

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the “Agreement”) is made and shall be effective as of the ● day of ●, 2016

BETWEEN:

METROLINX
 (“Metrolinx”)

and

CITY OF HAMILTON
 (“Hamilton”)

(Metrolinx and Hamilton, collectively the “Parties”)

BACKGROUND

A. Metrolinx has a mandate to develop a Regional Transportation Plan to identify and prioritize transportation and transit projects and create an integrated transportation and transit system in the Greater Toronto and Hamilton Area.

B. Hamilton and Metrolinx engaged in and undertook initial assessments, including the Rapid Transit Feasibility Study (2008), the B-Line Benefits Case Analysis (2009), which indicated that there was a strong case for investment in a light rail transit (“LRT”) project. Subsequently Hamilton initiated preliminary design and engineering work and public consultation. Metrolinx provided technical support.

C. In 2011 Hamilton, as the proponent, initiated a Transit Project Assessment Process (“TPAP”) and engaged in public consultation culminating in the filing of an Environmental Project Report (“EPR”) with the Ministry of the Environment and Climate Change (“MOECC”) in 2012 which resulted in approval for a 13.9 km LRT line extending from the western terminus at McMaster University along Main Street to Highway 403, along King Street between Highway 403 and the junction of King Street and Main Street, and along Main Street and Queenston Road to the eastern terminus at Eastgate Square.

D. On May 26, 2015, the Province of Ontario announced a commitment of up to \$1.0 billion for the capital cost of an LRT line with a revised scope, extending from McMaster University through downtown Hamilton to Queenston Circle. The LRT line will connect directly to the West Harbour GO Station and provide for a future, high-order pedestrian connection to the Hamilton GO Centre GO Station as a component of the LRT project, and will include a maintenance and storage facility with a connection to the LRT corridor. Metrolinx and Hamilton have further agreed to examine whether an extension to the waterfront at West Harbour and rectification of negative traffic impacts, through measures such as road widening and traffic signals, can be accommodated within the approved project budget of up to \$1 billion (the “Project”).

E. Based on the May 26th announcement by the Province and the change in scope, it is intended that Hamilton facilitate an amendment to the EPR and/or an additional TPAP, including by undertaking all preparatory and ancillary work required for such EPR amendment and/or additional TPAP, and that Metrolinx will reimburse Hamilton for the costs incurred by it in this

regard. The Parties agree to be co-proponents of the EPR process and to work collaboratively on the EPR amendment and/or additional TPAP technical work plan.

F. The Project will be designed, built and owned by Metrolinx and operated by or on behalf of Metrolinx on lands in the City of Hamilton which Metrolinx will either own or in which it will have real property interests.

G. The Project will be designed to allow for the use of the PRESTO farecard.

H. The Parties wish to establish protocols and procedures that will lead to effective and efficient delivery of the Project and optimize existing resources and expertise while, at the same time, respecting both Metrolinx's ownership and control of the Project and Hamilton's ownership and control of its infrastructure and assets and its authority as municipal regulator.

I. This Memorandum sets out the key terms, timelines and conditions for the Project and is intended to constitute the basis for definitive agreements for the Project dealing with the matters set out herein. The Parties affirm their commitment to proceed expeditiously, diligently and in good faith and in a co-operative and collaborative manner to negotiate and enter into a definitive agreement or agreements to include, among other things, the matters set forth in this Memorandum of Agreement to facilitate and expedite the construction and completion of the Project. It is anticipated that Metrolinx will provide a draft of the first such definitive agreement to Hamilton during the first quarter of 2016 with the others to follow.

NOW THEREFORE, the Parties hereby agree to the following:

1. Roles and Responsibilities

This Agreement and any definitive agreements contemplated by this Agreement are not intended to waive, amend or derogate from the rights of Metrolinx as Crown agent and owner of the Project, or Hamilton as owner of infrastructure and assets affected by the Project and as municipal regulatory authority.

(a) Metrolinx

- Metrolinx is the owner and developer of the Project with responsibility for and control over: (i) scope, (ii) budget, (iii) scheduling, (iv) planning, design, and construction, (v) acquisition of the real property required for the Project except as otherwise specified, and (vi) engaging in public consultation. The determination of who will operate and maintain the vehicles and be responsible for certain matters ancillary thereto, including maintenance and operating costs, will be determined at a later date and included in future definitive agreements.

