

Amendment to Retainer Agreement Purchase Order 6035311 with Osler, Hoskin & Harcourt LLP for Legal Services Related to Pension and Benefits Issues

Date: September 25, 2024

To: General Government Committee

From: Executive Director, Finance Shared Services, City Solicitor, and Chief Procurement Officer

Wards: All

SUMMARY

The purpose of this report is to increase the existing retainer amount with the law firm of Osler, Hoskin & Harcourt LLP (Osler).

An additional (amount) is required to complete the transition of administration of the Police Benefit Fund Retirement Compensation Arrangement (Police RCA) to the City and in 2025, to advise upon unlocking pension funds currently held by the Canada Revenue Agency (CRA). The current retainer ends on December 31, 2025. Subject to any unforeseen delays, this work related to the Police RCA, including all final reviews, is expected to be completed by the end of 2025. As such, an extension of the retainer is not being requested at this time.

Staff are seeking General Government Committee (GGC) approval for a Purchase Order Amendment of an additional \$50,000 net of all applicable taxes and charges (\$50,880.00 net of Harmonized Sales Tax recoveries) from \$1,325,000 to \$1,375,000 net of all applicable taxes and charges which will allow for completion of the transition of the Police RCA including final reviews.

General Government Committee approval is required in accordance with Municipal Code Chapter 195, Purchasing, where the current request exceeds the Chief Procurement Officer's authority of the cumulative five-year commitment limit for each vendor under Article 7, Section 195-7.3(D) of the Purchasing By-law, or exceeds the threshold of \$500,000 net of HST allowed under staff authority as per the Toronto Municipal Code, Chapter 71, Financial Control, Section 71-11.1.

RECOMMENDATIONS

The Executive Director, Finance Shared Services, City Solicitor, and Chief Procurement Officer recommend that:

1. The General Government Committee, in accordance with Section 71-11.1C of the City of Toronto Municipal Code Chapter 71 (Finance Control By-Law) authorize the City Solicitor to amend the retainer with Osler, Hoskin & Harcourt LLP on Purchase Order Number 6035311, by increasing the value by \$50,000 from \$1,325,000 to \$1,375,000 net of all applicable taxes and charges.

FINANCIAL IMPACT

This report is seeking approval to increase the funding commitment for the amendment of the Retainer Agreement with Osler, Hoskin & Harcourt LLP by \$50,000 net of all applicable taxes and charges (\$50,880 net of HST recoveries), funded from the Employee Retiree Benefit Reserve Fund, with \$0 net impact to the 2025 Operating Budget, in order to complete the regulatory processes associated with the police RCA post-merger tasks. The value of the Retainer Agreement will be increased from \$1,325,000 to \$1,375,000 net of all applicable taxes and charges (\$1,348,320 to \$1,399,200 net of HST recoveries).

Additional funding of \$50,000 net of all applicable taxes and charges (\$50,880.00 net of HST recoveries) will be requested in the 2025 Non-Program Operating Budget submission.

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

DECISION HISTORY

A 2011 report to the Executive Committee summarized the outcome of a preliminary analysis of options with respect to the possible provision by OMERS of investment management and/or pension administration services for the City's five (5) pre-OMERS pension plans or, alternatively, outright merger of those legacy plans into OMERS. The report recommended that staff be authorized to enter discussions with OMERS and other appropriate parties regarding the terms of a potential merger of those plans with the OMERS primary plan; to evaluate the option of winding up the City's plans; and to report back accordingly.

The following is the link to the Council decision:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX11.10>

A 2017 report to the Government Management Committee recommended that the term of the 2012 Purchase Order be extended to April 1, 2020, and an increase to the amount, from \$150,000.00 to \$450,000.

The following is the link to the Council decision:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM20.5>

A 2018 report to the Government Management Committee recommended a further increase to the 2012 Purchase Order amount to \$900,000.

The following is the link to the decision:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM29.8>

A 2019 report to the General Government and Licensing Committee authorized the City Solicitor to introduce a By-Law for the repeal of the Metropolitan Toronto Police Benefit Fund By-Law 116-2018, upon distribution of the Plain's remaining assets in accordance with the Surplus Sharing Agreement dated June 1, 2018.

The following is the link to the Council decision:

<https://secure.toronto.ca/council/agenda-item.do?item=2019.GL9.4>

A 2020 report to the General Government and Licensing Committee recommended an additional increase to the 2012 Purchase Order to \$1,200,000 and an extension of the term to March 31, 2021.

The following is the link to the decision:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.GL15.11>

A 2022 report to the General Government and Licensing Committee recommended an additional increase to the 2012 Purchase Order, to \$1,275,000, and an extension of the term to December 31, 2022.

The following is the link to the decision:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.GL31.3>

A 2023 report to the General Government Committee recommended amending By-Law 18-97 to provide that all references to the "the Board" be read as references to the City of Toronto and identify an effective date for the change, being the date that By-Law 116-2018 is repealed, and discharge the Board of Trustees from all rights, duties, liability, and obligation in respect of the Police RCA from and after the Effective Date.

