

HAMILTON MOU

PROTOCOL RESPECTING PROPERTY INTERESTS TO AND FROM THE CITY OF HAMILTON

Purpose

- To establish a process and governance to deal with: (i) Metrolinx permanent acquisition of City of Hamilton (“**City**”) lands, (ii) temporary licences to Metrolinx from the City, (iii) transfer of Metrolinx lands to the City.

Permanent Acquisitions

- City lands required for project infrastructure and for the operation and maintenance of the LRT will be acquired by Metrolinx either in fee simple or by way of permanent exclusive stratified easement.
- City lands required for relocation of third party utilities (except in the right of way or if the City has a statutory obligation or the utility has a statutory right to such City owned property) will be acquired by Metrolinx or such third party utility, as the case may be for fair market value.
- City lands whereon or wherein the permanent LRT infrastructure or assets will be situated following construction, including, without limitation, lands used for the LRT guideway, stations and stops, vehicular lanes, sidewalks, bike lanes, and associated landscape areas (the “**Transit Corridor Lands**”) will be transferred to Metrolinx for nominal consideration unless such City lands: (a) are income producing, (b) have been identified by the City for any current or future City municipal purposes (including municipal development or redevelopment) under current applicable zoning or master plan, or in respect of which any application to amend zoning or the master plan has been submitted; or (c) are used for an operation and maintenance facility or a traction power sub-station, in which case they will be transferred at fair market value, having regard to the determination of value in the *Expropriation Act, Ontario*.
- The transfer of City lands to Metrolinx, other than the Transit Corridor Lands identified above for transfer at nominal consideration, shall be at fair market value, having regard to the determination of value in the *Expropriation Act, Ontario*.
- Metrolinx will provide the City with a request to purchase (a “**Request to Purchase**”) for each property that will include: (i) the required possession date, (ii) a description of the property, (iii) a high-level description of the proposed use, (iv) a date by which the City will provide an initial response to the Metrolinx, and (v) any other information that the City reasonably requires, including a survey or property sketch (with survey to follow).
- The City will not encumber or grant interests in any property in respect of which Metrolinx has delivered a Request to Purchase, without Metrolinx’s consent.
- The City will provide a response to Metrolinx within the time specified in Metrolinx’s Request to Purchase specifying whether or not it is prepared to transfer the property to Metrolinx and any terms, reservations, and encumbrances that it will impose.
- If the City is unable or unwilling to transfer the property or imposes restrictions that are unacceptable to Metrolinx, either Party may refer the matter to dispute resolution

pursuant to the Dispute Resolution Process.

- Metrolinx will acquire City lands on an as-is, where-is basis and is responsible for its own due diligence including title, although the City will make reasonable efforts to assist Metrolinx in discharging encumbrances. The City will use reasonable efforts to provide Metrolinx with notice of unregistered easements, leases, licences or rights of use or occupation held by third parties, including any encroachments (regardless of whether or not the encroachment(s) is documented), in each case in the City’s knowledge, possession or control.
- If the City is unable to transfer a City property or an interest therein by way of fee simple or permanent easement within the time required by Metrolinx, the City will grant a temporary licence to Metrolinx pending such transfer for no licence fee or consideration. Metrolinx acknowledges and agrees that foregoing provision does not limit or restrict, in any manner, the City’s right to recover staff costs and disbursements incurred in connection with such temporary licence, as such costs and disbursements are recoverable under the Staffing Agreement (as defined in the Memorandum of Agreement).

Temporary Licences

- This section excludes the use of public highways and lands that are designated as Park and Open Space Area or Green Space System in the City's Official Plan and/or on title to the subject lands as well as any road allowance adjacent to such area that is not a sidewalk or a road (collectively, “**Parklands**”). Lands designated as public highway that are required by Metrolinx on a temporary basis will be accessed through a road occupancy permit and dealt with pursuant to a separate protocol. Parklands that are required by Metrolinx on a temporary basis will be dealt with in accordance with the City’s by-laws and in accordance with the “Park and Open Spaces” section of this Real Estate Protocol.
- The City will grant Metrolinx a broad general licence for City lands for all project purposes including, without limitation: (i) required investigations and due diligence, (ii) environmental, geotechnical and other invasive testing, (iii) access to City lands including for purpose of removing and relocating City and third party infrastructure, (iv) laydown, (v) the construction of temporary facilities, (vi) the construction of permanent project infrastructure if the lands are to be subsequently transferred to Metrolinx. Metrolinx will reimburse the City’s costs and disbursements incurred in connection with such licence in accordance with and pursuant to the Staffing Agreement. Compensation payable by Metrolinx for such licence(s) will be as follows:
 1. If the City lands are Transit Corridor Lands, any such licence will be granted to Metrolinx for nominal consideration unless such City lands: (a) are income producing, (b) have been identified by the City for any current or future City municipal purposes (including municipal development or redevelopment) under current applicable zoning or master plan, or in respect of which any application to amend zoning or the master plan has been submitted; or (c) are used for an operation and maintenance facility or a traction power sub-station, in which case they will be transferred at fair market value, having regard to the determination of value in the *Expropriation Act*, Ontario; and