- Metrolinx will pay for the Project including the costs to design, construct and commission infrastructure and assets owned by Hamilton that need to be relocated to build the Project and any taxes exigible thereon, the costs to obtain permits, licenses, and approvals on the terms set out herein and the costs to repair and restore any damage caused by reason of construction of the Project except, in each case, as otherwise specified and subject to the amount provided by the Province to fund the Project, including any designation and allocation of such funds or any portion thereof for specific components of the Project (the "Project Budget") and any restrictions as to "Eligible Costs" set forth in the document pertaining to funding of the Project from the Ministry of Transportation entitled Capital Cost Eligibility Criteria for Metrolinx Owned Rapid Transit Projects dated September 21, 2010, a copy of which is attached as Schedule A (the "Capital Cost Eligibility Criteria"). For clarity, Hamilton shall not be responsible for **any of the foregoing costs including, without limitation**, the costs of relocating infrastructure owned by **Hamilton** that is required to be relocated as a result of the Project **even if the**

costs exceed the Project Budget unless specified herein, agreed to by the Parties **or Hamilton is otherwise liable at law for such costs.**

- Metrolinx will construct the Project in compliance with all laws that are applicable to it and binding on Metrolinx including collective agreements, if any, that are binding on Metrolinx as owner and developer of the Project.
- Consistent with the provisions of Section 4 hereof, if Metrolinx in its discretion chooses to acquire a property for a maintenance and storage facility for the Project that is owned and used by Hamilton, Metrolinx will pay for such property consistent with the principles set out for compensation in the *Expropriations Act*, Ontario. The Parties will work co-operatively, collaboratively and in good faith in an effort to arrive at a negotiated agreement before resorting to expropriation.

(b) Hamilton

- Hamilton is the owner of infrastructure and assets that may be affected by the construction of the Project and has regulatory authority over construction activities and the use of its roads and property.
- Nothing in this Agreement is intended to derogate from or waive the rights of Hamilton as owner of its infrastructure and assets or the rights and obligations it has as municipal planning authority. Furthermore, the Parties acknowledge that Hamilton has the unfettered right, authority and discretion to fulfill its statutory obligations under applicable law (including without limitation those prescribed under the *Planning Act* (Ontario), *Building Code* (Ontario), *the Fire Protection and Prevention Act* (Ontario), *the Emergency Management and Civil Protection Act* (Ontario), *the Health Protection and Promotion Act*, *Smoke Free Ontario Act* (Ontario) and the Business Licensing By-law) and the Parties understand and agree that nothing in this Agreement: (i) shall preclude Hamilton from performing, discharging or exercising its duties, responsibilities and powers under applicable law including the foregoing, or (ii) be deemed to be an attornment by Metrolinx to any applicable law including the foregoing that is not binding upon it.
- Notwithstanding Metrolinx's obligations as set forth in Section 1(a), if infrastructure and assets owned by Hamilton that are required to be relocated by Metrolinx to facilitate construction of the Project are scheduled for repair and/or upgrade and/or replacement by Hamilton, as reflected in any existing capital expenditure budget of Hamilton (whether current or future planned repair/replacement), Hamilton will reimburse Metrolinx for the costs to replace or modify such infrastructure and assets either in the amount allocated in the applicable Hamilton budget in respect of such repair, upgrade and replacement, as the case may be, or in a reasonable and equitable amount as determined by Metrolinx and Hamilton having regard to the age of such infrastructure
- Without derogating from or in any way fettering the discretion of Hamilton City Council, Hamilton agrees:
 - (i) to implement transit-supportive land use policies and provisions in any relevant municipal Official Plans, Secondary Plan and Zoning By-laws, and in doing so, shall be guided by the Ministry of Transportation's Transit-Supportive Guidelines;
 - (ii) to support Metrolinx in the delivery and implementation of the Project by, among other actions, minimizing and/or streamlining municipal approvals where possible and reasonable to ensure Project delivery timelines are achieved, and for ease of Project implementation; and

(iii) Hamilton will support requests submitted by the Government of Ontario to acquire funding contributions from the Government of Canada for the Project. At the request of Metrolinx, Hamilton will make resources and Project information available, where necessary, to support the development of such funding requests.

