






**CITY OF HAMILTON**  
**CORPORATE SERVICES DEPARTMENT**  
**Legal and Risk Management Services Division**  
**and**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**General Manager's Office**  
**and**  
**CITY MANAGER'S OFFICE**

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	September 8, 2021
<b>SUBJECT/REPORT NO:</b>	Hamilton Light Rail Transit (LRT) Project Memorandum of Understanding (PED21176/CM21012/LS21034)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Jason Thorne (905) 546-4339 Bryan Boodhoo (905) 546-2424 Ext. 7164
<b>SUBMITTED BY:</b>	Jason Thorne General Manager Planning and Economic Development Department
<b>SIGNATURE:</b>	
<b>SUBMITTED BY:</b>	Janette Smith City Manager
<b>SIGNATURE:</b>	
<b>SUBMITTED BY:</b>	Stephen Spracklin City Solicitor, Legal and Risk Management Services
<b>SIGNATURE:</b>	

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

## **RECOMMENDATION**

(a) That the Mayor and City Manager be authorized and directed to execute the Memorandum of Understanding with Metrolinx and the Ministry of Transportation attached as Appendix “A” to Report LS21034/PED21176/CM21012 ;

(b) That the City Manager be given the delegated authority to negotiate and execute a Staffing Agreement with Metrolinx and the Ministry of Transportation, pursuant to the Memorandum of Understanding attached as Appendix A to Report LS21034/PED21176/CM21012 , to create any temporary or permanent FTEs associated with that Staffing Agreement, and to create an LRT Office as a Division within the Planning and Economic Development Department, provided there is no levy impact;

(c) That, upon execution by all parties of the Memorandum of Understanding attached as Appendix A to Report LS21034/PED21176/CM21012 , the City Manager be given the delegated authority to take any necessary steps to transfer the proponenty of the Transit Project Assessment Process (TPAP) for the Hamilton LRT Project to the Province, such that the Province will become the sole proponent of the TPAP for the LRT Project;

(d) That the Outstanding Business List Item requesting that the General Manager of Planning and Economic Development to meet with Metrolinx, the Ministry of Transportation and other governmental entities, as required, to prepare a Memorandum of Understanding (MOU) for the Hamilton Light Rail Transit project, and report back to GIC, as soon as possible, with a draft MOU be considered complete and removed from the General Issues Committee’s Outstanding Business List.

## **EXECUTIVE SUMMARY**

On June 23, 2021, Council directed that staff “meet with Metrolinx, the Ministry of Transportation (MTO) and other governmental entities, as required, to prepare a Memorandum of Understanding (MOU) for the Hamilton Light Rail Transit project, and report back to the General Issues Committee as soon as possible with a draft MOU.”

Subsequent to that direction, City staff have taken part in a series of meetings with staff from Metrolinx and the MTO to prepare the Memorandum of Understanding (MOU), attached as Appendix “A” to this report. The MOU has been approved in principal by both Metrolinx and the MTO, and is being recommended for Council’s approval.

The MOU is the first legal document that outlines the commitment of the Ministry of Transportation, Metrolinx and the City of Hamilton (City) to the Hamilton Light Rail Transit (LRT) Project. If the MOU is signed, the parties will work on more detailed agreements and protocols in the following areas:

- Schedule A Train Operator Services Agreement
- Schedule B Municipal Funding Agreement
- Schedule C Fare and Non-Fare Revenue
- Schedule D Grade Separation
- Schedule E Bridge Agreement
- Schedule F Staffing Agreement
- Schedule G Commissioning and Acceptance Protocol
- Schedule H Municipal Infrastructure Agreements
- Schedule I Real Estate Matters
- Schedule J Permits, Licences and Approvals
- Schedule K Communications Protocol
- Schedule L Dispute Resolution Protocol
- Schedule M Governance Protocol

The first anticipated agreement is expected to be the Staffing Agreement.

The Memorandum of Understanding is similar to the Memorandum of Agreement that the City entered into with Metrolinx on March 8, 2016 for the previous iteration of the Hamilton LRT project. The March 2016 MOA is attached for information as Appendix B to Report LS21034/PED21176/CM21012. The key differences are that the Ministry of Transportation is now a party to the agreement, the MOU is written as a commitment of all three parties to the LRT Project, and Metrolinx will become the sole proponent of the Transit Project Assessment Process (TPAP). It is also notable that Metrolinx will perform its own real estate transactions and, as such, the LRT project will no longer require a local property acquisition unit.

