

PREPARATORY ACTIVITIES AGREEMENT

Hamilton LRT

MADE as of the ____ day of _____, 2023 (the “Effective Date”) between **METROLINX** (“**Metrolinx**”) and the **City of Hamilton** (the “**City**”), together the “**Parties**” and individually a “**Party**”.

RECITALS:

- A. Metrolinx is developing and constructing a light rail rapid transit line known as the Hamilton Light Rail Transit (LRT) line, which extends east from McMaster University to Eastgate Square in Hamilton, Ontario (as currently contemplated and subject to change, including expansion or reduction), and is prescribed as a “priority transit project” for the purposes of the *Building Transit Faster Act, 2020* (Ont.) and related works (collectively, the “**Hamilton LRT**”). Metrolinx expects to undertake and deliver the Hamilton LRT by design-build, design-bid-build, by alternate financing procurement, alliance, or by other means.
- B. The City owns certain infrastructure and assets, including municipal water and/or sewer infrastructure (the “**City Assets**”) that are expected to be not in alignment with or otherwise in conflict with the Hamilton LRT and, as a result, will require re-alignment, re-configuring, removal, relocation, modification, replacement, or protection of the City Assets (collectively, the “**Work**”).
- C. In preparation for the Hamilton LRT, Metrolinx and the City have determined that it will be necessary to undertake the Work at various locations (each a “**Work Site**” and collectively, the “**Work Sites**”) as specified in the applicable Work Authorizations (as defined below).
- D. The City has agreed to perform and complete the Work on the terms set out in this Agreement.

NOW THEREFORE for valuable consideration and the mutual covenants and agreements contained herein, the Parties agree as follows:

1. The Work

- (a) The City hereby agrees to undertake the Work in connection with the City Assets that are impacted by the Hamilton LRT, and Metrolinx hereby agrees to pay to the City all actual costs incurred by the City to perform such Work, subject to the terms and conditions of this Agreement. To this effect, Metrolinx may from time to time request the City in writing to identify the scope of the Work required in regard to the City Assets at a Work Site or Work Sites. Upon receipt of a Metrolinx request and having regard to the complexity of the request, the City will use commercially reasonable efforts to identify the scope of work in reasonable detail (the “**City Proposal**”) and to provide it to Metrolinx in a timely manner having regard to Metrolinx’s time constraints, for review by Metrolinx.
- (b) The City will not undertake any actual Work at any Work Site until:
- (i) the Parties have agreed in writing on the scope and estimated cost of such Work, which, may for clarity, include a budget of ten percent (10%) above any budget included in the City’s procurement process;
 - (ii) for any Work, the City has obtained all relevant permits, licences and approvals;
 - (iii) the Parties have settled and executed an addendum to this Agreement for the applicable Work Site, substantially in the form attached as **Schedule A** (each a “**Work Authorization**”). Each Work

Authorization will set out any changes to this Agreement that are specific to it, if any. Each Work Authorization, when agreed by the Parties and executed, will form a part of this Agreement.

(c) The City will undertake and complete all Work in accordance with: (i) the applicable Work Authorization; (ii) all permits, licences and approvals; and (iii) applicable laws. The City is solely responsible for, without limitation:

(i) the design, construction, suitability for purpose, construction means, methods, techniques, sequences and procedures and for undertaking and completing the Work to the City’s satisfaction, and

(ii) obtaining all permits, licences and approvals required by it at law or from third parties to undertake and complete the Work.

(d) The City will use commercially reasonable efforts to complete the Work within the timeframe set out in the applicable Work Authorization (the “**Timeframe**”). The City will keep Metrolinx informed of the status of its performance, or any matters which may materially affect timing or cost of completion of the Work. If there is risk to the completion of the Work within the Timeframe, the Parties shall work together cooperatively and in good faith to develop strategies to maintain on-time schedule performance of the Work.