2. If the City lands are not Transit Corridor Lands, any such licence will be granted to Metrolinx for fair market value, having regard to the determination of value in the *Expropriation Act*, Ontario.
- Metrolinx will provide the City with a request for each licence (a “**Request for Licence**”) that it requires that will include (i) the required possession date, (ii) a description of the property, (iii) a high-level description of the proposed use, (iv) a date by which the City will provide an initial response to the City, and (v) any other information that the City reasonably requires.
 - The City will endeavour not to encumber or grant interests in any property in respect of which it has received a Request for Licence.
 - The City and Metrolinx will develop a form of licence to be used, which may be a Master Licence with schedules for specific City lands.
 - The City will respond to Metrolinx’s request within the time specified in its Request for Licence. If the City is unable or unwilling to grant a required licence, or imposes terms that are unacceptable to Metrolinx, either Party may refer the matter to be dealt with pursuant to the Dispute Resolution Process.

Expropriation

- Metrolinx has the right, at any time, whether before or after submitting a Request to Purchase or a Request for Licence, or before, during or after the completion of the Dispute Resolution Process, to commence and proceed with, process and complete expropriation of any property.

Parks and Open Space

- Metrolinx will, or will cause Project Co to, take all reasonable efforts to minimize impacts to trees and Parklands in connection with the Project. The Parties acknowledge that tree replacement or compensation to the City in lieu thereof is in accordance with the provisions set out in the City’s by-laws or standards applicable to tree replacement. Metrolinx will consult with the City in accordance with the City’s by-laws or standards applicable to a tree replacement plan prior to any tree removal, provided that pending the determination of a replacement plan or compensation in lieu thereof, Metrolinx may at its risk remove such trees as may be required to facilitate construction of the Project. Nothing in this Paragraph derogates from Metrolinx’s expropriation authority including with respect to trees owned by the City or third parties.
- Parklands may not be able to be sold or permanently disposed of without an amendment to the City’s Official Plan. Metrolinx is not subject to the Planning Act (Ontario) and, as a result, to the Official Plan. Pursuant to the City’s Official Plan, the City may, upon mutual agreement by the parties, exchange Parklands for other nearby property of equivalent or larger area and comparable or superior green space utility that is acceptable to the City. If this option is not exercised, Metrolinx will acquire such lands at fair market value, having regard to the determination of value in the *Expropriation Act*, Ontario. Until Metrolinx acquires a permanent interest in Parklands required by it and provided that the City property can be made available to Metrolinx, the City will grant a temporary licence or temporary easement to Metrolinx for the purposes of enabling Metrolinx to use such City

property for construction and installation of infrastructure and improvements and for any other required construction-related activities, in accordance with the City’s by-laws.

- For any Parklands in respect of which Metrolinx requires temporary access, the City will grant a temporary licence to Metrolinx for the purposes of enabling Metrolinx to use such Parklands for its intended use. Notwithstanding the foregoing, if any City by-law requires Metrolinx to obtain a permit in order to temporarily access such Parklands, Metrolinx will comply with such City by-law for such temporary access.

Transfer of Lands to City for Road Widening and Other Road Purposes

- Lands owned by Metrolinx or by third parties that are required to be transferred to the City for road widening or other right-of-way/highway/public road purposes or that are immediately adjacent to a public road (the “**Transfer Lands**”) will be transferred to the City by way of permanent easement fee simple for a nominal fee. Metrolinx shall transfer all lands which will be dedicated by the City as public roadway in fee simple.
- Prior to the conveyance of the Transfer Lands to the City, Metrolinx will take, or cause Project Co to take, all action required by Environmental Laws in respect of any Hazardous Substance which is introduced to the Transfer Lands by Metrolinx, Project Co or their respective agents, employees, contractors, sub-contractors and consultants in, on, under or about the Transfer Lands or emanating therefrom. Metrolinx shall convey the Transfer Lands to the City in a condition where soil and ground water quality comply with all Environmental Laws and standards established by the Ministry of Environment, Conservation and Parks (the “**MECP Standards**”), as same may be amended or restated from time to time, and the Transfer Lands are fit for the City's intended purpose. For purposes of this paragraph, “**Environmental Laws**” means all applicable laws concerning pollution or protection of the natural environment, human health or otherwise relating to the environment, including those pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of hazardous substances, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of hazardous substances.

Lands for Additional City Infrastructure

- The City will acquire lands for Additional City Infrastructure (as that term is defined in the Memorandum of Agreement), if any, at its sole cost and expense and shall grant a licence to Metrolinx for nominal consideration sufficient for the purposes of the construction of the Additional City Infrastructure.
- Metrolinx may, in its discretion, acquire lands for the City for Additional City Infrastructure at the request and cost of the City.
- Whether the City or Metrolinx acquires lands for Additional City Infrastructure, the City will be responsible to Metrolinx for the cost of the lands and for the cost arising out of site conditions, including environmental, geotechnical and others.
- Metrolinx may transfer and the City agrees to accept lands, for road widening, Additional City Infrastructure or other purpose as agreed to by the parties, either on completion of the Hamilton LRT project or intermittently from time to time.