- a. submit in writing to AMO for the local roads and bridges *Eligible Project* category prior to spending the *Funds* the appropriate documentation on the impact of such investments on sustainability outcomes in the form in Schedule C of this *Agreement* hereto;
- b. ensure that the *Funds* will result in net incremental capital spending on *Municipal Infrastructure*;
- c. ensure that there is no reduction in capital funding provided by municipalities for *Municipal Infrastructure*. In the case of *Recipients* that are Municipalities in excess of 100,000 in population, ensure that over the period of April 1, 2005 to March 31, 2010 the *Recipient's* capital spending on *Municipal Infrastructure* will not fall below its *Base Amount*; and,

- d. ensure any of its contracts for the supply of services or materials to implement its responsibilities under this **Agreement** will be awarded in a way that is transparent, competitive, consistent with value for money principles and pursuant to its adopted procurement policy.

#### **4. ELIGIBLE PROJECTS**

##### **4.1. Eligible Projects. ESMI Projects** include the following:

- a. Public transit, e.g.:
  - i. Rapid Transit: tangible capital assets and rolling stock (includes light rail, heavy rail additions, subways, ferries, transit stations, park and ride facilities, grade separated bus lanes and rail lines);
  - ii. Transit Buses: bus rolling stock, transit bus stations;
  - iii. Intelligent Transport System (ITS) and Transit Priority Capital Investments;
  - iv. ITS technologies to improve transit priority signalling, passenger and traffic information and transit operations;
  - v. Capital investments, such as transit queue-jumpers and High Occupancy Vehicle (HOV) lanes;
  - vi. Para transit: rolling stock, fixed capital assets and systems;
  - vii. Related capital infrastructure: bus-loading bays, road rehabilitation for bus-only lanes;
  - viii. Active transportation infrastructure (e.g., bike lanes).
- b. Water, e.g.:  
Drinking water supply; drinking water purification and treatment systems; drinking water distribution systems; water metering systems.
- c. Wastewater, e.g.:  
Wastewater systems including sanitary and combined sewer systems; and separate storm water systems.
- d. Solid waste, e.g.:  
Waste diversion; material recovery facilities; organics management; collection depots; waste disposal landfills; thermal treatment and landfill gas recuperation.
- e. Community Energy Systems, e.g.:  
Cogeneration or combined heat and power projects (where heat and power are produced through a single process);  
District heating and cooling projects where heat (or cooling) is distributed to more than one building.



- f. Local roads, bridges and tunnels, active transportation infrastructure (e.g., bike lanes) that enhance sustainability outcomes.

4.2. **Exception.** For Large Municipalities, the list of eligible categories will consist of no more than **two** (2) of categories in Section 4.1 a. to e..

4.3. **Capacity Building.** All *Recipients* may also invest in *Capacity Building Projects* including the following activities:

- a. Collaboration: building partnerships and strategic alliances; participation; and consultation and outreach;
- b. Knowledge: use of new technology; research; and monitoring and evaluation;
- c. Integration: planning, policy development and implementation (e.g., environmental management systems, life cycle assessment).

4.4. **Recipient fully responsible.** The *Recipient* shall be fully responsible for the complete, diligent and timely implementation and completion of the *Eligible Project*, net of any *Funds* received.

4.5. **Environmental Assessment.** The *Recipient* shall comply with all legislated environmental assessment requirements and agree that no *Funds* will be committed to an *Eligible Project* until all environmental assessment requirements have been satisfied including the implementation of all mitigation measures identified in any environmental assessment of the *Eligible Project*.

## 5. ELIGIBLE COSTS

5.1. **Eligible Costs.** In order for cost to be eligible for *Funds* pursuant to this *Agreement* the cost must be in accordance with Schedule B.

5.2. **Discretion of Canada.** Subject to Section 5.1, the eligibility of any items not listed in Schedule B to this *Agreement* is solely the discretion of *Canada*.

