



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Low Carbon Cities Canada Agreement between the City of Toronto, the Toronto Atmospheric Fund and the Federation of Canadian Municipalities

Date: July 7, 2020
To: Executive Committee
From: City Manager
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report pertains to negotiations carried on or to be carried on by or on behalf of the Toronto Atmospheric Fund and the City of Toronto.

SUMMARY

The City Manager is seeking City Council approval to execute an agreement between the City of Toronto, the Toronto Atmospheric Fund (TAF) and the Federation of Canadian Municipalities (FCM) for a \$40 million contribution from the Government of Canada to TAF to support the Low Carbon Cities Canada (LC3) project. Pending confirmation from the Government of Canada, the contribution via the FCM Green Municipal Fund is structured as a \$38 million perpetual endowment and a \$2 million operating grant.

The TAF Board of Directors approved the terms of the Agreement at its meeting on July 6, 2020. Under the *Toronto Atmospheric Fund Act, 2005* and the draft Agreement, City Council is required to approve the terms of this agreement. This report seeks approval of the terms and conditions for the Agreement found in Confidential Attachment 1, and authority for the City Manager to resolve any outstanding issues and execute the Agreement on behalf of the City of Toronto.

In its March 2019 budget, the Government of Canada provided \$350 million to FCM for a national urban climate action program. These funds include \$183 million to establish the LC3 initiative, which is a network of seven climate action centres – Toronto, Vancouver, Edmonton, Calgary, Ottawa, Montreal and Halifax– that will be modelled on TAF and promote local grants and initiatives. TAF, as an LC3 centre, will receive \$40

million of the LC3 funding to enhance its capacity to accelerate low-carbon solutions in the Greater Toronto and Hamilton Area.

The federal \$40 million contribution will bring TAF's asset value to approximately \$90 million, including the City's initial 1992 endowment of \$23 million, the 2017 endowment of \$17 million from the Government of Ontario, and investment earnings. The LC3 Agreement builds on the current endowment model where TAF's annual operating costs are funded by the proceeds from investing the endowment funds. The terms align with TAF's accountability and obligations to City Council for the City and Provincial endowments, and provide for FCM governance over the federal endowment within TAF's existing frameworks outlined in the *Toronto Atmospheric Fund Act, 2005*, the City-TAF Relationship Framework and TAF's Statement of Investment Objectives and Principles.

Confidential Attachment 1 summarizes the terms of the Agreement. Through the LC3 Agreement, FCM confers to TAF the terms and conditions of their Agreement with the Government of Canada related to reporting, communication and performance standards. Ultimately, within the parameters of the Agreement, it entrusts the management of federal funds to the City-appointed TAF Board. The composition and governance structure of the TAF Board and its accountabilities to City Council remain unchanged, with the exception of FCM representation on TAF's Investment Committee.

The LC3 initiative aligns with and will advance the goals of the City's TransformTO Climate Strategy and strengthens the work of the FCM and the City of Toronto which together seek to build federal-municipal relationships.

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 City Manager to enter into an Agreement with the Federation of Canadian Municipalities and the Toronto Atmospheric Fund for a \$40 million contribution to the Toronto Atmospheric Fund, as an endowment of \$38 million and a \$2 million operating grant, in accordance with these terms and such other terms and conditions as may be satisfactory to the City Manager, in a form satisfactory to the City Solicitor.
2. City Council authorize the Chief Financial Officer and Treasurer to receive the \$40 million from the Federation of Canadian Municipalities and transfer the funds to the Toronto Atmospheric Fund, in accordance with the *Toronto Atmospheric Fund Act, 2005*.
3. City Council authorize the Toronto Atmospheric Fund to obtain a Line of Credit of up to \$1.6 million secured by the federal endowment once the funds are received.

4. Council approve the action of the Toronto Atmospheric Fund Board with respect to having borrowed up to \$250,000 from the City endowment to cover start-up costs related to the federal endowment.
5. City Council authorize the City Manager, in consultation with the Toronto Atmospheric Fund, to amend the Toronto Atmospheric Fund Relationship Framework to align with the Agreement in a form satisfactory to the City Solicitor.
6. City Council authorize the Toronto Atmospheric Fund to undertake financial commitments, liabilities and contractual obligations for up to six months beyond the 2018-2022 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, 2005*.
7. City Council authorize the public release of the confidential information in Confidential Attachment 1 to this report once the Agreement is executed between the Federation of Canadian Municipalities, the Toronto Atmospheric Fund and the City of Toronto and the federal contribution has been received.

FINANCIAL IMPACT

Once the LC3 Agreement is executed, TAF will receive a \$40 million contribution from the federal government through the Federation of Canadian Municipalities in one installment for a \$38 million endowment and \$2 million operating grant for programs in the City of Toronto and across the GTHA. The funds are anticipated to be received in Q4 2020 and will be invested in accordance with TAF's Council-approved Statement of Investment Objectives and Principles (SIOP).