Additionally, there is more detail in the current MOU than there was in the 2016 MOA as it relates to matters such as roles and responsibilities, material design changes, City infrastructure works, inspections, and permitting and approvals. The parties were able to provide this level of detail, because the parties had worked together extensively to elaborate the LRT Project subsequent to the signing of the 2016 MOA. This included working collaboratively through both the approval of the TPAP and the finalization of the RFP document, which included developing detailed requirements for all aspects the LRT Project, i.e. the Project Specific Output Specifications (PSOS).

As with the prior iteration of the LRT Project, Metrolinx has ownership of the Project, and has control over the Project. They remain committed to pay for capital costs, with

limited exceptions, life-cycle costs and dedicated City staff. At the end of the Project, the City will retain control over its infrastructure assets, such as its roads, waterworks systems, traffic signal systems and sewer systems.

**Alternatives for Consideration – See Page 11**

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** The MOU commits the City to funding the costs of Operating and Maintaining the LRT Project, subject to the terms and conditions that will be developed through the subsequent agreements. Report CM21006/PED21145/PW21040/FCS21068 presented to General Issues Committee on June 16, 2021 provides a more fulsome elaboration of the anticipated financial impacts of LRT operations and maintenance.

**Staffing:** The MOU commits the Province to funding the costs of City staff that are directly working on the implementation of the LRT Project. Recommendation (b) in this report would give the City Manager the delegated authority to negotiate and execute a Staffing Agreement with Metrolinx and the Ministry of Transportation, pursuant to the MOU, to create any temporary or permanent FTEs associated with that Staffing Agreement, and to create an LRT Office as a Division within the Planning and Economic Development Department, provided there is no levy impact.

**Legal:** If Council chooses to enter into the MOU, it is anticipated that legal services will be required for future agreements and protocols to review, advise and assist in negotiations.

## **HISTORICAL BACKGROUND**

On May 13, 2021, the Province of Ontario announced a funding commitment of \$1.7 billion to support the construction of the Hamilton LRT Project, and that the Government of Canada would match the \$1.7 billion commitment for a \$3.4 billion commitment to support the construction of the Hamilton LRT Project.

On June 2, 2021, James Nolan, Assistant Deputy Minister from the Ministry of Transportation (Ontario) and Phil Verster, President and Chief Executive Officer of Metrolinx presented at the General Issues Committee meeting on activities related to the Hamilton LRT Project, and answered questions related to the LRT Project from the Mayor and Members of Council. At the same meeting, staff was directed to report back

to the next General Issues Committee on three issues: (1) the updated net operating cost estimates for the Hamilton LRT, (2) estimated financial costs and impacts of City of Hamilton incentive programs on the corridor, and (3) historical investment activity in the proposed LRT corridor.

On June 16, 2021, staff reported back on the three issues, as requested in the prior General Issues Committee meeting.

Additionally, on June 23, 2021, Council ratified a motion of the June 16 General Issues Committee meeting that staff “be directed to meet with Metrolinx, the Ministry of Transportation and other governmental entities, as required, to prepare a Memorandum of Understanding (MOU) for the Hamilton Light Rail Transit project, and report back to the General Issues Committee as soon as possible with a draft MOU.”

Subsequent to that direction, City staff have taken part in a series of meetings with staff from Metrolinx and the MTO to prepare the Memorandum of Understanding (MOU), attached as Appendix “A” to this report. The MOU has been approved in principal by both Metrolinx and the MTO, and it is being recommended for Council’s approval.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

N/A

## **RELEVANT CONSULTATION**

To develop the MOU, the City, Metrolinx and MTO established a Steering Committee as well as a Working Group. The City’s representatives on the Steering Committee are City Manager Janette Smith, General Manager of Planning and Economic Development Jason Thorne, General Manager of Corporate Services Mike Zegarac and Solicitor Bryan Boodhoo. The City of Hamilton’s representatives on the Working Group are General Manager of Planning and Economic Development Jason Thorne, Solicitor Bryan Boodhoo, Manager of Budgets and Financial Policy Kirk Weaver, Director of Financial Planning Administration Brian McMullen, and Director of Transit Maureen Cosyn Heath.

Other members of staff were also consulted in the preparation of the MOU, including staff from the following City divisions:

- Engineering Services
- Environmental Services
- Roads

- Corporate Real Estate
- Human Resources

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

### Draft Memorandum of Understanding

The Draft Memorandum of Understanding (MOU) is attached as Appendix “A” to Report LS21034/PED21176/CM21012

The MOU is the first legal document that outlines the commitment of the Ministry of Transportation (MTO), Metrolinx and the City to the Hamilton Light Rail Transit (LRT) Project. If the MOU is signed, the parties will work on more detailed agreements and protocols in the following areas:

- Schedule A Train Operator Services Agreement
- Schedule B Municipal Funding Agreement
- Schedule C Fare and Non-Fare Revenue
- Schedule D Grade Separation
- Schedule E Bridge Agreement
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- Schedule J Permits, Licences and Approvals
- Schedule K Communications Protocol
- Schedule L Dispute Resolution Protocol
- Schedule M Governance Protocol

The first anticipated agreement is expected to be the Staffing Agreement.