5.3. **Reasonable Access.** The *Recipient* shall permit *Canada* reasonable access to all records relating to all *Eligible Projects* that have received *Funds*.

5.4. **Retention of Receipts.** The *Recipient* shall retain all evidence (such as invoices, receipts, etc.) of payments related to *Eligible Costs* and such supporting documentation must be available to *Canada* when requested and maintained by the *Recipient* for audit purposes for at least three (3) years after March 31, 2015.

## 6. FUNDS

**6.1. Allocation of Funds.** AMO will allocate the *Funds* to *Recipients* on a per capita basis with allocations made on a 50:50 basis to *Upper Tier Municipalities* and *Lower Tier Municipalities*, where they exist.

**6.2. Transfer of Funds.** Where a *Recipient* decides to allocate *Funds* to another *Eligible Recipient* it must be done by by-law. The by-law must be passed and submitted annually to AMO on or before March 31<sup>st</sup>. The by-law will identify the *Eligible Recipient* and the amount of *Funds* the *Eligible Recipient* is receiving for that *Municipal Fiscal Year*.

- a. **Transfer of Funds Reporting.** In the case of a *Recipient* transferring *Funds* in Section 6.2 of this *Agreement* the *Recipient* is still required to submit an *Annual Expenditure Report* as per Section 7.1 a., c and f. The *Eligible Recipient* is responsible for all other provisions of Section 7.1 and 7.2.

**6.3. Use of Funds.** The *Recipient* acknowledges and agrees the *Funds* are intended for and shall be used only for *Eligible Costs* in respect of *Eligible Projects*.

**6.4. Schedule of payout of Funds.** The *Recipient* has agreed that all *Funds* are to be transferred by AMO electronically to the *Recipient* twice yearly on or before July 15<sup>th</sup> and November 15<sup>th</sup>. More specifically on the basis set out in Schedule A.

**6.5. Use of Funds.** The *Recipient* is permitted to carry over unexpended *Funds* from the year received into subsequent years in a reserve fund account. The *Recipient* shall ensure:

- a. Any investment of unexpended *Funds* be in accordance with Ontario law and the *Recipient's* investment policy; and,
- b. Any interest earned on *Funds* be only applied to *Eligible Costs* on *Eligible Projects* or to eligible administration costs on the basis set out in Schedule B.

**6.6. Funds advanced.** If *Funds* advanced by AMO to the *Recipient* are not paid by the *Recipient* in respect of *Eligible Costs* within three (3) years after the end of the year in which the advance payment was received, AMO shall consult with the *Recipient* and may elect to withhold further payment of *Funds* on the basis set out in Schedule A hereto.

**6.7. Expenditure of Funds.** The *Recipient* shall expend all *Funds* by March 31, 2012.

**6.8. GST.** The use of *Funds* is based on the net amount of goods and services tax to be paid by the *Recipient* pursuant to the *Excise Tax Act* (Canada), net of any applicable rebates.

**6.9. Limit on Canada's Financial Commitments.** The *Recipient* may use *Funds* to pay up to one hundred percent (100%) of *Eligible Costs* of an *Eligible Project*. However, if the *Recipient* is receiving money under an *Infrastructure Program* in respect of an *Eligible Project* to which the *Recipient* wishes to apply *Funds*, the maximum federal contribution limitation set out in any *Infrastructure Program* contribution agreement made in respect of that *Eligible Project* shall continue to apply.

**6.10. Withholding Payment.** *AMO* may withhold payment of *Funds* where the *Recipient* is in default of compliance with any provisions of this *Agreement*.

**6.11. Insufficient funds provided by Canada.** If *Canada* does not provide sufficient funds to continue the *Funds* for any *Fiscal Year* during which this *Agreement* is in effect, *AMO* may terminate this *Agreement* in accordance with the terms specified in Section 12.4 of this *Agreement*.