The federal endowment will add to the City's original endowment of \$23 million and the \$17 million provincial endowment, bringing TAF's assets to approximately \$90 million. TAF's combined assets will continue to be under the custody of the City's Chief Financial Officer and Treasurer, with the management of TAF investments continuing to be approved by the TAF Board. Separate fund accounting will be used in order to track each fund and its proceeds as distinct assets, and TAF reports on grants and investments will specify the contributions from each of the three endowments.

Incremental eligible operating expenses (including program delivery, governance, staffing, and administration and business expenses) for the LC3 initiative will be funded from the \$2 million operating grant and by the investment proceeds generated from the federal endowment. Any such corresponding incremental investment income and expenditure will also be referred to the City annual budget process for information.

TAF maintains separate Lines of Credit (LOC) secured by each of the City and provincial endowments, which is used for financial flexibility (not leverage). This report seeks approval for a third, separate LOC secured by the federal endowment.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in this Financial Impact section.

DECISION HISTORY

At a special meeting of the Board of Directors of the Toronto Atmospheric Fund (the TAF Board) on July 6, 2020, the Board authorized approval of an Agreement between TAF, the City of Toronto and the Federation of Canadian Municipalities for a \$40 million contribution from the Government of Canada for the Low Carbon Cities Canada initiative. The Board requested the City Manager seek City Council approval for the Agreement and measures to support its implementation, including a \$1.6 million line of credit, updating the City-TAF Relationship Framework and extending approval of financial commitments beyond the current term of Council.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TA7.1>

At its meeting of February 14, 2020, the TAF Board authorized TAF staff to approve and execute a non-binding Indicative Term Sheet that will guide the FCM LC3 agreements to be adapted for TAF and each LC3 centre.

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

On April 30, 2019 the TAF Board acknowledged the Government of Canada's \$183 million contribution to the Federation of Canadian Municipalities (FCM) to establish LC3 centres in Toronto and six other municipalities, which included \$40 million to TAF. The TAF Board directed its staff to negotiate and prepare the terms of a final Agreement with the Federation of Canadian Municipalities Green Municipal Fund (GMF), to the satisfaction of Toronto Atmospheric Fund's Solicitor, the City Solicitor, the City Manager, the City's Chief Financial Officer and Treasurer, for the Board and City Council approval at the earliest opportunity.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TA2.4>.

On February 22, 2019, the TAF Board approved TAF's 2019 Business Plan, which continued the LC3 work through planned 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 February 9, 2018, the TAF Board approved TAF's 2018 Business Plan, which included advancing a Low Carbon Cities Canada (LC3) project that would establish a network of LC3 centres, request a total of \$115 million in federal investment for the network and attract \$40 million in capital funding 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>

COMMENTS

Background and Governance of the Toronto Atmospheric Fund

The Toronto Atmospheric Fund (TAF) is a City agency that finances and supports initiatives that reduce greenhouse gas emissions and improve air quality in Toronto and across the Greater Toronto and Hamilton area (GTHA). TAF currently funds its work through investment of a 1992 City endowment of \$23 million and a 2016 Provincial endowment of \$17 million along with investment proceeds from each.

TAF's key activities include:

- Providing support and funding to explore low-carbon solutions in the building and transportation sectors, and projects related to energy efficiency, global climate stabilization and air quality improvement; and
- Working with the City and other stakeholders to advance the TransformTO Climate Action Strategy and design and implement innovative programs and projects such as TowerWise building retrofits that increase energy efficiency, reduce air pollution and carbon emissions.

TAF is governed by several key pieces of legislation and frameworks, including:

- The *Toronto Atmospheric Fund Act, 2005*, which defines TAF as a corporation without share capital and a local board for the purposes of the Municipal Freedom of Information Act and the Municipal Conflict of Interest Act. Under the Act, TAF is subject to City Council policies governing its board structure, composition, appointment, meetings, procedures, financial authorities and investments;
- O. Reg 589/06 under the *City of Toronto Act, 2006*, prescribes TAF as a local board for the purposes of Dissolution of and Assumption of Powers of Local Boards;
- A City-TAF Relationship Framework, which sets out TAF's operating principles and objectives, policies and procedures, City liaison and support functions, financial reporting and the responsibilities and requirements for TAF's Board of Directors;
- A Statement of Investment Objectives and Principles (SIOP), required under the *TAF Act, 2005* and subject to City Council's approval, provides guidelines for the investment of the money of the Fund that is not immediately required for the Fund's projects, and directs the prudent and effective investment management and well-being of the Fund. The proposed Agreement envisions the federal endowment being invested in accordance with the SIOP, although the FCM may mandate certain differing parameters that would apply to the federal endowment alone;
- A 2016 Transfer Payment Agreement between TAF, the City and the Province of Ontario that governs the \$17 million Provincial endowment, which replicates the City

endowment and governance model, and preserves TAF's accountability and obligations to the City for the original City endowment; and

- TAF By-law Number 1 governs the transactions and affairs of TAF staff and members of its Board where not otherwise provided under the *TAF Act, 2005*, City policies and other frameworks, and is subject to City Council approval.

