



EX17.6

REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Transfer Payment Agreement for the Toronto Atmospheric Fund for a Provincial Endowment

Date: September 8, 2016

To: Executive Committee

From: City Manager

Wards: ALL

REASON FOR CONFIDENTIAL INFORMATION

This report involves the security of property belonging to the City or one of its agencies or corporations.

SUMMARY

At the request of the Board of the Toronto Atmospheric Fund (TAF) and a proposal from the Province of Ontario, the City Manager is seeking City Council approval to execute a Transfer Payment Agreement (TPA) with the Government of Ontario, the City of Toronto and TAF for a \$17 million endowment. This report seeks approval of the terms and conditions for the TPA found in Confidential Attachment 1, authority for the Mayor to execute the TPA on behalf of the City of Toronto. Furthermore, the report seeks authority for the City Manager to resolve any outstanding issues and finalize the agreement.

The provincial endowment will enhance TAF's work in the City of Toronto, and expand the agency's urban climate solutions mandate to the Greater Toronto and Hamilton Area (GTHA). The provincial endowment recognizes and leverages the City of Toronto's leadership and vision in creating an agency dedicated to addressing climate change 25 years ago. The funds will enable TAF to demonstrate innovative regional solutions towards municipal and provincial greenhouse gas reduction targets, while contributing to regional health and prosperity.

The TPA establishes scope and expectations, replicates the City endowment model where the proceeds from investing the endowment funds the Agency's annual operating costs, and protects City, TAF and provincial interests. The terms of the TPA preserve TAF's accountability and obligations to the City of Toronto for the original City endowment, restrict the use of the City endowment to TAF's original mandate, and protect TAF's assets (and the City's residual interest in the fund) from net incremental costs or negative impacts that may arise from operating in the broader GTHA.

To implement the TPA, City Council authority to broaden TAF's mandate and change its operating name to "The Atmospheric Fund" in recognition of its expansion to the GTHA is required. The report also seeks authority to request legislative change to enable TAF to undertake transactions that go beyond the Council term given TAF's long-term investment horizon. Lastly, to ensure that TAF is not subject to duplicative accountability requirements, the report also seeks authority to request a regulation from the Province of Ontario to exempt the agency from certain provincial provisions.

The composition and governance structure of the TAF Board remains unchanged. The confidential terms and conditions note a governance change to a TAF Committee to improve capacity in meeting the expanded mandate to the GTHA. However, the Province of Ontario entrusts the management of the provincial Funds to the City-appointed TAF Board with certain reporting, communication and performance standards, as set out in the Transfer Payment Agreement.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council approve the terms and conditions summarized in Confidential Attachment 1 to this report, and authorize the Mayor to enter into a Transfer Payment Agreement with the Government of Ontario and the Toronto Atmospheric Fund for a provincial endowment of \$17 million, and authorize the City Manager to resolve any outstanding issues.
2. City Council approve the Toronto Atmospheric Fund's registration and use under the *Business Names Act* (Ontario) of "The Atmospheric Fund" as its operating name (with its legal name remaining Toronto Atmospheric Fund), to accommodate an expanded mandate to the broader Greater Toronto and Hamilton Area.
3. City Council authorize the Toronto Atmospheric Fund to obtain a Line of Credit of up to \$2 million secured by the provincial endowment once the funds are received and subject to provincial approval.
4. City Council authorize the City Manager, in consultation with the Toronto Atmospheric Fund, to amend, as required, the Toronto Atmospheric Fund Relationship Framework to align with the Transfer Payment Agreement and City Council's decisions, in a form satisfactory to the City Solicitor.
5. City Council request the Province of Ontario to pass a regulation under the *Broader Public Sector Accountability Act* to exempt the Toronto Atmospheric Fund from provincial accountability requirements given that it is subject to equally or more stringent City of Toronto requirements.