## 7. REPORTING REQUIREMENTS

**7.1. Annual Expenditure Report.** The *Recipient* shall report in the form in Schedule D hereto due by March 31<sup>st</sup> following the *Municipal Fiscal Year* on:

- a. the amounts received from *AMO* under this *Agreement* in respect of the previous *Municipal Fiscal Year*;
- b. the amounts received from another *Eligible Recipient*;
- c. the amounts transferred to another *Eligible Recipient*;
- d. amounts paid by the *Recipient* in aggregate for *Eligible Projects*;
- e. amounts held at year end by the *Recipient* in aggregate, including interest, to pay for *Eligible Projects*;
- f. indicate in a narrative the progress that the *Recipient* has made in meeting its commitments and contributions;
- g. a listing of all *Eligible Projects* that have been funded, indicating the location, investment category, amount of *Funds*, nature of the investment and expected outcomes, as identified in Schedule E; and,
- h. an annual *Audit Statement* prepared by the *Recipient's* auditor in accordance with section 5815 of the Canadian Institute of Chartered Accountants Handbook - Special Reports — Audit Reports on Compliance With Agreements, Statutes and Regulations, providing assurance that the terms of the *Agreement*

have been adhered to and *Funds* received by the *Recipient* have been spent in accordance with the *Agreement*.

**7.2. Outcomes Report.** The *Recipient* shall account in writing for outcomes achieved as a result of the *Funds* through an *Outcomes Report* to be submitted to *AMO* and to be made available publicly in manner consistent with financial reporting under the *Municipal Act, 2001 S.O. 2001 c.25*.

- a. The *Outcomes Report* will report in writing on the cumulative investments made, in a manner to be provided by *AMO*, including information on the degree to which these investments have actually contributed to the objectives of cleaner air, cleaner water and reduced greenhouse gas emissions.

## 8. OTHER REQUIREMENTS

**8.1. Capital Investment Plan.** The *Recipient* acknowledges and agrees to undertake and complete, prior to the end of the fourth year of this *Agreement*, a *Capital Investment Plan*.

**8.2. Integrated Community Sustainability Plan.** The *Recipient* acknowledges and agrees that over the life of this *Agreement* to develop or enhance an *Integrated Community Sustainability Plan*, either by itself or as part of some higher level of agglomeration, as in Schedule G hereto.

**8.3. Public Sector Accounting Board.** The *Recipient* acknowledges and agrees that prior to March 31, 2010, the *Recipient* will adopt and use the accounting rules of the Public Sector Accounting Board, in accordance with provincial regulations.

## 9. RECORDS AND AUDIT

**9.1. Accounting Principles.** All accounting terms not otherwise defined herein have the meanings assigned to them; all calculations will be made and all financial data to be submitted will be prepared in accordance with generally accepted accounting principles (GAAP) in effect in Ontario. GAAP will include, without limitation, those principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants or any successor institute, applied on a consistent basis.

**9.2. Separate Records.** The *Recipient* shall maintain separate records and documentation for the *Funds* and keep all records including invoices,

statements, receipts and vouchers in respect of *Eligible Projects* that *Funds* are paid in respect of for three (3) years after the March 31, 2015. Upon reasonable notice, the *Recipient* shall submit all records and documentation relating to the *Funds* to *Canada* for inspection or audit.

**9.3. External Auditor.** *Canada* may request, upon written notification and *AMO* has agreed, to complete and provide to *Canada* an audit of *Eligible Project*. *AMO* shall require the assistance of an external auditor to carry out an audit of the material referred to in Section 9.2 of this *Agreement*. If so, the *Recipient* shall, upon request, retain an external auditor acceptable to *Canada* and *AMO* at the *Recipient's* sole expense. The *Recipient* shall ensure that any auditor who conducts an audit pursuant to this section of this *Agreement* or otherwise, provides a copy of the audit report to *AMO* and *Canada* at the same time that the audit report is given to the *Recipient*.