(e) The City, in order to avoid cost overruns, unexpected costs and delays shall: (i) exercise reasonable care and due diligence in providing the cost and time estimates for the Work under each Work Authorization; and (ii) take due care, to the extent possible, that its cost and time estimates under any Work Authorization covers all of the Work required under such Work Authorization. The City shall promptly notify Metrolinx upon learning of any actual or anticipated delays or increased costs that vary from the time estimates and costs set out in the applicable Work Authorization.

(f) Where the City retains a contractor to complete the Work, the final procurement documents will be, without need for further action, incorporated into the applicable Work Authorization; except and provided that the City provide a copy of such final procurement documents to Metrolinx. In the event of any conflict between the final procurement documents and the remainder of the Work Authorization, the final procurement documents shall prevail.

(g) If a change to the Work and/or to a Work Authorization is required to complete the Work, the City, before proceeding with the change, will: (i) consult with Metrolinx and prepare an additional and/or revised City Proposal for such change; and (ii) submit such additional and/or revised City Proposal for the written approval of Metrolinx, which approval will not be unreasonably withheld. In the event that the cost of the Work or the time required to complete the Work is increased by any unknown groundwater, contamination, abandoned or unknown infrastructure, or any other reason that could not be reasonably foreseen by the City, the Parties shall in good faith discuss changes to the Work or Work Authorization including suitable alternative locations. Upon approval by Metrolinx, the additional and/or revised City Proposal shall be deemed to be a Work Authorization, or amendment to an existing Work Authorization, as the case may be, and will form a part of this Agreement. For certainty, a change to the Work and/or to a Work Authorization does not relieve or change Metrolinx’s obligations to pay for all actual costs incurred by the City to perform any Work, as contemplated herein.

(h) The City shall inform, and provide regular updates to, Metrolinx of matters relating to Work that could reasonably affect Metrolinx operations or other stakeholders at the relevant Work Site.

(i) Metrolinx, at its cost, at a time that is agreeable to the contractor of record for the Work Site, the City and any of its contractors, may physically inspect the Work at a Work Site as it is being carried out and confirm that, among other things, the Work is being completed as contemplated by the applicable Work Authorization, but no inspection or confirmation relieves the City from the strict performance of its obligations under this Agreement or is deemed to be confirmation that the City has complied with such obligations. Metrolinx shall comply with all Occupational Health and Safety (defined below) requirements.

(j) Without limiting Sections 1(d) and (e), if and to the extent that the actual conditions encountered at a Work Site while completing the Work vary from those contemplated in the applicable Work Authorization and require a change in the Work, then the Parties will follow the change process described in Section 1(g) above.

(k) Within 20 Business Days after completing the Work set out in the applicable Work Authorization, the City will, at the City’s cost, provide Metrolinx with inspector notes for the completed Work sufficient to accurately establish the plan, profile and dimensions of the City Assets installed. The Parties acknowledge and agree that inspector notes of the City Assets constitute the City’s confidential information, which must be protected from disclosure in accordance with Section 9(g), and shall only be used by Metrolinx for the purpose of facilitating Metrolinx’s conduct of future planning and repairs to Metrolinx infrastructure.

2. Safety

(a) As between the Parties, the City shall be solely responsible for safety at a Work Site in connection with the Work including relocation activity, including initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. It is acknowledged and agreed the City may satisfy any safety requirements through any of its contractors.

(b) In connection with the performance of the Work, the City, directly or through any of its contractors, shall comply with, and implement the requirements of the Ontario *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, any and all regulations promulgated thereunder and any health and safety plan implemented thereunder (“**Occupational Health and Safety**”), and, as between the Parties, the City shall assume all liabilities and obligations imposed under applicable laws in respect of Occupational Health and Safety matters. The City represents and warrants that it is familiar with the obligations imposed on it under applicable laws in respect of Occupational Health and Safety matters.

(c) The City, directly or through any of its contractors, shall advise Metrolinx of any and all conflicts or overlap with other parties that could reasonably have an adverse impact on the Work in respect of a Work Site and will work with Metrolinx to develop plans to eliminate such conflicts or overlaps.