2. Project Delivery

- The Project may be delivered by Metrolinx and Infrastructure Ontario as sponsors by way of Alternate Finance Procurement that may include Design, Build, Finance, Operate, Maintain depending on, among other things, value for money assessment and Provincial direction. **The present intention is to work towards contract award in 2018.** At the request of Metrolinx, as directed by Metrolinx and at no cost to Metrolinx, Hamilton will assist by providing information, responding to inquiries and attending meetings with the proponents and with the successful proponent but Hamilton will not otherwise meet or liaise with or respond to the proponents and the successful proponent on any aspect of the Project.

- The Parties will work collaboratively to develop a protocol of processes and approvals that will apply to infrastructure and assets owned by Hamilton that will be affected by construction of the Project.

- Metrolinx acknowledges that Hamilton has unique knowledge of local conditions and considerations related to the Project that will be important inputs in the development of the Project Agreement including the Project Specific Output Specifications (“PSOS”). Accordingly, Metrolinx shall provide Hamilton with opportunities to review the Project Agreement or components thereof and specifically the PSOS or components thereof. In the case of infrastructure and assets owned by Hamilton that are affected by or are required to be rebuilt/replaced by Metrolinx as a result of the Project Hamilton shall review, approve and accept provided that Hamilton City standards have been met. In respect of other components of the Project, Hamilton may provide input and assistance to Metrolinx and Metrolinx will use reasonable efforts to implement Hamilton’s suggestions where appropriate and reasonable to do so having regard to, among other things, cost and scheduling.

- During the in-market period after issuance of the Request for Proposal and before bid submissions have been received, Metrolinx will request Hamilton to attend design consultation meetings and may request Hamilton to attend commercially confidential meetings with proponents from time to time and provide input to it and to assist in responses to various requests for information by proponents.

- During the evaluation process, Metrolinx will request a member Hamilton staff to participate in a component or components of bid evaluations.

- After award and during implementation of the Project, Hamilton will have the right to review and comment (through Metrolinx) on the design of infrastructure and assets owned by Hamilton that are being rebuilt/replaced as a result of the Project to ensure compliance with the PSOS and Hamilton standards and the right to inspect and accept such infrastructure and assets provided that the PSOS and Hamilton standards have been complied with. Metrolinx will ask Hamilton to attend working groups from time to time as required.

- **Metrolinx recognizes the importance to the Parties of completing the Project by the scheduled completion date to be agreed with Project Co and conversely that delay may have an adverse impact on the Parties. To that end Metrolinx will consider**

providing incentives/disincentives to Project Co to drive behavior towards on time completion and minimization of delay, including liquidated damages.

3. Project Scope

- It is intended that the Project as initially described in and approved by the EPR will be varied and amended by amendment to the EPR to take into account and reflect the May 26, 2015 project funding announcement by the Province of Ontario, which referred to an LRT corridor as described in Recital D. Additional technical studies will be undertaken to form the basis of the submission for EPR amendment.
- “Material Change” to the Project means a change to the Project as described in the amended EPR that (i) eliminates a station, (ii) significantly changes the distance between stations, or (iii) requires an amendment to an EPR. If Metrolinx proposes a Material Change, Metrolinx will provide particulars to the Project Steering Committee. Metrolinx will endeavour to arrive at a solution that is consistent with comments provided by Hamilton and acceptable to Metrolinx.

4. Real Estate Matters

- Metrolinx will own or have a real property interest in all lands on which the Project infrastructure is located and will be responsible, unless otherwise agreed, for acquiring such lands or interest therein.
- Hamilton will provide an exclusive easement for nominal consideration to Metrolinx over that portion of the right-of-way(s) on which the Project infrastructure will be built and located. The permitted uses under the easement are transit purposes and ancillary uses conducted from time to time by Metrolinx. Until the easement is transferred to Metrolinx (which may be on completion of designs or on completion when as-built drawings and surveys are available) Hamilton will grant to Metrolinx and persons authorized by it a license to use and occupy the easement lands sufficient to permit construction of the Project and otherwise on reasonable terms as agreed to by the Parties, subject to permits, licenses and approvals, if required.
- Hamilton will transfer any other property owned by it (and by its boards, agencies and commissions if and to the extent that Hamilton has jurisdiction to do so) upon which the Project infrastructure will be built and located to Metrolinx for nominal consideration save and except only if any such lands are occupied and in use and generate revenue, in which case Metrolinx will pay fair market value (referable to the revenue generated from such lands) for such lands.
- Hamilton will provide to Metrolinx and persons authorized by it a temporary construction license for lands owned by it (and by its boards, agencies and commissions if and to the extent that Hamilton has jurisdiction to do so), to facilitate construction of the Project. The license fee will be nominal save and except only if any such lands are occupied and generate revenue, in which case Metrolinx will re-imburse Hamilton or its boards, agencies and commissions, as the case may be, for lost revenue. For clarity, the use of parks will be dealt with as aforesaid and there will be no additional parks fee.
- The Parties will work together to identify the required lands, the transfer date or the commencement date, duration and term of any license, as the case may be. Hamilton will determine whether Council approval is required for the transfers and licenses and for exemptions or waivers of fees, and ensure that the appropriate applications are brought to Council or other committees and persons whose approval is required in a timely manner to

