



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Tripartite Funding Agreement for TAF's Canada Endowment

Date: July 2, 2020

To: Toronto Atmospheric Board of Directors

From: Julia Langer, Chief Executive Officer

REASON FOR CONFIDENTIAL INFORMATION

The attachments to this report pertain to negotiations carried on or to be carried on by or on behalf of the Toronto Atmospheric Fund.

SUMMARY

The Government of Canada, via the Federation of Canadian Municipalities (FCM), announced \$350 million for an urban climate action program in the March 2019 budget. This includes \$183 million for the Low Carbon Cities Canada (LC3) initiative incubated by TAF. Of this \$183 million, TAF will receive \$40 million, \$137 million will be provided to six other centres modelled on TAF, and \$6 million will be retained by FCM's Green Municipal Fund (GMF) for a national office to support the LC3 network and provide oversight and accountability to the federal government. The balance of the \$350 million - \$167 million – will go to GMF as an endowment to support low-carbon action in communities not directly served by the LC3 initiative. The new Canada endowment will be dedicated to advancing TAF's current mandate in the Greater Toronto and Hamilton Area (GTHA).

The seven LC3 centres, including TAF, negotiated a non-binding Indicative Term Sheet intended to guide the development of individual Funding Agreements with FCM. The Indicative Term Sheet was approved in principle by the TAF Board on February 14, 2020, subject to resolution of several key issues. These issues have now been resolved and the Term Sheet will be executed.

In tandem, TAF, the City of Toronto (COT) and FCM negotiated a tripartite Funding Agreement which sets out the purpose and objectives of the Canada endowment; TAF's governance, accountabilities and ongoing obligations with respect to its management; matters requiring FCM approval or consent; events of default and remedies; and reporting requirements. TAF's governance under the TAF Act, TAF/City of Toronto Relationship Framework and Council-approved Statement of Investment Objectives & Principles remains the same. TAF commits, among other things, to invest the

endowment in a prudent manner in keeping with Council-approved investment policy and to maintain the nominal value in perpetuity, to provide grants to eligible recipients, to keep our administrative costs within best-practice boundaries, and to pay FCM fees and provide FCM with the information it needs for oversight and reporting to the Government of Canada and for management of a national LC3 Network. The Funding Agreement applies only to the Canada endowment and includes protections for TAF's Toronto and Ontario endowments. It also acknowledges that TAF's existing endowments satisfy, in perpetuity, the requirement for matching the funds provided by the federal government.

FCM has also confirmed that TAF has provided satisfactory evidence of the conditions of transfer outlined in the Funding Agreement, including the requisite organizational policies, staff and advisory competencies, financial statements, governance documents, risk management framework, and insurance coverage. A 5-year cashflow projection and bring-down certificates are in development. Funds would be received by the City, in trust for TAF, within 30 days of all parties executing the Funding Agreement.

It is recommended that TAF's Board approve the Funding Agreement and request, via the City Manager, Council's approval.

In addition, to facilitate implementation of the Canada endowment, including in the context of funding projects and expenses using all three endowments, it is recommended that Council's approval be sought for a Line of Credit (which is provided for in the Funding Agreement) and, in the context of Section 11 of the TAF Act, for the authority to undertake obligations beyond the terms of Council, similar to the approval provided when the Ontario Transfer Payment was approved.

RECOMMENDATIONS

The Chief Executive Officer recommends that the Toronto Atmospheric Fund Board of Directors:

1. Approve the Funding Agreement as substantially summarized in Confidential Attachment 1, and direct the Chair of the Board of Directors to execute it;
2. Request that the City Manager seek City Council approval and execution of the Funding Agreement;
3. Request that the City Manager seek City Council approval to implement the Funding Agreement by:
 - a. Approving a Line of Credit of up to \$1.6 million secured by the Canada endowment once the funds are received from FCM;
 - b. Making any necessary amendments to the TAF/City Relationship Framework or any other governance instruments or agreements; and
 - c. Approving, pursuant to Section 11 of the TAF Act, any financial commitments, liabilities or contractual obligations undertaken by TAF which extend after the expiry of present and future Council terms using i) the City endowment funds, ii) the Ontario endowment; and/or iii) the new Canada endowment, and which comply with the Relationship Framework.