TAF submits its annual budget and Business Plan to City Council but does not receive any operating funds from the City. TAF invests its City and provincial capital endowments in keeping with the Trustee Act, Section 23 to 31, and investment returns form the bulk of TAF's operating funds. Earnings are used to provide grants to projects of non-profit organizations across the GTHA that advance low-carbon solutions, support business partnerships, and to provide "working capital" for the design, implementation and scale-up of innovative 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 its funds under City oversight and the SIOP, use investment returns to provide grants and undertake mandate-related research and programs, and co-operate with others in providing public education related to TAF's objectives.

Under the *TAF Act, 2005* and the City-TAF Relationship Framework, major mandate and financial obligations such as certain types of transactions or transactions over a certain dollar threshold, including those necessary to govern and implement the provincial and proposed federal endowments, require the approval of City Council.

Federal Government \$40 Million Contribution

This new \$40 million contribution to TAF is part of a \$350 million contribution from the Government of Canada to FCM's Green Municipal Fund for a national "Collaboration on Community Climate Action" program. Announced in the March 2019 federal budget, this FCM program provides financing and grants to municipalities and non-profit organizations to support energy-efficient buildings and local community pilot projects, and includes \$183 million to establish a Low Carbon Cities Canada (LC3) network in Toronto and six other cities to support local actions to reduce greenhouse gas emissions. LC3 is modelled on TAF, and TAF will receive \$40 million to continue its work in the GTHA and to advise LC3 centres in Metro Vancouver, Edmonton, Calgary, Ottawa, Metro Montreal and Halifax Region as they establish and develop their activities.

The entire \$40 million was initially intended to be an endowment, but FCM has since indicated that due to economic challenges, a portion of the contribution can be received as an operating grant. As of the writing of this report, the contribution is structured as a \$38 million perpetual endowment and a \$2 million operating grant, and the Government of Canada will confirm.

Advancing Key City of Toronto Objectives

TAF and the City of Toronto Environment and Energy Division co-led the development of Toronto's climate action strategy, TransformTO. Unanimously approved by Council in July 2017, TransformTO lays out a set of long-term greenhouse gas emission reduction goals and programs and policies to advance these goals. TAF has adopted TransformTO as a guiding framework for its investments and work in Toronto and continues to collaborate with the City on its delivery.

The federal government's contribution to the LC3 initiative is part of a milestone investment of almost \$1 billion into FCM's Green Municipal Fund which was made in 2019. As FCM's largest member, the City of Toronto is a strong supporter of FCM's work including its advocacy in Ottawa and its programs like the Green Municipal Fund that invest federal funding in municipal projects. The creation of LC3 and the contribution to TAF advances the City of Toronto's objectives to foster intergovernmental relationships of mutual respect and to promote ongoing cooperation to benefit Toronto's residents and businesses.

Key Terms of the LC3 Agreement

In order to proceed with execution and implementation of the LC3 Agreement, this report recommends approval of the key terms and conditions summarized in Confidential Attachment 1 to this report, as negotiated by the City, TAF and FCM. The TAF Board approved these terms at its meeting on July 6, 2020.

The terms and conditions of the Agreement were guided by key objectives established at the outset of the negotiation process by FCM, TAF's Ad Hoc LC3 Working Group, the TAF Board and staff in the City Manager's Office, Legal Services, City Finance (Capital Markets and Office of the Controller) and the Environment and Energy Division. The Agreement includes terms and conditions that ensure the following:

- TAF's current governance structures, accountabilities and obligations to the City of Toronto to administer the City endowment under the *Toronto Atmospheric Fund Act, 2005* and the TAF-City Relationship Framework and the provincial endowment will be maintained, and extended to the management of the federal endowment and operating grant;
- The federal endowment and operating grant, once received, will be considered to be part of TAF's assets, along with the City and Provincial endowments, and will remain under the custody of the City's Chief Financial Officer and Treasurer, with the management of investments approved by the TAF Board;
- The terms of the Agreement apply only to the federal contribution, except where the Agreement speaks to the intersection of the three endowments, and at no time will FCM have recourse to the either of the City or provincial endowment funds (including any proceeds from the investment of those Funds including interest, dividends, capital gains or other returns on the investment);