4. Purchase Order and Payment

(a) Metrolinx will either issue (i) a single purchase order to the City for all of the Work Authorizations collectively; or (ii) multiple purchase orders, each one for a Work Authorization at a specified Work Site. Notwithstanding the amount of any such purchase order, Metrolinx will pay to the City only the actual cost of the Work in accordance with this Agreement. If the actual cost is anticipated to exceed the applicable purchase order, the City shall notify Metrolinx, and if agreed to by Metrolinx, acting reasonably, Metrolinx will issue revised or additional purchase order(s).

(b) Subject to Section 4(c) below, Metrolinx will only pay the City’s actual costs (including without limitation any taxes, such as non-recoverable HST, levies and charges) incurred for performing the Work as provided for in this Agreement and the applicable Work Authorization(s).

(c) Payment by Metrolinx to the City will be made within thirty (30) days of:

(i) for any payment other than the final payment, receipt by Metrolinx of a City invoice issued in accordance with the terms of the applicable Work Authorization, referencing the applicable purchase order and detailing the costs incurred;

(ii) for final payment under any Work Authorization, receipt by Metrolinx of written confirmation from the City that the Work referred to in the applicable Work Authorization for which payment is being sought, has been completed, and confirmation by Metrolinx that the City has satisfied all of its obligations under such Work Authorization and this Agreement; and

(iii) for all payments, receipt by Metrolinx of such other evidence as Metrolinx may reasonably require to validate the costs incurred by the City in respect of the Work.

For clarity, payments by Metrolinx are also subject to the statutory holdback requirements of the *Construction Act* (Ontario).

(d) The City will maintain adequate records relating to the actual cost incurred by the City in the performance of the Work (“**Records**”) during the term of this Agreement and for a period of one (1) year thereafter. Such Records will not include any information, data or records from the City beyond that data reasonably necessary to verify the actual cost incurred by the City in the performance of the Work and, in particular and without limitation, will not contain any City or City customer’s or City supplier’s confidential information, personal information, or commercially sensitive or proprietary information.

(e) Metrolinx may, at its expense, at a mutually agreeable date and time, assign a representative who is either an employee of Metrolinx or a chartered accountant (which will be required to execute a confidentiality agreement with the City) to attend at the City’s offices to review the Records solely to the extent necessary for the purpose of determining the actual cost incurred by the City in the performance of the Work. The City agrees to make such Records available for such review to allow Metrolinx’s representative to verify the costs and expenses invoiced to Metrolinx. Metrolinx and/or its representative shall not disclose to any person any of the information and/or Records reviewed by it as contemplated by this paragraph, without the prior written consent of the City unless required to do so by applicable law. The Metrolinx representative shall not remove, make copies of or otherwise reproduce any of the Records reviewed or made available to Metrolinx hereunder.

If the representative is not an employee of Metrolinx, Metrolinx shall provide the City with a copy of the applicable engagement letter or contract through which the represented has been retained by Metrolinx.

(f) Upon completion of the Work under a Work Authorization, the City will determine the final amount of the actual costs and expenses incurred to complete the Work, will notify Metrolinx and will provide to Metrolinx a final invoice for the amount, if any, that Metrolinx owes to the City. For clarity, this does not prevent the City from providing interim invoices from time-to-time.

(g) The actual costs of the Work means all costs of the City properly attributed to the Work, including, without limitation, the following, as may be more particularly described and provided for in the Work Authorization:

- (i) the actual wages paid to all workers (including, without limitation, the City and the City's contractor) up to and including the supervisors for their time actually spent on the Work and in travelling to and from the Work Site, and the cost of food, lodging and transportation for such workers where necessary for the proper carrying out of the Work;
- (ii) the cost to the City of contributions related to such wages in respect of workplace safety and insurance premiums, vacation pay, employment insurance, pension or insurance benefits and other similar benefits;
- (iii) the cost of using and transporting equipment and explosives used in the Work;
- (iv) the cost of planning, designing and engineering, including, without limitation, any subsurface engineering and geo-technical work;
- (v) the costs of construction inspections, include ancillary costs, such as a portion of vehicles, maintenance and overhead;
- (vi) the cost of materials;
- (vii) the cost of acquiring necessary permits, approvals and property rights; and
- (viii) related administrative costs such as for project management.

