

Authority to Execute a Letter of Agreement with the Government of Ontario for 2009 Ontario Bus Replacement Program Funding

Date:	August 25, 2009
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2009\Internal Services\Fp\Ec09015Fp (AFS#10380)

SUMMARY

This report recommends that staff be authorized to execute a transit capital funding Letter of Agreement under the Ontario Bus Replacement Program (OBRP) between the City and the Provincial Government. The Ontario Bus Replacement Program is a provincial Ministry of Transportation program funding the replacement of transit buses. The Ministry created the OBRP in recognition of municipalities' need to replace aging transit buses to support the development of strong communities, increase public transportation reliability, reduce municipal operating costs, and invest in the renewal of transportation systems. As part of the 2009 OBRP agreement between the City and the Province, the Ministry of Transportation will provide up to a maximum of \$25,801,173 in accordance with and subject to the terms set out in the Letter of Agreement and the Guidelines and Requirements, payable after April 1, 2009.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. The Mayor and the Deputy City Manager and Chief Financial Officer be authorized to execute the Letter of Agreement under the Ontario Bus Replacement Program (OBRP) between the City of Toronto and Her Majesty the Queen in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario, generally in accordance with the terms

set out in Appendix A, and to the satisfaction of the Deputy City Manager and Chief Financial Officer and the City Solicitor.

2. The appropriate officials be authorized and directed to take necessary actions to give effect thereto.

FINANCIAL IMPACT

Once the Ministry of Transportation has received signed copies of the Letter of Agreement, the related authorizing municipal by-law, and certified copies of agreements between the Toronto Transit Commission and the bus manufacturer, the Ministry can, in accordance with the OBRP, make arrangements for the payment of OBRP funding to the City. Funding for 2009 will be \$25,801,173, of which 1/12 will be paid immediately, with the remaining 11/12ths paid in equal amounts over the following 11 years. The funding for this program is assumed in the 2009-2013 Approved Capital Budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

ISSUE BACKGROUND

In 2007, the Ontario Bus Replacement Program replaced an earlier Provincial bus replacement program called the Ontario Transit Vehicle Program. Toronto received funding for 24% of eligible bus purchases in 2007. In 2008, the OBRP funding program was changed by the Provincial government for the eight largest municipalities in Ontario. The percentage of conventional bus purchases that the Province will fund was increased to 33.3%. However, the payments are being spread over the 12 year assumed life of the buses. The result of this change in the program is that the City of Toronto will only receive \$2.4 million in payments with respect to its 2009 bus purchases out of \$25.8 million in eligible funding to reflect the one year amortization of the value of the bus payments. The City is required to debt finance the Provincial share. The remaining 11/12ths will be paid, in equal amounts, to the City annually over the next 11 years. The Ministry of Transportation has committed to reimburse the City for its debt costs associated with this deferred revenue stream. Funding will be received in each of the 10 years of the 2009 Approved Capital Budget; 2010-2013 Approved Capital Plan; and 2014-2018 Capital Forecast.

COMMENTS

The TTC has reviewed the terms and conditions of the Letter of Agreement and the OBRP – 2009 Guidelines and Requirements. The TTC has also provided a certified copy of the contract document agreement executed with Orion Bus Industries (now known as DaimlerChrysler Commercial Buses North America Ltd.) for the delivery of 130 low-floor diesel-electric hybrid city buses in 2009. The contract for a further purchase of Wheel-Trans specialized transit buses was awarded in 2008 for vehicle deliveries

commencing in 2009 and the TTC will follow-up with the Province when any further commitments are made for deliveries.

Staff have previously expressed concerns to the Province with regard to Sections 9 and 10 of the agreement which allow the Province to terminate their twelve year funding commitment at any time. Other municipalities have expressed the same concern. The response from the Province was that the clauses will not change.