The following is the link to the decision:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.GG2.20#>

A 2023 report to the General Government Committee recommended an additional increase to the 2012 Purchase Order to a total of \$1,325,000 and an extension of the term to December 31, 2025. At that time, it was anticipated that this sum would be sufficient to complete all outstanding items and any unexpected issues arising from these mergers under all but the most complex scenarios.

The following is a link to the decision:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.GG3.12>

COMMENTS

Merger of four City-sponsored Pension Plans with OMERS

In the fall of 2011, the City Solicitor, in consultation with the then Director of Pensions, Payroll, and Employee Benefits, issued an Invitation for Proposals for specialized legal services in connection with anticipated discussions with OMERS for the merger of the five (5) City-sponsored pension plans (York, Civic, Metro, Metro Police, and Fire) with OMERS. On April 2, 2012, a retainer agreement with Osler as the successful proponent was entered under Purchase Order Number 6035311, with an initial amount of \$150,000, net of applicable taxes and charges, to provide preliminary analysis and support for merger discussions. The term of the retainer was until April 1, 2017.

Because regulations under the *Pension Benefits Act* allowing for mergers of public-sector pension plans did not come into effect until November 2015, an extension was required beyond the initial expiry date of the Purchase Order to April 1, 2020. At that time, Council approved an increase to the retainer amount to \$450,000 net of all applicable taxes and charges.

In 2018, recognizing the complexity of the legal challenges involved, including negotiation of surplus sharing agreement as well as navigating complex merger and asset transfer regulations, the retainer was further increased to \$900,000 net of all applicable taxes and charges.

Following the successful merger of four of the five City-sponsored pension plans (York, Civic, Metro, and Metro Police) with OMERS in January 2020, the focus shifted to the wind-up and termination of the plans, including surplus distribution. Since merger from a single employer pension plan to a jointly sponsored plan was a relatively new process, City staff along with actuaries of the plans and representatives from Osler, met with members of the Financial Services Regulatory Authority (FSRA) to fully understand and ensure adherence to regulatory measures.

As a result, in 2020, the retainer was further extended to December 31, 2020, and again in 2021 to March 31, 2021, and the total amount of the Purchase Order was increased by \$300,000 net of all applicable taxes and charges for a total of \$1,200,000 net of all applicable taxes and charges.

Between December 2020 and mid-2022, with Osler's continued guidance and direction, the City successfully filed all relevant documents with FSRA and received approval to distribute the surplus remaining in the now-merged legacy plans. In accordance with the negotiated settlements, the City distributed over \$117 million to over 4,000 eligible Plan members. Approximately \$107 million of the surplus was received by the City.

Despite the successful negotiated settlements, some isolated surplus distribution issues arose. In addition, specialized tax advice was required in relation to the Police RCA, which could not be merged with OMERS. Accordingly, the retainer was extended to December 31, 2022. In addition, the Purchase Order amount was increased by \$75,000 net of all applicable taxes and charges to a total of \$1,275,000 net of all applicable taxes and charges.

Although the Plans had been rolled into OMERS, the Plan By-Laws could not be repealed until FSRA provided confirmation that its file for each of the four Plans was closed. FSRA provided this confirmation in June 2021 (York Plan), September 2022 (Civic Plan) October 2022 (Police Plan), and January 2023 (Metro Plan).

The York Plan (By-Law 1428-2017) was repealed by By-Law 822-2021 at the Council meeting on October 4, 2021. At its meeting on February 8, 2023, Council repealed the Metro and Civic Plan By-Laws (159-2018 and 100-2018, respectively) with By-Laws 124-2023 and 145-2023.

In April 2023, a further extension of the retainer to complete the Police RCA work as well as all matters ancillary to the mergers was approved by Council, to December 2025, and an additional \$50,000 was authorized to the retainer amount for that purpose, bringing the total to \$1,325,000 net of all applicable taxes and charges.

The Police Plan By-Law (116-2018) was repealed at the May 12, 2023, Council meeting by By-Law 430-2023, following passage at the same meeting of Council of By-Law 429-2023 which transferred administration of the Police RCA from the Police Plan Board of Trustees to the City.

Police RCA Transition and Future Steps

Further to the transfer of the administration of the Police RCA from the Police Plan Board of Trustees to the City and the repeal of the Police Plan By-law, the City is now administering the Police RCA. The funds remain with RBC Trust and payment still comes from RBC Trust. Once the remaining refundable tax amount is received in 2025, and the RBC Trust account wound up, the City will take over the payments to the RCA recipients on a pay as you go basis. This is estimated to occur in September 2025.

Subject to any further unforeseen delays, all the work stated as part of this POA is expected to be completed by the end of 2025, as such, an extension is not being requested at this time.

CONTACT

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SIGNATURE

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