## 10. INSURANCE AND INDEMNITY

**10.1. Insurance.** The *Recipient* shall put in effect and maintain in full force and effect or cause to be put into effect and maintained for the period during which this *Agreement* is in effect all the necessary insurance that would be considered appropriate for a prudent *Recipient* of this type undertaking a project similar to the *Eligible Projects*, including, where appropriate and without limitation, property, construction and errors and omissions insurance and identifies *Canada* and *AMO* as additional insured for the purposes of the *Eligible Projects* only.

**10.2. Certificates of Insurance.** Throughout the term of this *Agreement*, the *Recipient* shall provide *AMO* with a valid certificate of insurance that confirms the requirements of Section 10.1.

**10.3. AMO not liable.** In no event shall *Canada* and *AMO* be liable for:

- a. Any bodily injury, death or property damages to the *Recipient*, its employees, agents or consultants or for any claim, demand or action by any *Third Party* against the *Recipient*, its employees, agents or consultants, arising out of or in any way related to this *Agreement*; nor
- b. Any incidental, indirect, special or consequential damages, or any **loss** of use, revenue or profit to the *Recipient*, its employees, agents or consultants arising out of any or in any way related to this *Agreement*.

**10.4. Recipient to Indemnify.** The *Recipient* agrees to indemnify and hold harmless *Canada* and *AMO*, its officers, servants, employees or agents, from and against all claims and demands, loss, costs, damages, actions,

suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or **loss** or destruction of property, economic **loss** or infringement of rights caused by or arising directly or indirectly from:

- a. the *Recipient's Eligible Projects*;
- b. the performance of this *Agreement* or the breach of any term or condition of this *Agreement* by the *Recipient*, its officers, employees and agents, or by a *Third Party*, its officers, employees, or agents;
- c. the performance of this *Agreement* or the breach of any term or condition of this *Agreement* by the *Recipient*, its officers, employees and agents, or by a *Third Party*, its officers, employees, or agents.
- d. the design, construction, operation, maintenance and repair of any part of all *Eligible Projects*; and
- e. any omission or other wilful or negligent act of the Indemnifier or *Third Party* and their respective employees, officers, or agents.

**10.5.Exception.** Except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings related to the act or negligence of an officer, employee, or agent of *AMO* in the performance of his or her duties.

## **11.TRANSFER AND OPERATION OF *MUNICIPAL INFRASTRUCTURE***

**11.1.Retain Title.** The *Recipient* shall retain title to, and ownership of, the *Municipal Infrastructure* resulting from the *Eligible Project* for at least ten **(10)** years after the *Eligible Project* completion.

**11.2.Repayment.** Any time within ten **(10)** years from the date of completion of the *Eligible Project*, the *Recipient* sells, leases, encumbers or otherwise disposes of, directly or indirectly, any asset constructed, rehabilitated or improved, in whole or in part, with funds contributed by *Canada* under the terms of this *Agreement*, other than to *Canada*, Ontario, a *Municipality*, or a Crown corporation of Ontario that is the latter's agent for the purpose of implementing this *Agreement*, the *Recipient* shall repay *Canada* on demand, a proportionate amount of the funds contributed by *Canada*, as follows:

Where Eligible Project asset is sold, leased, encumbered or disposed of:	Repayment of contribution (in current dollars)
Within 2 Years after Eligible Project completion	100%
Between 2 and 5 Years after Eligible Project completion	55%
Between 5 and 10 Years after Eligible Project completion	10%

**11.3. Notice.** The *Recipient* shall advise *Canada* and *AMO* in writing **120** days in advance and at any time during the ten (**10**) years following the completion of an *Eligible Project* if any asset constructed, rehabilitated, or improved in whole or in part with *Funds* is sold, discharged or alienated in any way other than to *Canada*.

## 12. DEFAULT AND TERMINATION

**12.1. Event of Default.** *AMO* may declare in writing that an event of default has occurred when the *Recipient* has not complied with any condition, undertaking or material term in this *Agreement*. *AMO* will not declare in writing that an event of default has occurred unless it has consulted with the *Recipient*. Each and every one of the following events is a potential “*Event of Default*”:

- a. Failure by the *Recipient* to deliver an *Annual Expenditure Report*, *Audit Report* or the *Outcomes Report*.
- b. Delivery of an *Annual Expenditure Report* or *Audit Report* that discloses non-compliance with any condition, undertaking or material term in this *Agreement*.