ensure that the identified commencement dates are achieved and that the fees are exempted or waived, as aforesaid.

- At the request of Metrolinx, Hamilton will make resources available to acquire real property from third parties identified as being required for the Project, including appraisers, surveyors and legal personnel. The properties may be acquired using Metrolinx's expropriating powers.

5. Permits, Licenses and Approvals Protocol

- The Parties will work together to establish a process and timelines for (i) review and approval by Hamilton of design and other matters requiring their approval pertaining to infrastructure and assets owned by them that are affected by the Project, and (ii) review and approval of applications for permits, licenses and approvals required to construct the Project and the issuance of such permits, licenses and approvals.

- Infrastructure and assets owned by Hamilton that are required to be replaced to facilitate construction of the Project will be built to the existing standard on a specified, agreed-upon date. Metrolinx will consider any request by Hamilton to exceed such standard or to build additional infrastructure and assets provided that there is no adverse impact on cost or completion of the Project by the anticipated completion date and on the basis that all additional costs associated with any such request will be paid for by Hamilton.

- Metrolinx, and Hamilton will work together to identify fees and approval times and requirements for applicable permits, licenses and approvals. Hamilton, will seek delegated authority to staff in respect of permits, licenses and approvals that would otherwise require Council approval and will seek an exemption or waiver of fees where such fees are more than nominal review fees, in each case on a blanket basis for the Project as a whole and any such delegated authority and exemption is subject to approval by Hamilton Council, whose discretion is unfettered.

6. Third Party Utilities

- Metrolinx will be responsible for relocation costs of third party utilities that need to be relocated and/or replaced as a result of and to facilitate construction of the Project.

- Hamilton will endeavor to exercise its rights under and enforce any cost sharing or similar agreements that it has with utility companies requiring utility companies to relocate or share the cost of relocation of utilities, and will provide Metrolinx with copies of any such agreements.

7. Hamilton Dedicated Staff

- Hamilton will provide dedicated staff to facilitate reviews and approvals, and other matters to expedite the delivery of the Project. A list of the positions identified to fulfill these functions will be based on Schedule B attached hereto. The positions on the list may be changed from time to time with the approval of Metrolinx or the list may be decreased or expanded as agreed to by the Parties. It is intended that Metrolinx will pay for the time expended by staff holding these positions to fulfill these functions at rates to be agreed to by the Parties.

- Metrolinx will work together with Hamilton to identify and approve costs incurred by Hamilton after May 26, 2015 to plan and develop the Project including but not limited to the costs related to consultants, staff and consultations with community groups and stakeholders with the intent that Metrolinx will reimburse Hamilton for such costs. In payment of such costs Metrolinx has advanced \$2,000,000 to Hamilton to be retained by

Hamilton subject only to substantiation of such costs by Hamilton and verification by Metrolinx.

8. Public Communications and Engagement

- Metrolinx and Hamilton will jointly develop and adhere to a public communications and public engagement protocol which will provide for the basis upon which Metrolinx will communicate with the media and the public, other agencies and advertisers, and the manner in which it will engage with the public including community relations, and stakeholder engagement and consultation, in each case for matters pertaining to the Project.

9. Public Realm

- Metrolinx will allocate funds to public realm (the “Public Realm Amount”) which it anticipates will be in accordance with the Capital Cost Eligibility Criteria. Hamilton, in its discretion, may request Metrolinx to construct improvements to streetscape that are in addition to Metrolinx’s obligations to repair and restore damage to the agreed upon standard. For clarity, Hamilton will determine the location of such additional streetscape improvements requests. Metrolinx will endeavor to accommodate any such request provided that the Public Realm Amount is not exceeded in the aggregate, any such additional streetscape is constructed in the immediate vicinity of the Project, and is acceptable to Metrolinx, acting reasonably.