5. Liability, Indemnity and Insurance

(a) Except as may be expressly set forth in this Agreement, Metrolinx has no liability to the City or to third parties for the Work or for any matter arising out of it, including design, construction, removal, relocation or modification, notwithstanding any payment by Metrolinx, or any involvement by or review, inspection or approval of Metrolinx, provided that this release shall not extend to any negligence, act or omission, or wilful misconduct of any Indemnified Person.

(b) the City indemnifies and saves harmless Metrolinx, its directors, officers, employees, representatives, agents and those for whom it is responsible at law (the "**Indemnified Persons**") from all actions, claims, penalties, damages, losses, judgements, settlements, costs and expenses or other remedies (collectively, "**Claims**") by any person arising out of the Work, provided that the City shall have no liability to Indemnified Persons or to third parties for Claims arising out of the negligent acts or omissions or willful misconduct of any of the Indemnified Persons. This indemnity shall survive the expiry of the term and any earlier termination of this Agreement.

(c) Without limiting the generality of the foregoing, neither Party shall have liability under any circumstances to the other Party for any indirect, consequential, incidental or special damages, including but not limited to loss of profits or revenues, business interruption losses, loss of contract, goodwill, or for any punitive or exemplary damages.

(d) the City, either directly or as an additional insured through a contractor’s policy, shall obtain and maintain such insurance noted in **Schedule B**. Prior to the commencement of any Work, the City shall provide Metrolinx with evidence of insurance in a form satisfactory to Metrolinx, acting reasonably.

6. Term and Termination

(a) This Agreement shall expire upon: (i) completion of all Work under outstanding Work Authorizations, and (ii) written confirmation signed by both Parties indicating the Parties’ mutual desire to terminate the Agreement, which shall not be unreasonably withheld.

(b) If either Party breaches any material term of this Agreement and fails, after written notice from the non-breaching Party, to remedy within thirty (30) days or within any other reasonable time of not less than thirty (30) days as contained in such notice, as determined by the non-breaching Party, having regard to the nature of the breach, the non-breaching Party may terminate this Agreement on written notice, without prejudice to any other rights or remedies it may have, including the right to claim and recover its losses and damages as a result of such breach.

(c) Metrolinx may, in its discretion, terminate this Agreement and/or any Work authorized by a Work Authorization that has not yet been completed by the City by notice in writing to the City.

(d) If this Agreement and/or any such Work Authorization is terminated for any reason (other than for a material breach of this Agreement by the City), Metrolinx will pay to the City: (i) its costs of performance of that portion of Work completed by the City to the date of termination; (ii) if the City has retained a contractor to perform any Work, and amount of money owed to such contractor as a result of contract termination; and (iii) any costs associated with completion of the Work undertaken under a Work Authorization, or, if the City chooses not to complete such Work, with returning the City Assets and Work location to a safe operating pre-work condition.

7. Dispute Resolution

(a) If any question, difference or dispute arises between the Parties to this Agreement in respect of any matter arising under this Agreement (including the performance of the Work) or in relation to the construction of this Agreement (each, a “**Dispute**”), the Parties shall use their reasonable commercial efforts to settle such Dispute.

(b) If the Parties are not able to reach a settlement within a period of thirty (30) days of receipt of written notice of a Dispute, then, upon written notice by either Party to the other, the Dispute shall be referred to mediation. A single mediator shall be appointed by agreement of the Parties, and such mediator shall endeavour to settle the Dispute as soon as practicable.

(c) If a mediator is not appointed within a period of thirty (30) days from the date of receipt of such notice, or if the Parties are not able to reach a settlement of the Dispute (regardless of whether a mediator is appointed) within a period of ninety (90) days following delivery of a referral notice to mediation, then the Parties shall be entitled to pursue, including by litigation, whatever rights and remedies are available to them at law or in equity.

(d) The Work shall continue pending resolution of a Dispute provided that the Dispute in question does not require resolution before the Work can continue.

