



STAFF REPORT ACTION REQUIRED

Authority to Enter into Amended and Restated Security Agreement with ACE INA insurance company and RBC Dexia Investor Services Trust

Date:	April 29, 2014
To:	City Council
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2014\Internal Services\Cf\Cc14010cf (AFS #19300)

SUMMARY

The purpose of this report is to obtain authority to enter into an Amended and Restated Security agreement (A&RS) with ACE INA insurance company (ACE INA) and RBC Dexia Investor Services Trust. The A&RS will replace the existing Security Agreement with ACE INA approved by Council in May, 2003. The A&RS is required by the City to meet insurance obligations arising from the \$5 Million deductibles on its General Liability, Automobile and Errors & Omissions Liability insurance policies.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. City Council authorize the Deputy City Manager and Chief Financial Officer to enter into an Amended and Restated Security agreement with ACE INA and RBC Dexia Investor Services Trust on the terms outlined in this report, to replace the existing Security Agreement required for the provision of Automobile, General Liability and Errors & Omissions Liability insurance with content satisfactory to the Deputy City Manager and Chief Financial Officer and in a form satisfactory to the City Solicitor.

Financial Impact

There is no financial impact related to the City entering into the Amended and Restated Security Agreement with ACE INA. There is a monthly custody fee that is charged by the RBC Dexia Investor Services Trust of \$1,850 per month for its services related to this

security agreement that has not changed in several years. Legislation requires the use of a third party custodian.

DECISION HISTORY

Government Management Committee at its April 7, 2014 meeting amended report GM29.11 by adopting the motion that the Government Management Committee:

1. Submit this item to City Council without recommendation.
2. Request the Deputy City Manager and Chief Financial Officer to report directly to the May 6, 2014 meeting of City Council on the terms of a finalized Amended and Restated Security agreement to be recommended for Council approval.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.GM29.11>

ISSUE BACKGROUND

The City Council adopted insurance program has a \$5 Million deductible on each of the General Liability, Automobile and Errors & Omissions Liability policies. A \$5 Million deductible reduces the premium expense the City pays to insurers and allows the City to cost effectively self-insure claims.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.GM3.16>

Although it is the City's responsibility to fund claims within the \$5 Million deductible layer, certain insurance obligations exist which must be provided by the licensed insurer, ACE INA. One such obligation comes under statutory Ontario automobile insurance policies which cannot have a third party liability or accident benefits deductible. ACE INA issues these policies to the City in recognition of the City's wish to self fund claims up to \$5 Million. However insurance company regulations under the Ontario Superintendent of Financial Institutions considers ACE INA ultimately responsible for all of the City's Third Party Liability and Accident Benefits claims from first dollar. Consequently ACE INA requires the City to provide financial collateral against the payment obligations for these claims in the event the City is unwilling or unable to fulfill the obligations.

This arrangement was originally authorized by Council in May, 2003 and the amended authority provided by GMC Item 4.11 as approved by Council in May, 2007.

In May, 2003 Council authorized the City and ACE INA to enter into a Security Agreement in a form satisfactory to the City Solicitor. As part of that agreement, the City is required to provide Government of Canada Bonds to be held in trust in favour of ACE INA until such time as they are no longer required. In May, 2007 Council authorized an amount of financial security up to \$96.366 Million, however to date ACE INA has required only \$66 Million as security. The Security Agreement allows ACE INA to hold sufficient capital to meet regulatory requirements imposed by the Ontario Superintendent of Financial Institutions. Income earned on the pledged securities continue to accrue to the City.

The Security Agreement was selected as the security method most advantageous to the City. City Council directed that a custodial account be established in the name of ACE INA and deposited the agreed amount of Government of Canada Bonds with an interest and term to maturity acceptable to ACE INA.

Changes to the Security Agreement are needed to better protect the City's interests and document the secured interest in the assets pledged by the City under the *Securities Transfer Act, 2006*, (Ontario). The Securities Transfer Act created a new method of perfecting security interests that resulted in super-priority status for those secured parties who obtained "control" of the pledged assets. The most common way to obtain control under the Act is a control agreement under which the custodian agrees to comply with instructions of the secured party without any further consent or other action of the debtor, in this case, the City upon an Event of Default. The agreement we have recommended in this report references this control and the mechanisms to maintain this control.

The Act also created a number of new legal terms for collateral which are now customarily incorporated into updated security agreements so that the description of the collateral aligns with the statutory definitions.

The debtor (City) must agree to the arrangement which is why a tri-partite agreement is proposed. This allows the City to retain title to the collateral and deal with it prior to an Event of Default. The City Solicitor has been consulted and has reviewed and concurs with the form of the proposed A&RS agreement.

The following highlight the key provisions to be incorporated into the new A&RS agreement:

- The agreement continues to set a maximum security amount equal to the Council approved limit of \$96,366,000 for a three year period, after which any change in terms including a change in the ceiling amount will be subject to City Council approval;
- The guarantor, RBC Dexia Investor Services Trust is a party to the agreement as the City's guarantor of its financial ability to pay claims that fall within the \$5 Million policy deductible;
- The agreement requires that the City pay custodial fees which include all costs, fees and expenses of the guarantor, RBC Dexia Investor Services Trust;
- The agreement includes an indemnification provision wording in favour of the guarantor, a limitation on the guarantor's liabilities, and a binding arbitration process to resolve disputes relating to the minimum security amount.

The authorities delegated to staff by Council in May, 2003 for the City and ACE INA to enter into a Security Agreement are inadequate for the newly proposed agreement recommended in this report. As such, Council authority is now required to enter into the proposed security agreement as recommended in this report.

CONCLUSION

It is necessary to change the existing Security Agreement between the City and licensed insurance company ACE INA in order to comply with provisions of the Securities Transfer Act, 2006 (Ontario). The City provides security to ACE INA in order for them to issue insurance policies to the City that have \$5 Million deductibles. The Act requires a custodian to maintain control over the assets pledged by the City to secure the insurer's financial obligations associated with claims within the deductible amount. The Agreement allows the City to retain title of the collateral and the ability to manage its collateralized investments.

The City Solicitor has been consulted and has reviewed and concurs with the form of the proposed A&RS agreement.

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SIGNATURE

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