4. Authorize the public release of the confidential information in Confidential Attachment 1 to this report from the Chief Executive Officer once the Funding Agreement is signed with FCM.

5. Direct that the confidential information contained in Confidential Attachment 2 remain confidential in its entirety, as it pertains to negotiations carried on or to be carried on by or on behalf of the Toronto Atmospheric Fund.

FINANCIAL IMPACT

None to the City of Toronto.

DECISION HISTORY

On February 14, 2020, the TAF Board authorized staff to approve and execute the non-binding Indicative Term Sheet for the FCM-LC3 funding agreements, substantially in the form presented by the Federation of Canadian Municipalities on February 3, 2020, subject to conditions.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TA5.5>)

Following the Federal Budget, at its Board Meeting of April 30, 2019 (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TA2.4>), the TAF Board directed staff to negotiate and prepare an agreement with the Federation of Canadian Municipalities for receipt, use of, and accountability for, the \$40 million Canada endowment. This negotiation was to be done in consultation with City staff via the City Manager's Office, and with guidance from the TAF Ad Hoc LC3 Working Group and the TAF Investment Committee to the satisfaction of TAF's Solicitor, the City Solicitor, the City Manager, the City's Chief Financial Officer & Treasurer, for the purposes of achieving Board and City Council approval. The TAF Board directed the Ad Hoc LC3 Working Group to expand its membership, support TAF's CEO in framing and guiding the negotiation of terms, and present the draft agreement to the Board for approval. It also directed the Investment Committee to develop a City and FCM compliant plan for prompt deployment of the Canada endowment, seek the Board's approval for the proposed plan and deployment of the funds. The TAF Board also approved the use of up to \$250,000 from the Toronto endowment in 2019 and 2020 for costs associated with initial programming, to be repaid from revenues from the Canada endowment no later than December 31, 2021.

The Board received several updates on the progress of the LC3 incubation and Clean Economy Fund support via the CEO's reports (<https://www.toronto.ca/legdocs/mmis/2017/ta/bgrd/backgroundfile-109845.pdf>) (<https://www.toronto.ca/legdocs/mmis/2018/ta/bgrd/backgroundfile-112301.pdf>), and staff updated the advisors several times but no formal meetings were held. In the weeks leading up to the Federal Budget, TAF consulted with the advisors and colleagues in the City Manager's Office and Environment and Energy Division regarding the initiative.

On February 22, 2019, the TAF Board approved TAF's 2019 Business Plan, which included "Low Carbon Cities Canada (LC3): If successful, support the engagement of a national support organization, negotiation of funding agreements, roll-out of capital to six partner centres, and enhancement of TAF's endowment and capacity".
(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TA1.5>)

On July 19, 2018, the TAF Board received a presentation regarding LC3, and struck the Ad Hoc LC3 Advisory Group, comprised of the Board Chair and two other members, to provide guidance to staff on advancing the Low Carbon Cities Canada initiative, and if relevant, make recommendations to the Board of Directors of the Toronto Atmospheric Fund concerning implementation of this opportunity, including consultation with the City Manager regarding the Toronto Atmospheric Fund/City relationship.
(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TA21.4>)

On February 9, 2018, the TAF Board approved TAF's 2018 Business Plan which included a project to Increase TAF's Capital Pool through "Low Carbon Cities Canada (LC3): As one of six LC3 centres, request a total of \$115 million in federal investment for the network and attract \$40 million as "working capital" to enhance TAF's capacity to invest and advance low-carbon solutions in the GTHA."
(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TA19.4>)

On October 5, 6 and 7, 2016, City Council approved the terms and conditions of the TPA and authorized the Mayor to enter into a Transfer Payment Agreement with the Government of Ontario and the Toronto Atmospheric Fund for the Ontario endowment of \$17 million, requested that the Government of Ontario amend subsections 11(8) and (9) of the Toronto Atmospheric Fund Act to authorize the Toronto Atmospheric Fund to undertake financial commitments, liabilities or contractual obligations that extend beyond the term of any City Council, and authorized TAF to undertake financial commitments, liabilities and contractual obligations for up to six months beyond the 2014 to 2018 term of City Council, for which transactions were to be calculated as part of the City's debt and financial obligation limit under Subsection 11(8) of the Toronto Atmospheric Fund Act.
(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX17.6>)

On July 16, 2016 the TAF Board approved, in principle, the terms of a Transfer Payment Agreement (TPA) establishing an Ontario Endowment Fund for the purposes of expanding TAF's services throughout the Greater Toronto and Hamilton Area (GTHA). (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TA11.1>).