8. Notices

Any notice, consent, approval, agreement, writing or other communication required or permitted under this Agreement (each, a “**Notice**”) shall be in writing. Any Notice delivered or to be delivered by a Party shall be sufficiently given if delivered personally or faxed or emailed to the other Party at the addresses set out below (or such other addresses as Metrolinx or the City may designate by written notice from time to time), and shall be deemed to be received, if delivered, on the day of delivery, or if faxed, on the next following day or if emailed on the day of delivery as recorded in the electronic mail system of the sender; provided that in each case if such day is not a Business Day, it shall be deemed to have been received on the next following Business Day. A Party may change its address by giving written notice to the other Party as provided for in this Section.

<p>(a) To the City:</p> <p>Director of the Hamilton LRT, Planning and Economic Development. 36 Hunter St E Hamilton Ontario, L8N3W8 Abdul.shaikh@hamilton.ca</p> <p>And: Manager Design – LRT Planning and Economic Development. 36 Hunter St E Hamilton Ontario, L8N3W8 Chris.McCafferty@hamilton.ca</p> <p>With a copy to:</p> <p>City Clerk City of Hamilton, City Hall 71 Main Street West Hamilton, Ontario L8P 4Y5 Email: clerk@hamilton.ca</p>	<p>(b) To Metrolinx: 20 Bay Street, Suite 600, Toronto, ON M5J 2W3 Attention: Director, Pre-Construction Services, Utilities & Third Parties Fax: 416-202-7349 Email: paul.collins@metrolinx.com</p> <p>and with a copy to:</p> <p>Metrolinx Law Department 97 Front Street West, Toronto, Ontario M5J 1E6 Attention: Senior Legal Counsel Fax: 416-869-1755</p>
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9. Miscellaneous Provisions

(a) Each Party is performing its obligations hereunder as an independent entity and is not the representative or agent of the other Party.

(b) No action or inaction by either Party shall be construed as a waiver of its rights hereunder.

(c) This Agreement may not be modified or amended, except by written amendment signed by each of the Parties, and is the entire agreement of the Parties with respect to the subject matter hereof.

(d) This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(e) This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors, heirs and permitted assigns.

(f) Except as specifically set forth or referred to herein, nothing herein is intended or shall be construed to confer upon or give to any person or entity, other than the Parties and their respective successors, heirs and permitted assigns, any rights or remedies under or by reason of this Agreement. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations under this Agreement.

(g) Except as otherwise specifically provided for in this Agreement or required by law or order of any regulatory body having jurisdiction over a Party, the Parties covenant and agree with each other to:

- (i) keep the contents of this Agreement and the details of their relationship confidential;
- (ii) protect the other Party’s confidential information that it receives from disclosure, in whole or in part, to any third party; and
- (iii) only disclose and use the other Party’s confidential information it receives on a need-to-know basis and for the purpose of exercising or performing its rights and obligations under this Agreement.

Notwithstanding the foregoing, the City shall be authorized to discuss/present the Work and the contents of this Agreement with/to the Council of the City of Hamilton (“**City Council**”) in City Council meetings and/or Committee meetings, as may be reasonable required from time-to-time, and with other third parties involved in the Hamilton LRT, including any City contractor engaged in any Work. Metrolinx represents that it is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) and the City represents that it is subject to the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M.56* and the Parties agree that any information provided to the other Party in connection with this Agreement may be subject to the applicable foregoing legislation. The Parties acknowledge and agree that the other Party will not be required or forced to disclose, except as may be required under such legislation or by order of a court of competent jurisdiction. Without limiting the foregoing, the Parties agree not to release any public statements concerning this Agreement or their relationship except with the prior written consent of the other Party.

(h) Each Party shall, upon the request of the other Party, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, documents, assignments, transfers, conveyances and assurances as may be reasonably necessary to give full effect to this Agreement.