**12.2. Waiver.** *AMO* may withdraw *Event of Default* if the *Recipient*, within thirty (**30**) days of receipt of the notice, either correct the condition or event or demonstrate, to the satisfaction of *AMO* that it has taken such steps as are necessary to correct the condition.

**12.3. Remedies on default.** If *AMO* declares that an *Event of Default* has occurred, after thirty (**30**) days of declaration, it may immediately exercise one of the following remedies:

- a. In the case of default under Subsection **12.1 a.**, terminate or suspend its obligation to pay the *Funds*. If *AMO* suspends payment, it may pay suspended funds if *AMO* is satisfied that the default has been cured.

- b. In the case of any other default, *AMO* will suspend its obligation to pay *Funds* related to the event of default pending *AMO's* satisfaction that the default has been cured.

### 13. CONFLICT OF INTEREST

13.1. **No conflict of interest.** No member of the House of Commons, the Senate of Canada, the Legislature of the Province of Ontario or *AMO* Board of Directors will be admitted to any share or part of any Contract made pursuant to this *Agreement* or to any benefit arising therefrom.

### 14. NOTICE

14.1. **Notice.** Any notice, information or document provided for under this *Agreement* will be effectively given if delivered or sent by letter, postage or other charges prepaid, or by facsimile or email. Any notice that is delivered will have been received on delivery; and any notice mailed shall be deemed to have been received on the eighth (**8**) calendar day following the day on which it was mailed.

14.2. **Representatives.** The individuals identified in Section 14.3 of this *Agreement*, in the first instance, act as *AMO's* or the *Recipient's*, as the case may be, representative for the purpose of implementing this *Agreement*.

14.3. **Addresses for Notice.** Further to Section 14.1 of this *Agreement*, notice can be given at the following addresses:

- a. If to *AMO*:

Executive Director  
Federal Gas Tax Agreement  
Association of Municipalities of Ontario  
393 University Avenue, Suite 1701  
Toronto ON M5G 1E6

Telephone: (416) 971-9856  
Facsimile: (416) 971-6191



b. If to the *Recipient*:

Glenn Peace  
City Manager  
City of Hamilton  
71 Main St. W.  
Hamilton, ON L8P 4Y5

Telephone: (905) 540-5420

Facsimile: (905) 546-2095

## 15. MISCELLANEOUS

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

**15.2. No waiver.** The failure of *AMO* to insist in one or more instances on performance by the *Recipient* of any of the terms or conditions of this *Agreement* shall not be construed as a waiver of *AMO*'s right to require further performance of any such terms or conditions, and the obligations of the *Recipient* with respect to such performance shall continue in full force and effect.

**15.3. Governing Law.** This *Agreement* shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

**15.4. Survival.** The following schedules, sections and provisions of this *Agreement* shall survive the expiration or early termination hereof: Sections 5, 7, 9.3, 10.4, 10.5, 11, 12.3, 15.7 and Schedule G .

**15.5. *AMO* and *Recipient* independent.** Nothing in this *Agreement* and no action by the *Parties* will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose with *Canada* or *AMO* whatsoever.

**15.6. No Authority to Represent.** Nothing in this *Agreement* is to be construed as authorizing one *Party* to contract for or to incur any obligation on behalf of the other or to act as agent for the other. Nothing in this *Agreement* is to be construed as authorizing any *Recipient* or any

*Third Party* to contract for or to incur any obligation on behalf of either *Party* or to act as agent for either *Party*.

**15.7. Debts Due to AMO.** Any amount owed to *Canada* under this *Agreement* will constitute a debt due to *AMO*, which the *Recipient* will reimburse forthwith, on demand, to *AMO*.