6. City Council authorize the public release of the confidential information in Confidential Attachment 1 to this report once the Transfer Payment Agreement is executed between the Government of Ontario, the Toronto Atmospheric Fund and the City of Toronto.
7. City Council request the Government of Ontario to 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.
8. City Council authorize the Toronto Atmospheric Fund, as an interim step to Recommendation 7, 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 are to be calculated as part of the City's debt and financial obligation limit under Subsection 11(8) of the *Toronto Atmospheric Fund Act*.

FINANCIAL IMPACT

Once the Transfer Payment Agreement is executed, TAF will receive a new endowment from the Province for \$17 million in one installment for programs in the City of Toronto and across the GTHA. The funds are anticipated to be received in Q4 2016 and will be invested in accordance with TAF's Council-approved Statement of Investment Objectives and Principles (SIOP).

The provincial endowment will add to the City's original endowment of \$23 million. TAF's assets – both the City and provincial endowments will be under the custody of the City's Deputy City Manager & Chief Financial Officer, with the management of investments approved by the TAF Board. Separate fund accounting will be used in order to track each fund and its proceeds as distinct assets.

New and ongoing incremental operating costs (including program delivery, governance, staffing, administration and business expenses) of expanding TAF's mandate to the GTHA will be funded by the investment proceeds generated from the provincial endowment, to be used for eligible expenses in accordance with the terms of the TPA. Any incremental expenditure will be submitted for City Council's approval as part of the annual budget process; TAF's preliminary 2017 budget submission includes estimated additional revenue and expenditures.

TAF maintains a Line of Credit (LOC) secured by the City endowment, which is used for financial flexibility (not leverage), and approval is being sought for a parallel LOC secured by the provincial endowment.

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

DECISION HISTORY

On February 25, 2016, the Province of Ontario announced a \$17 million contribution to TAF in their 2016 Budget, to broaden TAF's work in urban solutions to reduce greenhouse gas emissions in the Greater Toronto and Hamilton Area.

At its meeting of February 11, 2016, the TAF Board established an Ad Hoc Endowment Expansion Working Group, to make recommendations to the Board concerning advancement of the endowment opportunity, in consultation with the City Manager. The Board also requested the City Manager's Office to work with TAF's Chief Executive Officer to explore mechanisms to facilitate non-City of Toronto contributions to augment TAF's endowment and mandate, and to continue discussions with the Province.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TA8.5>

On July 18, 2016, following a review of proposed terms and conditions that would form a Transfer Payment Agreement, the Board of the Toronto Atmospheric Fund adopted the following resolutions:

- approving, in principle, the terms of the TPA (which reflect subsequent negotiations among the parties) as generally condensed and summarised in Confidential Attachment 1 to the Staff Report from the TAF CEO dated July 13, 2016;
- directing TAF staff, in collaboration with the City Manager's Office, to seek City Council's approval to finalize and execute the TPA, following resolution of key outstanding issues in accordance with confidential instructions;
- requesting that the City Manager seek City Council's approval of the terms and conditions of the TPA including authority for a TAF Line of Credit secured by the provincial endowment; registration and use by TAF of the operating name "The Atmospheric Fund"; application to the Province to amend the TAF Act regarding authority for compliant transactions that extend beyond the term of Council and an interim authority from Council for such transactions up to six months following the next municipal election, and any necessary amendments to the TAF Relationship Framework as required.

<http://app.toronto.ca/tmmis/decisionBodyProfile.do?function=doPrepare&decisionBodyId=1061#Meeting-2016.TA11>

Issue Background

Toronto Atmospheric Fund (TAF) was established in 1991 to assist the City of Toronto in meeting its goal of reducing greenhouse gas (GHG) emissions. In 2005, TAF's mandate was expanded to include promotion of better air quality.

TAF is deemed a local board of the City of Toronto under O. Reg. 589/06 of the *City of Toronto Act, 2006*, and is subject to City Council policies governing its structure, composition, appointment, meetings, procedures, financial authorities and investments

of TAF. TAF is also deemed a local board under the TAF Act for the purposes of the *Municipal Freedom of Information Act* and the *Municipal Conflict of Interest Act*.

