



REPORT

To: ONE Joint Investment Board
From: Heather Douglas, Legal Counsel, WeirFoulds
Date: February 28, 2024
Re: ONE JIB Agreement and the Services Agreement Review
Report: ONE JIB 2024-015

1. RECOMMENDATIONS

It is recommended that the Board:

1. Adopt the proposed changes to the ONE JIB Agreement as outlined in Attachment 1.
2. Defer making changes to the Services Agreement until the transition to the OCIO model is further advanced.

2. SUMMARY

- As part of its good governance practices ONE JIB has adopted a regular review cycle for key documents. That process commenced at ONE JIB's meeting on November 29, 2023 with a report on its Terms of Reference, its Code of Conduct and its Procedure By-law. That good governance practice continues following a complete review of the ONE JIB Agreement and the Services Agreement Agreed.
- This report identifies recommended changes to the ONE JIB Agreement and proposes that changes to the Services Agreement be deferred until the transition to the OCIO model is further advanced.

3. BACKGROUND

Proposed Amendments to the ONE JIB Agreement

The ONE JIB Agreement and its schedules and exhibits embedded in the agreement were developed prior to the establishment of ONE JIB with input from the Founding Municipalities. The ONE JIB Agreement was approved by the Board on May 19, 2020.

Increase in the Size of the Board and Changes to the Amendment Provision

At its meeting on November 29, 2023 ONE JIB approved an amendment to the Terms of Reference which constitutes Schedule C to the ONE JIB Agreement that involved an increase in the size of the Board of ONE JIB to allow for a maximum of 12 members thereby enabling a third municipal treasurer to serve on the Board while complying with the prescribed limit on the number of municipal treasurers that may serve on the Board to 25% of the members.

Currently paragraph (2) of Section 12.02 (a) of the ONE JIB Agreement requires that an increase in the size of the Board of ONE JIB must be approved by a by-law of the councils of the Participating Municipalities representing at least 75% of the Participating Municipalities who are parties to the ONE JIB Agreement and who represent not less than 50% of the money and investments that are under the control and management of ONE JIB. The same approval by the Participating Municipalities would be required with respect to the four other matters described in Section 12.02 (a) of the ONE JIB Agreement, one of which relates to any change to the amendment provisions of the ONE JIB Agreement. ONE Investment staff concluded, particularly considering its expectation of an imminent increase in the number of Participating Municipalities in response to ONE JIB's transition to an OCIO model, that any requirement for approval by the Participating Municipalities of any amendments to the ONE JIB Agreement should be limited to amendments in respect of which such approval is required by applicable law.

ONE Investment holds the view that this proposed change will facilitate effective governance by ONE JIB and improve future growth opportunities. ONE Investment believes that the proposed change will result in an efficient process for changes that are intended to facilitate the efficient and cost-effective administration of the assets under management and is consistent with the concept of a turnkey investment program for Participating Municipalities. The proposed change would, of course, include a provision requiring ONE JIB to provide a description of any material amendments to the ONE JIB Agreement in its annual report to each Participating Municipality.

Records Retention

ONE Investment staff have also determined that because ONE JIB constitutes a local board of each Participating Municipality, and because under the *Municipal Act, 2001* ("Act") the Participating Municipalities are jointly responsible for retaining and preserving the records of ONE JIB in a secure and accessible manner, the Participating Municipalities could under one by-law deal with the record retention requirements of ONE JIB as well as the proposed increase in the number of members of ONE JIB in accordance with Section 12.02 (a) 2 and the proposed change to the amendment provisions of the ONE JIB Agreement that require the approval by the Participating Municipalities for specified matters. A separate Report in respect of ONE JIB's Records Retention By-law will also be submitted to ONE JIB at its February 28, 2024 meeting.

Participating Municipalities' Approval

On January 23, 2024 ONE Investment staff and legal counsel met virtually with treasurer and clerk representatives of eleven Participating Municipalities to explain the need for the Participating Municipalities to pass one 'model' by-law to deal with the various changes described above and to explain that under the model by-law the need for future approvals would only arise in the event that such approvals by Participating Municipalities of changes to the ONE JIB Agreement are required under applicable law. Prior to the virtual meeting various materials were provided to the Participating Municipalities, including a draft model by-law, a draft report to council, a PowerPoint slide deck that explained the foregoing and a draft ONE JIB Records Retention By-law with a draft Schedule "A" entitled "*ONE JIB Records Retention and Classification*". ONE Investment staff have subsequently reached out to the one Participating Municipality (Kenora) that did not attend the January 23, 2024 meeting to explain why the meeting was held and to review the materials that

were presented at the meeting.