### Key Provisions

The Memorandum of Understanding (MOU) is similar to the Memorandum of Agreement (MOA) that the City entered into with Metrolinx on March 8, 2016 for the previous iteration of the Hamilton LRT project. The March 2016 MOA is attached for information as Appendix B to Report LS21034/PED21176/CM21012.

The key differences between the 2016 MOA and the current draft MOU are that the Ministry of Transportation is now a party to the agreement, the MOU is written as a commitment of the all three parties to the LRT Project, and Metrolinx will become the

sole proponent of the Transit Project Assessment Process (TPAP). Additionally, because the parties had worked together extensively to elaborate the LRT Project subsequent to the signing of the 2016 MOA, including through the approval of the TPAP as well as the Project Specific Output Specifications (PSOS), there is more detail in the current MOU than was in the prior agreement as it relates to matters such as roles and responsibilities, material design changes, City infrastructure works, inspections, and permitting and approvals.

As with the prior iteration of the LRT Project, Metrolinx has ownership of the Project, and has control over the Project. They remain committed to pay for capital costs, with limited exceptions, life-cycle costs and dedicated City staff. At the end of the Project, the City will retain control over its infrastructure assets, such as its roads, waterworks systems, traffic signal systems and sewer systems.

Highlights of some of the key provisions of the MOU are outlined below:

**1. Project Delivery:** As with the previous MOA, the procurement model for the delivery of the Project is to be determined by Metrolinx. The MOU outlines the role of the City in the procurement process. As with the previous MOA, Metrolinx as the owner of the Project, has contractual responsibility for design planning, construction, maintenance and operations as well as for acquisition of the real property required for the Project, and public consultation.

**2. Public Communication:** As with the previous MOA, the MOU commits the Parties to working together to establish a Public Communications Protocol to more fully and completely set out the basis upon which the Parties will communicate and engage with the public, the media and stakeholders. It is anticipated that a communications lead for the City will be one of the funded staffing positions under the Staffing Agreement.

**3. Capital Costs:** As with the previous MOA, the Province will be responsible for capital costs (as well as land acquisition costs) associated with the Project, including all work outlined in the prior iteration of the Project Specific Output Specifications (PSOS). The City would be expected to contribute for new work only if it was not anticipated in the original PSOS and only if the work is already in a City approved and funded budget.

**4. Operating, Maintenance and Life-cycle Costs:** As with the previous MOA, the Province will be responsible for life-cycle costs. The City will pay for Operation and Maintenance. The MOU provides new clarity that the City will be entitled to all fare box revenues and certain non-fare box revenues, and that the LRT will be included as part of Hamilton's overall ridership for the purposes of gas tax calculations on substantially the same basis as bus ridership.

**5. Material Changes:** As with the previous MOA, Metrolinx will have final decision-making authority on material changes. However, the MOU commits the Province to working collaboratively with the City to develop the Project Specific Output Specifications (PSOS). For any material change to what was contemplated in the previous PSOS, the City will have the same extensive consultation and escalation rights it had previously. For a material change that would require a Transit Project Assessment Process (TPAP) amendment, public consultation would also be required.

**6. Operator:** As part of Ownership, Metrolinx retains the final approval over the selection of the Operator, with significant input from the City. Any operator would be subject to performance standards set by Metrolinx. The City has the right to review materials having an effect on Operation and Maintenance costs and to participate in the portion of the RFP evaluation process for the selection of the Operator.

**7. Traffic Operations:** A new provision has been added to the MOU confirming that the City will retain its authority over traffic operations within and adjacent to the corridor.

**8. Customer Service:** A new provision has been added to the MOU acknowledging the importance of a seamless customer experience for users of the LRT and the broader HSR transit system.

**9. Municipal Permits, Licenses and Approvals:** As a Crown agent, Metrolinx is exempt from planning approvals. Nevertheless, the MOU includes provisions for the City to review site plan and design of major elements of the Project. For other permits, licenses and approvals, such as road cuts and lane closures, Metrolinx would be treated on the same basis as other third parties, and approvals would be provided through the usual City processes. Most of these processes involve delegated staff authorities. Metrolinx may also seek further delegated authorities to City staff for certain permitting and approvals, but Council's right to delegate authority to City staff remains unfettered.

**10. Inspections:** The City will have a right to review and inspect the construction of its infrastructure.

**11. Affordable Housing and Community Benefits:** The critical importance of affordable housing and community benefits is acknowledged in the preamble of the MOU, with a commitment by the Province to work with the City and community stakeholders to endeavour to determine how best to support these goals.