In addition to the *City of Toronto Act, 2006*, the agency is governed by the *Toronto Atmospheric Fund Act, 2005* (the TAF Act). As set out in the TAF Act, TAF's objects are to: promote global climate stabilization through the reduction of greenhouse gas emissions; promote air quality improvement; promote public understanding of global warming and air quality problems and implications for the urban environment; create and preserve carbon sinks; promote energy conservation and efficiency; and support and fund projects related to TAF's objects.

TAF advances innovative local solutions that reduce greenhouse gas emissions and air pollution. A key priority is energy conservation and efficiency since over half of Toronto's GHG emissions come from buildings. TAF is also mandated to raise public understanding of global warming and its implications for the urban environment.

TAF invests the \$23 million capital endowment from the City in keeping with the *Trustee Act, Section 23 – 31* and investment returns form the bulk of TAF's operating funds; TAF does not receive any operating funds from the City. The earnings are used to provide grants to projects of non-profit organizations and the City that advance low-carbon solutions. TAF also designs and implements innovative programs that are later delivered to other agencies for scaling-up; funds from outside agencies are raised to assist with these programs.

TAF is authorized to receive non-City contributions and to use non-City funds for programs within and beyond the City of Toronto, invest a multi-million dollar fund under City oversight and the SIOP, use investment returns to provide grants and undertake mandate-related research and programs that support TAF's objects, and co-operate with others in providing public education related to TAF's objects.

Over the course of 25 years, TAF has supported cost savings to the City of over \$60 million through energy conservation projects, has invested the City endowment nearly three times over, and has mobilized over \$160 million in public and private contributions to low-carbon solutions.

Under the TAF Act and the TAF/City of Toronto Relationship Framework, major mandate and financial obligations, including those necessary to govern and implement the provincial endowment, require the approval of City Council.

COMMENTS

As part of its investment in the green economy, the Province Ontario will provide a new \$17 million endowment to the TAF to provide programs benefitting Toronto and GTHA. The provincial endowment will add to the City's original endowment of \$23 million. TAF's assets -- both the City and provincial endowments -- will be under the custody of the City's Deputy City Manager and Chief Financial Officer, with the management of investments approved by the TAF Board. Separate fund accounting will be used in order to track each fund and its proceeds as distinct assets.

The provincial endowment will enable TAF to expand its work to the broader GTHA to help the Province achieve its climate goals by working on innovative solutions across the region. The City of Toronto is also eligible for provincial TAF funding.

1. Key Terms of the Transfer Payment Agreement (TPA)

In order to proceed with execution and implementation of the Transfer Payment Agreement (TPA), this report recommends approval of the key terms and conditions summarised in Confidential Attachment 1 to this report, based on TAF Board instructions and staff negotiations with the Province of Ontario.

The terms and conditions of the TPA were guided by key objectives established at the outset of the negotiation process by the Ad Hoc Endowment Enhancement Working Group, the TAF Board, and the City Manager's Office in collaboration with the Ministry of Municipal Affairs staff, and were designed to protect the interests of all Parties to the agreement and included the following:

- Only those appointed by Toronto City Council will have decision-making authority over the city endowment.
- TAF's current accountabilities and obligations to the City of Toronto to administer the City endowment under the TAF Act and the TAF-City Relationship Framework will be maintained.
- The City endowment and provincial endowment will be reported as distinct assets on a separate fund accounting basis.
- The city endowment will be used exclusively to undertake TAF's mandate within the City of Toronto. Proceeds from the provincial Fund will be used to undertake TAF's mandate throughout Toronto and the Greater Toronto and Hamilton Area.
- Operational and program costs associated with the provincial endowment will be supported exclusively by proceeds from the provincial endowment pursuant to the terms and conditions set out in the TPA.
- The TPA will be a tri-partite arrangement between the Province of Ontario, the City of Toronto and TAF.

The key terms and conditions of the TPA are consistent with these objectives. The confidential terms and conditions summary will be released upon the signing of the agreement.