CONTACT

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SIGNATURE

Cam Weldon
Deputy City Manager and Chief Financial Officer

ATTACHMENTS

Appendix A: Key Terms and Conditions of the Ontario Bus Replacement Program

Appendix A

Key Terms and Conditions of the Ontario Bus Replacement Program

1. The Ontario Ministry of Transportation agrees to provide OBRP funding to the Municipality up to a maximum amount of \$25,801,173, plus interest in accordance with paragraph 3, and in accordance with and subject to the terms set out in the Letter of Agreement and the Guidelines and Requirements, payable after April 1, 2009 upon receipt of the signed Letter of Agreement and related authorizing municipal by-law, certified copy of a binding agreement between the Municipality or a transit operator, as applicable, and a manufacturer of transit buses for the purchase of such transit buses to be delivered in 2009, and where applicable, a binding operating agreement between the Municipality and a transit operator. The municipality must also submit a report in writing from the municipal official responsible for public transportation, attesting that the transit buses eligible to receive OBRP funding are not required to comply with the Canadian Content Policy as the procurement call was publicly issued prior to September 1, 2008.
2. Unless the Ministry otherwise approves in writing and subject to the Municipality meeting the annual performance requirements set out below, the Ministry will provide OBRP funding to the Municipality for the replacement of conventional transit buses over twelve years (starting in 2009 and ending in 2021). Payments for such OBRP funding will be provided annually and equal to one-twelfth of the OBRP funding allocated to conventional transit buses, given that the Municipality provides the Ministry with evidence that the buses are still owned by and in use by the Municipality.
3. The interest rates at which the Ministry agrees to pay interest on OBRP funding provided for the replacement of conventional transit buses will be calculated as follows:
 - a) Where the Municipality borrows money from a third party, the rate will be the Ontario Strategic Infrastructure Financing Authority (OSIFA) ten year borrowing rate as at March 31st, adjusted annually and
 - b) Where the Municipality uses its own funds, excluding OBRP funds kept in an OBRP capital reserve account, a rate, subject to Ministry review, equal to its internal rate of return, as provided in writing by the Municipality no later than February 15th of the following calendar year end, and not to exceed the rate set by the Ministry in 3a).
4. Any amount payable under the Letter of Agreement may be subject, at the Minister's sole discretion, to adjustment for consistency with the agreements described in Section 1, and any other adjustments as set out in the Guidelines and Requirements, including those related to annual appropriations of funds by the Legislative Assembly of Ontario.

5. The Ministry may terminate the Letter of Agreement at any time, without cause, upon giving at least 60 days written notice to the Municipality. If the Ministry terminates the Letter of Agreement without cause, it may: a) cancel all further OBRP funding payments; and b) determine the Municipality's reasonable costs to terminate any binding agreement between the Municipality or a transit operator and a manufacturer of transit buses acquired under the OBRP, and permit the Municipality to offset these costs against the OBRP funds remaining in the possession or under the control of the Municipality.
6. If the legislature fails to appropriate sufficient funds for the OBRP, the Ministry, in addition to any adjustments it may make with respect to interest payments, may terminate the Letter of Agreement immediately by giving notice to the Municipality.
7. The agreement is for the year 2009 only.
8. Replacement transit buses only are eligible.
9. To be eligible for OBRP funding for a program year, a municipality must order, or contribute to an order by a transit operator offering public transportation services on behalf of the municipality, transit buses intended for delivery within that program year.
10. All replacement transit buses must be fully accessible in accordance with the requirements set out in the Ontarians with Disabilities Act, 2001.
11. At the end of the program year for which OBRP funding has been provided, the Municipality must provide the ministry with a year end report indicating the disbursements of OBRP funding, balance of OBRP capital reserve account and a description of the transit buses replaced.
12. A municipality receiving OBRP funding must agree to indemnify and hold harmless the indemnified parties from and against any and all liabilities, loss, costs, damages and expenses, causes of actions, actions, claims, demands, personal injury and property damage in any way arising out of or in connection with directors, officers, agents, contractors and the like for any claim, demand or action by any third party against the municipality, its employees, agents, contractors, and the like arising out of or in any way related to the OBRP, including OBRP funding.
13. The municipality receiving OBRP funding must acquire, provide and maintain, at its own expense, appropriate insurance in order to protect itself and the Ministry and support the indemnification, as set out above, provided to the Ministry.