- FCM confirms that TAF, by having existing City and provincial endowments, has met the federal requirements imposed on all LC3 entities to match their federal contributions with new non-federal long-term funding sources within 10 years of executing the agreement. FCM has indicated that there is no further requirement to ensure that these existing endowments remain within TAF;
- An FCM representative will join TAF's Investment Committee as a non-voting member. TAF's SIOP currently applies to the City and provincial endowments and will also govern investment of the federal endowment, subject to FCM's approval of any modifications that are specific to the federal endowment. The SIOP, including modifications for the federal endowment, will continue to require City Council approval;
- The City, provincial and federal endowments will be reported as distinct assets on a separate fund accounting basis;
- Unlike the City and provincial endowments which can fully fund investments, projects and grants, the federal endowment is limited to only funding up to a maximum of 80 per cent of investments, projects or grants. This will require that funds be derived from other sources, including the City and provincial endowments; and
- Eligible operational and LC3 program costs associated with the LC3 program will be supported exclusively by proceeds from the federal endowment pursuant to the terms and conditions set out in the Agreement.

In collaboration with LC3 cities, TAF may undertake national projects that benefit Toronto and the Greater Toronto and Hamilton Area as per TAF's mandate. For grants, City endowment funds will continue to be used only when there is direct impact in Toronto, while the federal and provincial endowments can be used to support grants across the Greater Toronto and Hamilton Area. TAF will continue to use a ratio to determine proportional grant contributions from the endowments.

Subject to City Council approval of the terms and conditions summarized in Confidential Attachment 1 to this report and the delegation of appropriate signing authority, the City Manager in consultation with the City Solicitor will resolve any outstanding issues to finalize and execute the Agreement on behalf of the City of Toronto. With Council approval, the Chief Financial Officer and Treasurer will receive the federal contribution from FCM and transfer the funds to TAF. This report recommends that Council authorize the public release of Confidential Attachment 1 upon the signing of the Agreement.

Line of Credit

Council has authorized TAF to maintain two lines of credit of up to \$2 million each for operational purposes, secured against the City and Provincial endowments, and repaid from investment proceeds. TAF maintains these lines of credit to add flexibility, as its operating costs are covered by investment proceeds, not from the principal.

The new Agreement entitles TAF to pledge up to 4 per cent of the endowment for an operating line of credit. As recommended by the TAF Board, this report seeks authority for TAF to obtain a third line of credit of up to \$1.6 million secured against the federal endowment once these funds are received.

Past Allocation for Endowment Expenses

Although FCM is now permitting TAF to use a portion of the federal contribution for operating expenses, TAF was initially considered too established to require start-up funds like other LC3 centres. For this reason, at its meeting of April 30, 2019 the TAF Board authorized the allocation of up to \$250,000 from City endowment returns in 2019 and 2020 to cover start-up costs related to the federal endowment. The TAF staff report noted that the funds could help initiate programming, for instance grants, programs, and incremental staffing. The TAF Board directed that the funds be repaid from the federal endowment returns by December 31, 2021. Council authority for the Board to use the City endowment in this manner was not sought for TAF's 2020 Operating Budget. This report therefore recommends that Council approve this action of the Board.

Reporting TAF's Financial Commitments and Liabilities

As part of the 2016 approval of the Provincial endowment, TAF sought Council authority to seek amendments to the *TAF Act, 2005*, to remove the obligation of TAF to seek prior City approval for any financial commitment, liability or obligation where TAF is required to make payments after the expiry of the term of Council. This information is required to be reported as part of the City's annual debt and liability limits under the City of Toronto Act. As an interim measure, Council provided a pre-approval which was to expire six months after the 2018 municipal election. To date, TAF has not sought amendments to the *TAF Act, 2005*. TAF is seeking a further extension of the Council pre-approval beyond the current term of Council and this report recommends Council extend this approval for up to six months past the current 2018-2022 term.

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 City-TAF Relationship Framework to align with the FCM Agreement. Amendments are also needed to reflect direction from the TAF Board and City Council since the Relationship Framework was last updated in 2013, including references to the Transfer Payment Agreement for the Provincial Endowment, the types of investments requiring Council approval, and the composition of the TAF Board.

Conclusion

The Federal Government's significant investment in TAF, through FCM, demonstrates both the critical need for local solutions to climate change, and the strength of the TAF model that has evolved through its local partnerships and the leadership and vision of the City of Toronto. It also promises very meaningful climate change action from the new LC3 network that will create opportunities and strengthen partnerships among the City, FCM, municipalities, and the Government of Canada.

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SIGNATURE

Chris Murray
City Manager

ATTACHMENTS

Confidential Attachment 1 - Summary Terms and Conditions of Low Carbon Cities Canada Agreement Between the City of Toronto, the Toronto Atmospheric Fund and the Federation of Canadian Municipalities