On December 5, 2014, TAF's Board approved Strategic Directions for 2015-2020, including #4 (of 7): "Mobilize New Resources – Continue to leverage TAF's excellence as a finance and grant-making innovator and impact investor to encourage the flow of more capital towards low-carbon investments. Continue and amplify project fundraising but avoid competing with affiliates in our sector. And, scan for opportunities that could supplement the TAF endowment to allow more core capacity to deliver on our current mandate." (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.TA1.3>)
(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TA1.3>)

COMMENTS

Low Carbon Cities Canada (LC3) Background

On the heels of receiving the Ontario endowment, and in the context of an emerging federal climate action plan, TAF requested that the federal government match the City of Toronto and Province of Ontario contributions to accelerate low-carbon solutions in The Greater Toronto and Hamilton Area - Canada's most populous urban region. This prompted their interest in whether the TAF model would be relevant in other Canadian cities and, with funding from Natural Resources Canada (NRCan) and the Clean Economy Fund (pooling philanthropic contributions from the McConnell, Trottier, Echo, North Growth and Donner Foundations), TAF undertook research and consultation to explore interest in and need for local capacity to accelerate low-carbon solutions.

What emerged was the LC3 initiative: champions from six other urban regions – Metro Vancouver, Edmonton, Calgary, Ottawa, Metro Montreal, and Halifax Region – dedicated to leveraging TAF's model and experience to create their own local, low-carbon funds. TAF continued incubating LC3 and in August 2018 LC3 made a pre-Budget submission requesting \$183 million. Letters of support were provided by Mayors, MPs, MLAs, and community leaders from across the country.

On March 19, 2019, the Federal Government Budget announced \$1.1 billion to the FCM's Green Municipal Fund (GMF) for four programs relating to energy efficiency and greenhouse gas (GHG) reduction. One element was "Collaboration on Community Climate Action: \$350 million to provide municipalities and non-profit organizations with financing and grants to retrofit and improve the energy efficiency of large community buildings as well as community pilot and demonstration projects in Canadian municipalities, both large and small. FCM and the Low Carbon Cities Canada Initiatives will create a network across Canada that will support local community actions to reduce GHG emissions." Of this, \$183 million was dedicated to LC3, specifically \$165M as endowment capital for seven LC3 centres, including \$40 million for TAF, \$12M as operating funds for start-up costs to six of the centres (excluding TAF), and \$6M for a national coordinating office. The balance of \$167 million was to be administered by GMF to implement an LC3-type program in other cities. The LC3 centres are awaiting final confirmation from the government regarding the opportunity to shift up to 5% of their respective endowment allocations to operating funds which could be spent down.

The Canada endowment will bring TAF's asset value to approximately \$90 million. TAF's mandate, geographic focus and core governance remains the same, with the proceeds from the Canada endowment being used to enhance TAF's capacity to invest in and accelerate low-carbon solutions in the Greater Toronto and Hamilton Area (GTHA).

Tripartite Funding Agreement

At the Board's direction, staff engaged in the negotiation of a Funding Agreement with FCM governing the receipt and use of, and accountability for, the \$40 million federal contribution. It was agreed that a tripartite agreement between TAF, the City and FCM

would best satisfy the TAF Act, Section 8 (1) “Custody and investment of the Fund’s money” and TAF’s Relationship Framework, Section 11.1 “Investment Framework: The City is ultimately responsible for TAF investments as set out in the legislation; therefore assets entrusted to TAF are not to be placed outside the reach of Council.” The funds being received will significantly expand the corpus of the trust, and thus are considered by City Legal Services to warrant the same level of direct City oversight as the Ontario endowment.