(i) Except for the Parties’ obligations to make payments to each other under this Agreement, neither Party shall be liable for a delay in its performance or its failure to perform under this Agreement due to causes beyond its reasonable control including acts of God, fire, flood, or other catastrophes; government, legal or statutory restrictions on forms of commercial activity arising subsequent to this Agreement; or order of any civil or military authority; national emergencies, pandemics, epidemics, outbreak of a communicable disease, insurrections, riots or wars or strikes, lock-outs or work stoppages (“**Force Majeure**”). In the event of any one or more of the foregoing occurrences, written notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance to the extent required for so long as the Force Majeure occurrence continues.

(j) In this Agreement the following rules shall apply to the interpretation thereof: words denoting the singular include the plural and vice versa and words denoting any gender include all genders; the words “**include**”, “**includes**” and “**including**” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”; “**Business Day**” means any day except Saturday, Sunday or any

day on which banks are generally not open for business in the City of Hamilton (including all days between Christmas and New Year’s Day); any reference to a statute shall mean the statute in force as at the date of this Agreement, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided; when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency; and the division of this Agreement into separate articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. If any payment or other action is required to be made or done under this Agreement on a day that is not a Business Day, then such act or step may be made or done on the next Business Day.

(k) This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. The execution of this Agreement by a Party and the fax or e-mail transmission (PDF) of such execution to the other Party shall be as binding on the Parties as if an original signature of the relevant Party had been provided.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF this Agreement has been executed and delivered by the Parties as of the Effective Date.

<p>METROLINX</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p><i>I/We have the authority to bind the corporation.</i></p>	<p>CITY OF HAMILTON</p> <p>By: _____</p> <p>Name: Andrea Horwath</p> <p>Title: Mayor</p> <p>By: _____</p> <p>Name: Janette Smith</p> <p>Title: City Manager</p> <p><i>We have the authority to bind the City.</i></p>
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Schedules:

A – Form of Work Authorization

B – Insurance Requirements

SCHEDULE A

FORM OF WORK AUTHORIZATION

WORK AUTHORIZATION

to the

CITY OF HAMILTON Preparatory Activities Agreement

Work Location:

Unless otherwise defined, capitalized terms contained herein shall have the definitions ascribed thereto in the Preparatory Activities Agreement.

1.0 Type of Preparatory Activity*:

- Design Activity ☐
- Construction ☐
- Relocation Activity ☐
- Removal Activity ☐
- Modification Activity ☐
- Replacement Activity ☐
- Protection Activity ☐

(*Check box that applies to the Activity Request)

2.0 Work Location

Description details of location where work is being performed, intersection street names, etc.

3.0 General Description of the Activity

At the request of Metrolinx, and through this Work Authorization, the City will complete [enter summary narrative of the work to be performed.]

Any revision to the Hamilton LRT design may result in additional cost and/or duration.

4.0 Expected Scope of the Activity and Sequencing

Narrative of pre-construction activities (e.g.: easements, permits and approvals) and description of work steps.

5.0 Initial Estimate of Work Cost* [NTD: Section may need to be adjusted for a particular Work Location]

- Design Activity ☐
- Construction ☐
- Relocation Activity ☐
- Removal Activity ☐
- Modification Activity ☐
- Replacement Activity ☐
- Protection Activity ☐

(*Check box that applies to the Activity Request; and complete relevant Section 5(a) or 5(b) only.)

- a) Design Activity — the City's initial estimate of the total cost of the Design Activity referenced in this Work Authorization is:
\$0*** (plus applicable taxes)
- b) Construction — the City's initial estimate of the total cost of Construction referenced in this Work Authorization is:
\$0*** (plus applicable taxes)
- c) Relocation Activity — the City's initial estimate of the total cost of the Relocation Activity referenced in this Work Authorization is:
\$0*** (plus applicable taxes)
- d) Removal Activity — the City's initial estimate of the total cost of the Removal Activity referenced in this Work Authorization is:
\$0*** (plus applicable taxes)
- e) Modification Activity — the City's initial estimate of the total cost of the Modification Activity referenced in this Work Authorization is:
\$0*** (plus applicable taxes)
- f) Replacement Activity — the City's initial estimate of the total cost of the Replacement Activity referenced in this Work Authorization is:
\$0*** (plus applicable taxes)
- g) Protection Activity — the City's initial estimate of the total cost of the Protection Activity referenced in this Work Authorization is:
\$0*** (plus applicable taxes)