During the meeting several Participating Municipalities indicated that they would like to pass a by-law substantially in the form of the model by-law before ONE JIB's meeting on February 28, 2024. Others indicated that they would like to pass the model by-law after ONE JIB passes its Records Retention By-law and approves the proposed amendment of Section 12.02 (a) of the ONE JIB Agreement at the February 28, 2024 meeting. Staff of ONE Investment agreed to provide to the Participating Municipalities a redlined version of the ONE JIB Agreement that shows the changes described in this report as early as possible in February.

Transition to the OCIO Model through an OCIO Offering

ONE JIB is transitioning to the OCIO model and as a consequence some new definitions and some amendments to existing definitions are required because ONE JIB and ONE Investment intend that in the future all Participating Municipalities will invest under the OCIO Offering. Schedule D to the ONE JIB Agreement which sets out the fees and expenses for the current ONE Prudent Investment Offering will have to be amended to include a description of the fees to be paid by Participating Municipalities who invest under the OCIO Offering.

Authorizing By-laws for Applicant Municipalities

When the ONE JIB Agreement was initially drafted it was unclear whether future Participating Municipalities would pass one authorizing by-law referred to as an "Authorizing By-law" to authorize the entering into of the ONE JIB Agreement and related matters and another separate by-law, referred to as a "Prudent Investor Enabling By-law" to have section 418.1 of the Act apply to them or whether they would pass a 'combination' by-law that would not necessitate submission to council of two by-laws on two different council meeting dates. Under the applicable legislation the Founding Municipalities were required to pass more than one by-law because they first had to establish ONE JIB as a Joint Investment Board, authorize the entering into of the ONE JIB Agreement and deal with other related matters, including the holding of an inaugural meeting of ONE JIB at which various mandatory obligations had to be fulfilled, before ONE JIB became operational. Only after ONE JIB was established and became operational could ONE JIB and the Founding Municipalities enter into the ONE JIB Agreement. After having operated for more than three years the staff of ONE Investment have made the determination that one by-law is the most efficient way for Applicant Municipalities to become Participating Municipalities and ONE Investment staff have also concluded that a combined Authorizing/Prudent Investor Enabling By-law is more consistent with the turnkey operation concept.

Amendment of Services Agreement

After having undertaken a complete review of the Services Agreement, and considering the imminent transition to the OCIO model, One Investment concluded that amendments to the Services Agreement should be deferred until after the OCIO Offering has been

made available to Participating Municipalities and has been offered to other Ontario municipalities as an investment opportunity.

4. ANALYSIS

Changes proposed to the ONE JIB Agreement

A complete review of the ONE JIB Agreement presents an opportunity to address some smaller issues and housekeeping items. It allows for a change to better position ONE JIB to attract larger municipalities through the transition to the OCIO model, to streamline the process for amending the ONE JIB Agreement and to simplify the protocol for Applicant Municipalities to become Participating Municipalities.

The proposed amendments to the ONE JIB Agreement other than the proposed change to Section 12.2 (a), are not extensive. Following the approval of the proposed amendments to the ONE JIB Agreement, ONE JIB will advise all Participating Municipalities that have not yet passed the model by-law that was sent to all Participating Municipalities in advance of the January 23, 2024 meeting to pass a by-law substantially in the form of that by-law.

Attachment 1 is a redlined version of the ONE JIB Agreement that shows the proposed changes to the existing ONE JIB Agreement including the changes to Section 12.02 (a) as well as more minor and/or housekeeping items that are proposed to be addressed. The additional items include:

Changes to Transition to the OCIO Model

- Section 1.01 – amendments to include a new definition for “OCIO Offering” and “ONE Pools Offering” and amendments to the existing definitions for “External Portfolio Managers” and “ONE Pools Offering” to ensure that they are consistent with the transition to the OCIO model.
- Section 3.06 – the addition of this provision clarifies that the transition to the OCIO Model does not contravene the provision of section 3.05 which limits the sub-delegation of investment functions by any Agent (other than ONE Investment).