Throughout the process, staff consulted and kept the Ad Hoc LC3 Working Group apprised of the negotiation process, and worked with City staff from the City Manager’s Office, City Legal and Corporate Finance

The approach has been to develop a non-binding Indicative Term Sheet between the seven LC3 centres and FCM which is intended to guide the development of the individual Funding Agreements. The Indicative Term Sheet was approved in principle at the Board meeting held February 14, 2020, with instructions to resolve several outstanding issues. These have now been resolved and the Term Sheet will be executed when finalized.

In addition, recognizing the challenging financial context and the need for climate action, a proposal to allow the LC3 centres to shift up to 5% of their endowment allocation to an operating grant which can be spent down has been advanced and is awaiting the federal government’s confirmation. If approved, TAF will elect to make this shift, which would result in the receipt of a \$38M endowment to be maintained in perpetuity, and \$2M for operating expenses. The operating funds would not have to be spent on any timetable and would be invested as per the endowment until utilized.

The Funding Agreement builds on the Indicative Term Sheet and includes terms pertaining to:

- the purpose of the Agreement namely to establish the Canada endowment in perpetuity with the proceeds used to support and accelerate local climate action and the obligation to act as a prudent investor to maintain the nominal value of the endowment;
- the role of the Board in governance and oversight, approval of projects (including grants and investments), policies, strategies and budgets, and prudent, long-term management of the fund assets;
- conditions of transfer, including FCM approval of key documents such as TAF’s Investment Policy, various other policies, and risk management framework
- use of the proceeds, including parameters regarding the quantum and types of allowable annual disbursements;
- use of separate fund accounting for TAF’s three endowments;
- reporting and accountability to FCM, which reports to the Government of Canada on behalf of all seven LC3 endowments, as well as confidentiality requirements;
- operation of the LC3 network office by FCM and payment of management fees by each LC3 centre;
- events of default and remedies in the event of default or TAF’s wind-up, underpinned by protection of the Toronto and Ontario endowments;

- the requirement to leverage the Canada endowment with matching funds, and acknowledgment that this requirement has been satisfied by virtue of the Toronto and Ontario endowments;

This report seeks Board approval of the Funding Agreement which is summarized in Confidential Attachment #1.

Facilitating TAF Implementation

Endowment deployment: At the Board's direction, the Investment Committee, with support from Proteus Performance Management, TAF's third-party investment advisor, has developed a plan for prompt deployment of the Canada endowment that is prudent and compliant with TAF's Statement of Investment Objectives & Principles (SIOP).

Investment Policy: TAF's current SIOP has been approved by FCM, with the expectation that gaps between the SIOP and the Investment Framework which forms a part of the Funding Agreement will be filled within a year, either via amendment of the SIOP or a separate annex. As always, amendment of TAF's SIOP will be developed and recommended by TAF's Investment Committee and approved by TAF's Board and City Council. The amendments approved by the Board in at its meeting of November 8, 2019 have not yet been advanced for Council approval and efforts will be made to update these for the Board's consideration in September, and Council's thereafter.

Operating Expenses: At its meeting of April 30, 2019, the Board approved spending up to \$250,000 to initiate the programming associated with the Canada endowment, which would be repaid to the Toronto fund no later than December 31, 2021 with revenues from the Canada endowment. This would be undertaken with the operating funds if available to TAF, before the end of 2020.

Transactions beyond term of Council: Subsections 11(8) and (9) of the TAF Act provide that for the purpose of calculating its debt and financial obligation limits under section 401 of the Municipal Act, 2001, the City shall be deemed to have incurred as a long-term debt any financial commitment, liability or contractual obligation of TAF in respect of which TAF is required to make payments after the expiry of the term for which the City Council was elected. This "term of Council" requirement for prior Council approval for TAF to undertake such financial commitments, as they are deemed liabilities of the City, constrains TAF's ability to execute timely transactions, act as a reasonable investor, and enter into long-term agreements. TAF's potential impact on the City's debt is minimal. At its meeting of October, 6, 5 and 7, 2016, Council authorized TAF to apply for amendment of the Act, although this has not yet been achieved.