**15.8. Priority.** In the event of a conflict, the part of this *Agreement* that precedes the signature of the *Parties* will take precedence over the Schedules.

## **16. SCHEDULES**

**16.1.** This *Agreement*, including:

Schedule A	Schedule of Fund Payments
Schedule B	<i>Eligible Costs</i>
Schedule C	Impact of Investment on Sustainability Outcomes for Local Roads and Bridges
Schedule D	<i>Annual Expenditure Report</i>
Schedule E	Outcome Indicators
Schedule F	Communications
Schedule G	<i>Integrated Community Sustainability Plans</i>

constitute the entire agreement between the *Parties* with respect to the subject matter contained in this *Agreement* and supersedes all prior oral or written representations and agreements.

**17. SIGNATURES**

**IN WITNESS WHEREOF**, *AMO* and the *Recipient* have respectively executed, sealed and delivered this *Agreement* on the date set out on the front page.

**RECIPIENT'S NAME:**

**City of Hamilton**

By:

Affix  
Corporate  
Seal

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

**THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO**

By:

Affix  
Corporate  
Seal

\_\_\_\_\_  
Name: Pat Vanini  
Title: Executive Director

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Witness  
Name: Nancy Plumridge  
Title: Director of Administration  
and Business Development

\_\_\_\_\_  
Date

**SCHEDULE A  
SCHEDULE OF FUND PAYMENTS**

**RECIPIENT'S NAME:** City of Hamilton

The following represents the minimum *Funds* and schedule of payments over the life of this *Agreement*.

Year	Schedule of Fund Payments	
	July 15th	November 15th
2005		\$9,559,914.65
2006	\$4,779,957.32	\$4,779,957.33
2007	\$6,372,564.81	\$6,372,564.81
2008	\$7,965,172.29	\$7,965,172.30
2009	\$15,930,344.59	\$15,930,344.58

## **SCHEDULE B ELIGIBLE COSTS**

### **Eligible Project Costs**

1. *Eligible Costs* are all direct costs which are in *Canada's* opinion:
  - a. properly and reasonably incurred and paid by the *Recipient* and no other person; and
  - b. paid under a contract for goods and services necessary for the implementation of an *Eligible Project*.
  
2. *Eligible costs* may include only the following:
  - a. the capital costs of acquiring, constructing, renovating or rehabilitating a tangible capital asset and any debt financing charges related thereto;
  - b. the fees paid to professionals, technical personnel, consultants and contractors specifically engaged to undertake the surveying, design, engineering, manufacturing or construction of a project infrastructure asset and related facilities and structures;
  - c. the costs of environmental assessments, monitoring, and follow-up programs as required by the *Canadian Environmental Assessment Act*; or a provincial equivalent;
  - d. the costs related to strengthening the ability of municipalities to enhance or develop *Integrated Community Sustainability Plans*.
  
3. **Employee and Equipment Costs**
  - a. In the case of *Recipients* that are remote municipalities the out of pocket costs (not overhead) related to employees or equipment may be included in its *Eligible Costs* under the following conditions:
    - i. the *Recipient* has determined that it is not economically feasible to tender a contract;
    - ii. employees or equipment are employed directly in respect of the work that would have been the subject of the contract; and
    - iii. the arrangement is approved in advance and in writing by the *Oversight Committee*.
  
4. **Administration Costs**
  - a. That portion of *Funds* representing interest earned may be used to pay for administration costs related to the implementation of the *Agreement*.

