



## STAFF REPORT ACTION REQUIRED

### Metropolitan Toronto Pension Plan and Metropolitan Toronto Police Benefit Fund – Refund of 2008 Audit Fees

<b>Date:</b>	March 17, 2015
<b>To:</b>	Government Management Committee
<b>From:</b>	Treasurer
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2015\Internal Services\ppeb\gm15001ppeb (AFS20849)

#### SUMMARY

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To ensure consistent treatment across all five of the City's Pre-OMERS pension plans, this report requests authorization to refund to the Metropolitan Toronto Pension Plan (Metro Plan) \$14,458.50 and to the Metropolitan Toronto Police Benefit Fund (Police Plan) \$7,922.25 for fees that those pension plans paid to the City in 2009 for the auditing of their 2008 Financial Statements.

#### RECOMMENDATIONS

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**The Treasurer recommends that:**

1. City Council approve payment of \$14,458.50 to the Metropolitan Toronto Pension Plan (Metro Plan) and \$7,922.25 to the Metropolitan Toronto Police Benefit Fund (Police Plan) for the audit fees paid by the Plans in 2009 for the auditing of their 2008 Financial Statements.
2. City Council approve a Non-Program Operating Budget increase of \$22,380.75 gross and \$0 net funded from the Employee / Retiree Benefits Reserve Fund to cover the cost of refunding the Metropolitan Toronto Pension Plan and the Metropolitan Toronto Police Benefit Fund for the audit fees paid by the Plans in 2009 for the auditing of their 2008 Financial Statements.

## **Financial Impact**

The total cost associated with refunding the audit fees paid by the Metropolitan Toronto Pension Plan and the Metropolitan Toronto Police Benefit Fund in 2009 for the audit of their 2008 financial statements is \$22,380.75 (\$14,458.50 for the Metro Plan + \$7,922.25 for the Police Plan). Funding for this recommended refund will come from the Employee/Retiree Benefits Reserve Fund.

Should Council approve the recommended refund, staff is requesting authorization to increase the 2015 Non-Program Operating Budget by \$22,380.75 gross and \$0 net, funded from the Employee/Retiree Benefits Reserve Fund to cover the cost of refunding the two aforementioned pension plans.

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

## **ISSUE BACKGROUND**

Ontario pension plans are governed by our Province's *Pension Benefits Act (PBA)* Regulations which requires every pension plan to produce and submit a number of documents, including annual audited financial statements.

By-law No. 15-92 governing the Metro Plan provides in subsection 8(3) that the City Auditor shall be the auditor for the Plan's fund. Subsection 6(2) of By-law No. 181-81 governing the Police Plan provides the same for the Police Fund.

The By-laws also provide in clauses 8(4) (b) and 6(7) (b) respectively for payment from the pension fund, subject to Board approval, of "direct costs arising out of the administration of the fund".

Prior to January 1, 1998 there were no direct costs associated with the audit of the City's five Pre-OMERS Pension Plans' annual financial statements given that the City Auditor / Metropolitan Auditor was a City employee and accordingly performed the audit of each Plan's financial statements annually as part of his/her many duties. As such, the City did not charge the Pension Plans for audit fees.

Since amalgamation and with the subsequent introduction of legislation governing Ontario municipalities (including the City) prohibiting a municipal auditor from being their employee, the City of Toronto has, through a competitive bid process, contractually engaged an external auditing firm to meet the City's auditing needs, including those with respect to the two Pension Plans discussed in this report (and the three other City-sponsored pension plans).

In 2008 and 2009, Ernst & Young (E&Y) was the City's external auditor and after auditing the 2008 financial statements for both the Metro and Police Plans, E&Y submitted invoices to the City totalling \$ 22,380.75 for that work. The City paid the invoices and subsequently for the first time requested reimbursement from the Boards of

Trustees of the two Plans. Each Board authorized the payment of the invoice related to its own financial statements.

Following submission in 2010 to the Boards of the E&Y invoices for the 2009 audits, the Boards declined to pay them and in 2011, the Chair of the Boards, as directed by formal minuted motions, wrote to the Treasurer requesting that the City return to the Plans the amount of the audit fees charged to and paid by the Plans with respect to the audit of their 2008 financial statements.

The Treasurer refused the request, advising the Boards that the City's position was that having duly authorized payment of the 2008 audit fees, the Boards had no legal grounds for demanding a refund unless the Superintendent of Financial Services ruled to the contrary.

The two Pension Boards continued to raise the issue of a refund and continued to question the City's ability to have charged for the 2008 audit. As instructed by the Treasurer, in 2013 the City Solicitor made a written application to the Superintendent of Financial Services, with a copy to the Metro Board, requesting, *inter alia*, that he issue an order to that Board to pay the rejected E&Y invoice for the 2009 auditing services and transmitting the Board's wish for an order (to which the City objected) requiring the City to repay the Board the amount of the E&Y invoice for the 2008 auditing services. It was the intent that whatever action the Superintendent took with respect to the Metro Plan would be followed for the Police Plan.

A response was received in 2014 which rather than refusing or complying with the City's request suggested that the City apply for refund of an overpayment, and also indicated that if the Metro Board wished an order requiring the City to repay the amount of the invoice for the 2008 auditing services, that Board would have to request such an order itself.

Further correspondence with the Superintendent seeking clarification yielded little assistance.

Following transmittal of the Superintendent's response to the Metro Board, the Board consulted outside counsel with respect to the 2008 audit fees and adopted a motion at its meeting held on June 20, 2014, requesting that the City of Toronto return to the Plan's pension fund the amount of \$14,458.50 paid in respect of the 2008 audit, without interest, as an indication of its good faith in the administration of the fund.

## **COMMENTS**

The City, as the Sponsor the five Pre-OMERS pension plans, is responsible for providing all administrative staff and service required for the efficient operation of the pension plans, and is also responsible for an annual audit of the pension funds. Traditionally the City has covered the cost associated with the audit of the pension plans' annual financial statements. Pre-1998, such audits were conducted by the City's Auditor General's office or the Metropolitan Auditor. Since 1998, the City has consistently funded the audit fees

charged by its external auditors for the audit of the annual financial statement for the City's five Pre-OMERS pension plans, with the exception of fees for the audit of the 2008 financial statements for the Metro and Police plans. The other three Pre-OMERS Pension Plans were not charged for the 2008 audit fee because their respective plan by-laws restricted the charging of these types of fees to the plans.

Since approving the payment of the 2008 audit fee, the two pension Boards (Metro Plan and Police Plan) subsequently challenged the City's right to charge such fees to the pension fund, and have formally requested that the City refund the amounts to the pension funds. The Plans have also received legal advice indicating that it would not be appropriate for the pension Boards to pay such amounts for audits from the pension fund.

The City Solicitor's Office is of the view that the City is under no legal obligation to return to the two Pension Plans the monies paid in 2009 with respect to audit fees for their 2008 financial statements.

However, based on the anomaly of this one year and the fact that the Metro Plan and Police Fund were not treated consistent with the other three Pre-OMERS pension plans (which were not charged a fee for their 2008 audit), it is recommended that the City refund the two pension plans the 2008 audit fees of \$14,458.50 to the Metro Plan and \$7,922.25 to the Police Plan, and that such refunds be funded from the Employee / Retiree Benefits Reserve Fund.

## **CONTACT**

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## **SIGNATURE**

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Giuliana Carbone  
Treasurer