**12. Real Estate:** As with the original MOA, the City will transfer on corridor right-of-way lands to Metrolinx at a nominal fee. Metrolinx would pay fair market value to the City for off-corridor lands if required (e.g. for transit power substations or for the operation and maintenance facility) if they use City lands.



**13. LRT Office:** Metrolinx will pay for City staff, as was done previously. Details will be contained in the Staffing Agreement.

**14. Building Transit Faster Act:** The MOU makes explicit reference to the Building Transit Faster Act (BTFA) and indicates that, upon the designation by regulation of the Project as a priority transit project under the Act, all provisions of the BTFA will apply.

**15. Governance and Dispute Resolution:** Similar to the original MOA, there will be a Project Steering Committee and an Executive Committee. In this MOU, however, it is made explicit that Metrolinx may proceed with a dispute item, but it does so at its own risk. Additionally, it is contemplated that the parties will work together to establish a detailed dispute resolution protocol, which will become a schedule to MOU, and would, be intended to be unless otherwise stated, to be binding.

**16. Confidentiality:** As with the original version of the MOA, there is a strict duty of confidentiality on certain aspects of the project. Under this MOU, members of City staff may be required to sign a non-disclosure agreement to access certain confidential information.

#### Commitment of the Parties

The MOU is meant to be a commitment of the parties to proceed with the LRT. Further details of the Project will be outlined in downstream agreements that will be attached as schedules to the MOU. Unlike the 2016 MOA, which explicitly stated that it was not binding and that a further definitive agreement would be forthcoming, the draft MOU states that it is “binding and enforceable” on the parties, and that any further agreements would be attached to the MOU as schedules.

#### Provincial Approvals

The principles contained within the proposed MOU have been approved by the Metrolinx Executive Committee of the Board. They have also received relevant provincial government approvals. The proposed MOU therefore can be considered as having the endorsement of the province and Metrolinx. Pending Council approval, Metrolinx and MTO are authorized to execute the MOU without the need for further approvals at their end.

#### Other Recent Federal and Provincial Transit Investments in Hamilton

This report relates only to the LRT Project, but it is important to look at the LRT in the context of the entire BLAST Network. In recent months, several major federal and provincial investments have been confirmed that will further support the expansion of

enhanced transit service across the City, and the implementation of the City's 10-Year Transit Strategy and planned Rapid Transit Network.

Through the *Investing in Canada Infrastructure Program (ICIP)* which is funded jointly by the Federal Government (40%) and Provincial Government (33.33%), with contributing funds from the City (26.67%), the City will leverage \$370 M for public transit and supporting infrastructure. Projects that will be completed through this funding include:

- Construction of a new Maintenance and Storage Facility (MSF)
- Replacement of Birch Avenue Bridge to support the MSF
- Implementation of A-Line Priority Bus Measures
- Replacement fleet to support existing transit service
- Expansion of the bus fleet to support years 5-10 of the 10-Year Transit Strategy
- Supporting active transportation connections
- Transit technology enhancements

These investments build on previous investments through the *Public Transit Infrastructure Fund (PTIF)*. Under this program, announced in 2018, the City received \$36 M for the MSF design, construction of sidewalks on Rymal Road, fleet expansion, transit infrastructure state of good repair (shelters, ends-of-lines and bus stops), new automatic passenger counter technology, software upgrades and a network redesign.

Additionally, the Province of Ontario continues to invest in service and infrastructure improvements on the Lakeshore West Corridor which have led to the establishment of all-day two-way GO Rail Service to West Harbour Station as of August 2021. It is expected that these investments will continue in order to bring rail service to Confederation Station and extensions to Niagara Region.

Finally, while still in the planning stages, Metrolinx is continuing to work closely with City staff on other projects that comprise Hamilton's BLAST Transit network including the Dundas Street Bus Rapid Transit (BRT) project which see an extension of service along Highway 5 in Waterdown and the A-Line BRT study which will define ultimate rapid transit concept for this important corridor.

## **ALTERNATIVES FOR CONSIDERATION**

Council may choose to direct staff to negotiate further amendments or changes to the Memorandum of Understanding attached as Appendix "A" to Report LS21034/PED21176/CM21012 with Metrolinx and MTO. Any further changes to the MOU, however, would require the agreement of all parties and, to the extent such

authority has not been delegated to provincial staff, may require reconsideration of the existing government approvals.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

### **Economic Prosperity and Growth**

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

### **Clean and Green**

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

### **Built Environment and Infrastructure**

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” – Draft Memorandum of Understanding

Appendix “B” – March 2016 Memorandum of Agreement