Subject to City Council approval of the terms and conditions summarized in Confidential Attachment 1 to this report, the Mayor will execute the agreement on behalf of the City of Toronto and the City Manager will resolve any outstanding issues to finalize the agreement. The provincial endowment will be officially launched on October 24, 2016, on the occasion of celebrating TAF's 25th anniversary.

2. Governance Implications of the Transfer Payment Agreement

The composition, governance structure and objects of the TAF Board remain the same, and going forward, will be responsible to oversee both the City and provincial endowments.

A governance change to TAF's Grants & Programs Committee, appointed by TAF's Board, will improve TAF's capacity in meeting its expanded mandate to include the GTHA.

3. Registration of "The Atmospheric Fund" as TAF's Operating Name

While retaining the legal name of the "Toronto Atmospheric Fund" under the TAF Act, this report seeks authority for TAF to register and use the operating name "The Atmospheric Fund" to reflect TAF's expanded scope of service to the GTHA.

4. Line of Credit

TAF is currently authorized under Article 11.3.1 of its Relationship Framework, to maintain a line of credit up to \$2 million for operational purposes, secured against the City endowment, and repaid from investment proceeds.

This report seeks authority for TAF to obtain a parallel line of credit up to \$2 million secured against the provincial endowment once these funds are received and with consent of the Province, as required under the TPA. The flexibility of a line of credit is required as operating costs are covered by investment proceeds, not from the principal.

5. Transactions Extending Beyond the Term of Council

This report recommends that City Council request the Province to amend the TAF Act to allow TAF to incur compliant (i.e. permitted by Council policy and applicable law) transactions requiring payments after the term of a current City 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. The Act further requires prior Council approval for TAF to undertake such financial commitments as they are deemed liabilities of the City.

The requirement to receive approval of individual transactions may constrain TAF's ability to execute timely transactions and act reasonably as investor. It creates a challenge for various kinds of contractual obligations, if any portion of an agreement, requires funding beyond the current or subsequent City Council term. This challenge is compounded when managing the provincial endowment that has no bearing on the City's debt limit. The TAF Act needs to be amended to resolve this issue.

In the interim, staff recommend City Council authorize 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 are to be calculated as part of the City's debt and financial obligation limit under Subsection 11(8) of the *Toronto Atmospheric Fund Act*. City Council has previously approved these transactions at the end of each term prior to the municipal election. All transactions are disclosed in TAF's Annual Audited Financial Statements.

6. Accountability Requirements

TAF is deemed a local board under Ontario Regulation 589/06 pursuant to the *City of Toronto Act, 2006* (COTA) and also subject to a range of policy, financial and accountability provisions and requirements established by City Council. TAF is also deemed a local board under the TAF Act for the purposes of the *Municipal Freedom of Information Act* and the *Municipal Conflict of Interest Act*. TAF is required to have open meetings pursuant to requirements in the TAF Act and its Procedural By-law.

The Province of Ontario has a range of policies and directives under the *Broader Public Sector Accountability Act* that could apply to TAF due to the provincial endowment. Since the City's accountability framework that TAF is subject to is comprehensive and robust, applying provincial accountability provisions for similar accountability matters may be confusing and result in unnecessary administrative burden on the Agency. This report therefore recommends that City Council request the Province of Ontario to pass a regulation exempting TAF from the *Broader Public Sector Accountability Act* given that the agency is already subject to similar provisions and requirements pursuant to COTA, City by-laws and policies.

7. TAF's Relationship Framework with the City of Toronto

This report seeks authority for the City Manager, in consultation with TAF, to make amendments as required to the TAF/City Relationship Framework to align with the TPA, and consistent with Council's decisions in this regard.

Conclusion

The Province's investment to expand TAF's mandate builds on the leadership and vision of the City of Toronto, and enables a shared government commitment to address climate change in Toronto and the GTHA.

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SIGNATURE

Peter Wallace
City Manager

ATTACHMENTS

Confidential Attachment 1: Summary Terms and Conditions of the of TPA