10. Access to Information

- Subject to any legal limitations including any limitations under the *Municipal Freedom of Information and Protection of Privacy Act*, Hamilton will provide Metrolinx with access to such information as Metrolinx may reasonably require from time to time in conjunction with the design and construction of the Project, including without limitation, the location of its infrastructure and assets and its requirements in respect of relocation and preservation with a view to including such information and requirements in any request for qualifications and/or proposal to design, construct and/or maintain the Project.

11. Revenue and Service Integration

- It is anticipated that when a determination has been made regarding the operator and/or maintainer of the Project, the revenue arrangements (including without limitation arrangements for the fares and costs) and matters pertaining to service integration will be documented in future definitive agreements. Hamilton has an expectation that any negative impact on the Provincial gas tax received by it as a result of the LRT will be taken into consideration in discussions on operating and maintenance costs.

12. Governance and Dispute Resolution

- The Parties intend to establish a Project Steering Committee and an Executive Committee.

- The Project Steering Committee is intended to meet at regular intervals or as-needed to endeavour to resolve issues related to the Project on a consensual basis.

- Matters that cannot be resolved by the Project Steering Committee are intended to be escalated to the Executive Committee which will meet as needed to endeavor to resolve disputes. The Parties will consider establishing a dispute resolution protocol for the resolution of certain disputes, primarily pertaining to the standard to which infrastructure and assets owned by Hamilton that needs to be relocated for the Project should be built.

- The Project Steering Committee and the Executive Committee are not intended to circumvent or override the rights of Metrolinx as owner of the Project or the rights of Hamilton as owner of its infrastructure and assets or as municipal regulatory authority.

13. Confidentiality

- Each Party shall keep information provided by another Party confidential and secure and limit the disclosure to those persons who have a need to know it and who are bound by agreement or otherwise to keep the information in confidence substantially on the terms of hereof.
- Each Party shall not directly or indirectly disclose, destroy, exploit or use any such information (except for the purpose of delivering the Project, or except if required by law), without first obtaining the written consent of the disclosing party and in respect of any Confidential Information about any third-party, the written consent of such third-party and shall provide confidential information to disclosing party on demand.
- If a receiving party becomes legally compelled to disclose any confidential information, it will notify the disclosing party in order to allow disclosing party the option of seeking a protective order to prevent disclosure.
- The provisions of this Section shall survive termination of this Agreement and remain in full force and effect.
- The Parties acknowledge and agree that: (i) they are subject to privacy legislation including in the case of Metrolinx, the *Freedom of Information and Protection of Privacy Act*, Ontario and in the case of Hamilton, the *Municipal Freedom of Information and Protection of Privacy Act*, Ontario, and (ii) they may be required to disclose information on as set out in the Acts, but will not otherwise do so in contravention of this Agreement.
- The Parties acknowledge and agree that Hamilton may make this Agreement and the definitive agreements available to Council and the public and may discuss the terms at Council meetings or meetings with the public other than confidential information, if any, contained therein.

14. General Provisions

- **Nothing herein is intended to limit, alter or relieve either Party from any legal liability to third parties or to each other that such Party may have or incur in connection with the Project except as may be specifically contained in future agreements. Metrolinx will require Project Co to add Hamilton as an additional insured on insurance policies that Project Co is required to maintain for the Project.**
- With the exception of the obligations under Section 13 (Confidentiality), this Agreement is an expression is intended to form the basis of negotiations between the Parties in an effort to arrive at definitive agreements and is not binding on them.
- This Agreement is governed by and shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada as applicable therein. The parties hereby attorn to the jurisdiction of the courts of Ontario for any legal proceedings arising out of this Agreement.

Executed by the Parties on the date written above.

METROLINX

By: _____
Name:
Title:

By: _____
Name:
Title:
I/we have the authority to bind the corporation

CITY OF HAMILTON

By: _____
Name:
Title:

By: _____
Name:
Title:
I/we have the authority to bind the corporation

Schedules:

- A** Capital Cost Eligibility Criteria
- B** Proposed Hamilton Dedicated Staff