The breakdown of the initial estimated cost is as follows:

Item	Description	Estimated Cost (CDN\$)
(i)	equipment and labour, construction, materials and contractors	0.00
(iv)	other (incl. third party costs)	0.00
(iii)	overheads	0.00
	TOTAL	<u>\$0.00</u>

As provided in the Agreement, (A) such initial estimate of the Work cost is only an estimate and is based on, among other things, the parameters on which the Work estimate for any Design Activity has been based, and (B) Metrolinx is responsible, and shall reimburse the City, for all of the City's costs and expenses incurred in completing the Work as provided in this Work Authorization and the Agreement.

7.0 Initial Estimate of Work Timeline

The City's initial estimate of the date required for the City to complete the City Preparatory Activity referenced in this Work Authorization is:

[INSERT DATE] (the "Estimated Completion Date").

As provided in the Agreement, such initial estimate of Work timeline is only an estimate and is subject to, among other things, the impact of any changes to the Work as set out herein, including to the design or route of the Hamilton LRT as contemplated in the Agreement and delays may be possible and such timeline unattainable. Without limiting the generality of the foregoing, the commencement of field work for the City Preparatory Activity referenced herein will not be able to proceed until such time as the City obtains access to certain Metrolinx lands.

The Parties hereby execute this Work Authorization to evidence their agreement in respect of the Work to be undertaken under this Work Authorization, all as contemplated and provided for in the Agreement.

DATED as of the ____ day of _____, 2023.

METROLINX

CITY OF HAMILTON

By: _____

Name:

Title:

By: _____

Name: Andrea Horwath

Title: Mayor

By: _____

Name:

Title:

By: _____

Name: Janette Smith

Title: City Manager

I/We have the authority to bind the corporation.

We have the authority to bind the City.

SCHEDULE B

INSURANCE REQUIREMENTS

At all times the City shall, at the sole cost and expense of the City, maintain in force:

- (a) Commercial general liability insurance or a comparable policy (including non-owned automobile) including but not limited to coverage for personal injury and bodily injury, including death, broad form property damage, loss of use, blanket contractual liability, non-owned automobile liability, including liability for damage to hired automobiles, employers liability, contingent employers liability, completed operations and products liability, sudden and accidental pollution exposures, cross liability with severability of interest clause and owners’ and contractors’ protective insurance coverage. Such insurance shall be written on an occurrence basis with limits not less than Ten Million Dollars (\$10,000,000) per occurrence and an aggregate limit of not less than \$10,000,000 within any policy year with respect to products and completed operations and shall include Metrolinx and, if directed by Metrolinx, its engineering consultant retained or authorized by it from time to time, each as “Additional Insured” (except under non-owned automobile liability) but only for The City’s legal liability arising from the performance of the Agreement. Such insurance shall not contain any exclusion for XCU (explosion and collapse), damage to “Existing Structure Exclusion”, or contain any liability restrictions related to operations with or around railroads and railway tracks.
- (b) Automobile liability insurance with a limit not less than Five Million Dollars (\$5,000,000) per accident shall be maintained for all vehicles owned or leased by the City.
- (c) In the event of any liquid or gaseous substances, the City or its contractor shall, at their own cost and expense, maintain in force not less than Five Million Dollars (\$5,000,000) per claim and in the annual aggregate pollution liability insurance to provide coverage for property damage and clean-up and restoration costs.
- (d) Excess or umbrella insurance may be used to achieve the required insurance limits described in the foregoing subsections. All policies or certificates of insurance shall provide that thirty (30) days’ advance notice in writing shall be given by the insurer to Metrolinx in the event that such policy is cancelled during policy terms. Any deductible under any of the policies shall be the responsibility of the City.
- (e) In the event that evidence of insurance (in a form sufficient and satisfactory to Metrolinx acting reasonably) is not delivered by the City, Metrolinx may purchase such insurance at the cost of the City, and the City shall reimburse Metrolinx for such cost forthwith upon receipt of invoices.