### **Ineligible Project Costs**

5. Costs related to the following items are ineligible costs:
  - a. *Eligible Project* costs incurred before April 1<sup>st</sup>, 2005;
  - b. services or works that are normally provided by the *Recipient* or a related party;

- c. salaries and other employment benefits of any employees of the *Recipient* or related party except as indicated in Section 3 of Schedule B above;
- d. a *Recipient's* overhead costs, its direct or indirect operating or administrative costs, and more specifically its costs related to planning, engineering, architecture, supervision, management and other activities normally carried out by its applicant's staff;
- e. costs of feasibility and planning studies for individual *Eligible Projects*;
- f. taxes for which the *Recipient* is eligible for a tax rebate and all other costs eligible for rebates;
- g. costs of land or any interest therein, and related costs;
- h. cost of leasing of equipment by the *Recipient* except for as indicated in Section 3 of Schedule B above;
- i. routine repair and maintenance costs;
- j. legal fees;
- k. administrative costs incurred by the *Recipient* as a result of implementing this *Agreement*, subject to Section 4 of Schedule B above; and
- l. audit and evaluation costs.

**SCHEDULE C  
IMPACT OF INVESTMENT ON SUSTAINABILITY OUTCOMES FOR LOCAL  
ROADS AND BRIDGES**

<b>Municipal Name</b>	
<b>Municipal Contact</b>	Name: Position: Municipal mailing address: Telephone number: Fax number: e-mail:
<b>Project Description</b> (type of project (i.e. road resurfacing, road or structure rehabilitation, road drainage improvements, traffic signal installation, installation of turning lanes))	
<b>Project Location</b> (road name, bridge name, start & end point, lot & concession – attach key plan if available)	
<b>Project Rationale</b> (benefits and beneficiaries)	
<b>Outputs</b> (describe which of the <b>outputs</b> are met by this project )	
_____	

1. This Schedule must be completed in accordance to instructions provided in “Transfer of Federal Gas Tax Revenues Under the New Deal for Cities and Communities Municipal Funding Agreement Guide” which will be updated once “output measures” and “outcome measures” contained in Schedule E of this Agreement have been developed, and approved by the Oversight Committee.

2. Projects using Funds must follow the requirements of this Agreement **as** outlined in Schedule C hereto and are subject to audit.
3. Recipients are responsible for reporting on *Eligible* Project outcomes set out Schedule E of this Agreement and subject to Section 7.2 of this Agreement.

Outcomes and Outputs:

1. Projects involving the restoration and rehabilitation of existing assets in order to extend the asset lifespan by several years i.e. resurfacing existing roadways and structure rehabilitation.
2. Projects incorporating significant quantities of recycled and reclaimed materials i.e. cold-in-place pavement recycling, expanded asphalt recycling and granular base reclamation.
3. Projects which significantly reduce travel times and distances i.e. new roads and bridges that reduce congestion by increasing travel speeds on the road network, create travel time savings and minimize travel distances,
4. Installation of turning lanes i.e. construction of left turn lanes, right turn lanes, left turn slip around lanes, and right turn tapers.
5. Traffic signal installation, traffic signal upgrading and traffic signal co-ordination Projects i.e. installation of new traffic signals, upgrading traffic signal installations, and projects to co-ordinate the timing of traffic signals in urban areas.

Note: If the *Eligible Project* is not one of the above outputs, the *Recipient* must provide the rationale for including the *Eligible Project* including how the *Eligible Project* will achieve the outcomes of cleaner air, cleaner water, and reduced greenhouse gases and how the outcomes will be met.



**SCHEDULE D  
ANNUAL EXPENDITURE REPORT**

	Annual \$	Cumulative \$
Gross Capital Expenditures (including 2010 expenditures for 2009 Eligible Projects (enclosed only)	0.00	
LESS: (to be reimbursed)		
Development Charges	0.00	
State Government Funding	0.00	
Other Non-Municipal Sources	0.00	
Base Amount	0.00	
Opening Balance of Unspent Funding	0.00	0.00
Received from AMO	0.00	0.00
PLUS: Received from Eligible Residents	0.00	0.00
LESS: Transferred to Eligible Residents	0.00	0.00
Interest Earned	0.00	0.00
LESS: Expenditures on Eligible Projects	0.00	0.00
Capacity Building	0.00	0.00
Community Energy Systems	0.00	0.00
Local Roads and Bridges	0.00	0.00
Public Transit	0.00	0.00
Solid Waste	0.00	0.00
Wastewater	0.00	0.00
Water	0.00	0.00
Closing Balance of Unspent Funding	0.00	0.00

**SCHEDULE D  
ANNUAL EXPENDITURE REPORT (cont'd)**

**PROGRESS REPORT:**

**PROJECT DETAILS:**

e. Project title, location, investment category, amount of *Funds*, nature of the investment and expected outcomes.