Numerous provisions of the Funding Agreement will require TAF to make payments or incur obligations and liabilities after the 2018-2022 term of the current City Council). It creates a challenge for various kinds of contractual obligations, if any portion of an agreement requires funding, creates an obligation or a contingent liability which might materialize after the Expiry Date, even though such transaction is otherwise permitted by the Relationship Framework, for instance:

- Grants to Eligible Recipients

- Direct Investments, including guarantees, other financial obligations or commitments, or non-financial or management type commitments which TAF may give to banks and other third party financiers to Eligible Recipients even if they are never called upon) to Eligible Recipients;
- National Office Service Fees;
- Payments to FCM as damages or compensation for breaches of the Funding Agreement, indemnification for losses caused to FCM by TAF under the Funding Agreement and return of the Canada Endowment due to default by TAF or TAF's winding-up.

The term of Council issue has been before City Council on numerous occasions, particularly in the final months of each Council term. In the context of the Ontario endowment City Council authorized TAF to undertake financial commitments, liabilities and contractual obligations for up to six months beyond the 2014 to 2018 term of City Council. As always, all TAF transactions are disclosed in TAF's Annual Audited Financial Statements. For practical purposes, this report also seeks, via the City Manager, City Council's authorization for TAF to incur compliant (i.e. permitted by Council policy and applicable law) transactions requiring payments after the term of a current City Council, including to make such payments and to incur such obligations and liabilities throughout the term of the Funding Agreement and as is necessary to execute the Funding Agreement and accept the Canada endowment. In no way would this exempt TAF from or undermine the obligations under the Relationship Framework.

GTHA Value Proposition

The Canada endowment will allow TAF to deepen its impact by adding new resources to support TAF's existing mandate in our current geographic service area. These additional funds come at an opportune time. Over the past year, municipalities across the GTHA have declared climate emergencies and are actively working to develop climate plans and programming of a level of ambition that is commensurate with the scale of the crisis. While COVID-19 is creating many serious challenges, shifts in public consciousness associated with this crisis are creating unique entry points and new investment opportunities for advancing climate action in ways that support multiple community benefits and expand constituencies of support. With a nearly 30-year track record of incubating and scaling local climate solutions, TAF's experience is needed more than ever.

The Canada endowment will almost double TAF's net asset value (NAV) to approximately \$90 million. Assuming an annual return of 5% on the Canada endowment, TAF is expecting to generate close to \$2 million in additional annual proceeds that can be deployed through grants and programs to advance climate solutions in the community.

TAF will also have up to 60% of its expanded asset – an additional \$22.8 million – available for Direct Investments in low-carbon solutions that generate a financial return. In addition, there is the potential for TAF to syndicate Direct Investments with other LC3 centres, attracting further resources to local projects and accelerating the growth of our low-carbon sector. TAF is also exploring the opportunity to share investment capacity

with other LC3 centres, offsetting TAF costs related to due diligence, credit analysis, structuring, and back-office investment management.

The proportional sharing of TAF's relevant expenses (administrative and programming) and Direct Investments will make TAF's existing Toronto and Ontario endowment funds go even farther. Based on TAF's 2019 net asset value, the TO:ON:CA proportionality ratio is 37:19:44. The proportional allocation of endowment funds to new projects would have the effect of significantly reducing each fund's per-project contribution and expanding the number and scale of initiatives TAF can support. As was the case when TAF received the Ontario endowment, core operating costs were incrementally not proportionately increased, allowing greater investment in programming, and the same efficiency is planned for this expansion.

The new LC3 centres will leverage Toronto's and Ontario's leadership investment in TAF to advance low-carbon solutions beyond the GTHA. This is already happening through the secondment of TAF's VP of Strategy and Partnerships to FCM to support the establishment and early success of the six new LC3 Centres and an associated national LC3 network. For its own part, TAF is building close relationships with climate leaders in major urban centres across Canada, and is poised to leverage the LC3 network's expertise, lessons and insights to deepen its own impact throughout the GTHA.

CONTACT

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SIGNATURE

Julia Langer
Chief Executive Officer

ATTACHMENTS

Confidential Attachment 1 – Summary of Toronto Atmospheric Fund – City of Toronto – Federation of Canadian Municipalities Funding Agreement

Confidential Attachment 2 - Key terms of the Funding Agreement between the City of Toronto, the Toronto Atmospheric Fund and the Federation of Canadian Municipalities