Consolidated Authority/Prudent Investor Enabling By-law for Applicant Municipalities

- Section 4.01 clarifies and simplifies the protocol for an Applicant Municipality to become a Participating Municipality. It provides that before entering into the ONE JIB Agreement an Applicant Municipality will pass one by-law substantially in the form attached as a new Schedule B and pursuant to that by-law the Applicant Municipality will authorize the entering into of the ONE JIB Agreement, authorize and approve all related matters and authorize its treasurer to determine its Prudent Effective Date in consultation with ONE Investment by entering into a Prudent Effective Date Agreement with ONE Investment that sets out such date. The agreement with ONE Investment will be entered into after the Applicant Municipality has entered into the ONE JIB Agreement and after it has been signed by ONE JIB and ONE Investment. Upon the execution of the Prudent Effective Date Agreement, the Applicant Municipality will become a Participating Municipality under the ONE

JIB Agreement.

- Schedule B has been amended so that it authorizes the events described in the description of the amended Section 4.01.

Schedule D Amendments

- Schedule D to the Agreement, “Fees and Expenses”, will be amended to include a description of the fees to be paid by Participating Municipalities who invest under the OCIO Offering. Because the definitions in the ONE JIB Agreement will be changed to reflect the transition to the OCIO model, the current offering in the ONE Investment Pools will be referred to as the “ONE Pools Offering” to distinguish it from the OCIO Offering. ONE Investment intends that in the future all participants in the ONE Prudent Investment Offering will invest under the OCIO Offering, at which point references to the “ONE Pools Offering” will be removed.
- Before the removal of references to the ONE Pools Offering, however, Schedule D will be amended to include a description of the fees for the OCIO Offering. Participating Municipalities investing under the OCIO Offering will be charged a “Governance Fee” in addition to, and separate from, the OCIO Fee charged by PH&N and its affiliated entities. The Governance Fee represents recovery of the overhead, costs and expenses associated with ONE JIB’s activities and ONE Investment’s services as Agent in the planning, design, implementation, and delivery of the OCIO Offering. Certain minor changes to Schedule D have been made for clarity and consistency in the use of certain defined terms.

Housekeeping Changes

There are a few housekeeping matters that can be addressed with minor changes to the ONE JIB Agreement. All the proposed housekeeping changes are double underlined in the redlined version of the ONE JIB Agreement in Attachment 1. Examples of housekeeping changes include the following.

- Section 5.03(d)-substitution of cross references to Sections 5.03 (a), (c) and (d) for the existing cross references to Sections 5.03 (a), (d) and (b).
- Deletion of the word “The” as it appears before the reference to “ONE Joint Investment Board” in the first line of the Terms of Reference which constitutes Schedule C of the ONE JIB Agreement.

Continuation of Review of Key Documents

ONE JIB remains committed to the review of all key documents on a regular cycle. At its November 29, 2023 meeting ONE JIB, as a municipal local board, concluded that a review cycle that is consistent with the municipal election cycle is appropriate for most key

documents. Based on that, the next review for the documents that ONE JIB reviewed at that meeting was identified as Q1 of 2027 or sooner if there are legislative changes that necessitate an earlier review. However, the ONE JIB Agreement is not expected to be amended as frequently as other key documents and it is therefore recommended that no date be specified for the next review of the ONE JIB Agreement on the basis that a further review will be undertaken if there are legislative amendments that necessitate such a review.

The Services Agreement remains a key document and because it is recommended that its complete review and a report on that agreement to ONE JIB be deferred until after the OCIO Offering is available to Participating Municipalities and to other Ontario municipalities, it is recommended that such review and report be deferred until after the OCIO Offering is 'up and running' but, in any event, not later than the beginning of Q4 of 2026.

5. CONCLUSION

As a good governance practice ONE JIB will continue its review of key documents on a regular review cycle.

The Review of the Services Agreement is to be completed by the beginning of Q4 of 2026.

ATTACHMENTS

Attachment 1: Redline – MASTER COPY of ONE JIB Agreement – February 20, 2024-v11

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