## SCHEDULE E OUTCOME INDICATORS

The impact of the use of the **Funds** will be measured through a set of core indicators, to be developed by the *Oversight Committee* and linked to the following outcomes and outputs:

### Outcomes:

- a) Cleaner Air: *[DETERMINE INDICATOR]*
- b) Cleaner Water: *[DETERMINE INDICATOR]*
- c) Lower Greenhouse Gas Emissions (GHGs): *[DETERMINE INDICATOR]*

### outputs:

- a) Community Energy Systems: *[DETERMINE INDICATOR]*
- b) Public Transit Infrastructure: *[DETERMINE INDICATOR]*
- c) Water Infrastructure: *[DETERMINE INDICATOR]*
- d) Wastewater Infrastructure: *[DETERMINE INDICATOR]*
- e) Changes in effluent quality *[DETERMINE INDICATOR]*
- f) Solid waste: *[DETERMINE INDICATOR]*
- g) Local Roads and Bridges: *[DETERMINE INDICATOR]*
- h) Capacity Building: *[DETERMINE INDICATOR]*

## SCHEDULE F COMMUNICATIONS

The *Recipient* shall:

- a. ensure all communications by the *Recipient* referring to projects funded under this *Agreement* will clearly recognize Canada's investments;
- b. ensure permanent signage at the location of projects receiving investments under this *Agreement*, prominently identifying the Government of Canada's investment and including the Canada wordmark. Where there is no fixed location for signage, such as a transit vehicle, a prominent marker will recognize the Government of Canada's contribution. **All signage/plaques will be located in such a way as to be clearly visible to users, visitors and/or passersby;**
- c. regularly report to the public on the outcomes of the investments entered into under this *Agreement*, including through the *Outcomes Reports* described in this *Agreement*;
- d. ensure the timing of public events shall be sufficient to allow for all orders of government to plan their involvement. The *Recipient* shall provide a minimum of 21 days notice of an event or announcement;
- e. unless otherwise arranged, the *Recipient* shall pay their own costs associated with their communications activities;
- f. receive appropriate recognition in communications materials; and,
- g. joint communications material and signage will reflect Government of Canada communications policy, including the *Official Languages Act* (Canada), and federal-provincial/territorial identity graphics guidelines.

## **SCHEDULE G**

### **INTEGRATED COMMUNITY SUSTAINABILITY PLANS**

*Municipalities* in Ontario operate with a sophisticated and comprehensive statutory and regulatory framework and are accountable to their residents for all aspects of municipal policy making, including operations and capital investment activities.

Ontario has demonstrated its leadership in sustainability planning through its well-established land-use planning and initiatives to protect the environment and provide safe drinking water in Ontario.

*Municipalities*, through their Official Plans, under the *Ontario Planning Act*, strive to reflect environmental objectives which are implemented through their municipal planning decisions, municipal capital plans, strategic plans and sustainability plans. As such, *Municipalities* have demonstrated their commitment to sustainability.

The purpose of the *Integrated Community Sustainability Plan* is to enhance or build upon existing planning instruments and processes.

Over the life of this *Agreement*, Recipients will be required to demonstrate through existing planning instruments and processes or through the creation of new planning document that the *Municipality* has:

- a co-ordinated approach to community sustainability (e.g., linkages of various plans, planning and financial tools that contribute to sustainability objectives);
- reflected and integrated social, cultural, environmental and economic sustainability objectives in community planning;
- collaborated with other *Municipalities* where appropriate to achieve sustainability objectives; and,
- engaged residents in determining a long-term vision for the *Municipality*.