

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Agreement") is made and shall be effective as of the 22 day of September 2021.

BETWEEN:

THE MINISTRY OF TRANSPORTATION
("MTO")

and

METROLINX
("Metrolinx")

and

CITY OF HAMILTON
("Hamilton" or the "City")

(MTO, Metrolinx and Hamilton, collectively the "Parties" and individually a "Party")

BACKGROUND

- A. On May 13, 2021, the Province of Ontario (the "**Province**") and the Government of Canada announced a commitment of up to \$3.4 billion for a 14-kilometre light rail transit line in the City extending from McMaster University to Eastgate Square.
- B. A Transit Project Assessment Process was undertaken and approval to build the light rail transit line obtained by Metrolinx and the City by way Environmental Project Report Amendment approved by the Minister on August 2, 2017 (the "**TPAP**"). The light rail transit line as permitted by the TPAP, as it may be amended from time to time, is hereinafter the "**Project**".
- C. The Project will be designed, built, and owned by Metrolinx and operated by or on behalf of Metrolinx on land in the City which Metrolinx will own either in fee simple or by way of permanent easement.
- D. The Parties wish to enter into this Memorandum of Understanding (the "**Agreement**") to set out the provisions regarding, among other things, matters pertaining to:
 - (i) responsibility for the cost of designing, constructing, making life-cycle improvements, maintaining and operating the Project;

- (ii) land acquisition;
- (iii) permits, licences and approvals;
- (iv) third party utilities; and
- (v) additional infrastructure requested by and at the expense of the City,

all with a view to providing for and ensuring effective and efficient delivery of the Project and optimizing existing resources and expertise while, at the same time, respecting both Metrolinx's ownership and control of the Project, the City's ownership and control of City infrastructure and assets affected by the Project, and the City as municipal planning authority.

- E. The Parties recognize that it may be beneficial to further expand and clarify the provisions contained in certain sections of this Agreement, including as specifically referred to in this Agreement. The Parties will work together to draft and consider such further expansions and clarifications. If agreed to by the Parties, each such expansion and clarification will be appended as a schedule to this Agreement.
- F. The Province has proposed to prescribe the Project as a priority transit project under the *Building Transit Faster Act, 2020* (the "**BTFA**"). It is expected that prescribing the Project and the subsequent designation under the BTFA of the transit corridor lands that are required for construction will help deliver the Project on accelerated timelines. If, and when, the Province prescribes and designates the Project as aforesaid, the BTFA will apply to the Project and this Agreement.
- G. The Province continues to recognize the critical importance of building affordable housing near transit stations and maximizing high quality jobs and benefits for communities adjacent to or affected by the Project. The Province will work with the City and community stakeholders to endeavour to determine how best to support these goals of affordable housing and community benefits as part of transit project delivery.

NOW THEREFORE for valuable consideration, now paid by each Party to each other Party and in consideration of the mutual covenants and agreements contained herein, the Parties covenant and agree as follows:

1. Derogation and Waiver

- 1.1. This Agreement and the schedules to it do not and are not intended to waive, amend, or derogate from the rights of:
 - (i) Metrolinx as Crown agent of the Province and as owner of the Project;
 - (ii) the City as owner of certain infrastructure and assets that may be affected by the Project and, as municipal planning authority, or to fetter the discretion of Council, or to preclude the City from carrying out its statutory rights and obligations; and

- (iii) MTO and the Province as ultimate owner of the Project with the responsibility for arranging the capital funding for the Project, including contributions by the Government of Canada.

2. Building Transit Faster Act

- 2.1. Upon the designation by regulation of the Project as a priority transit project, Part IV (Utility Company Cooperation) and Part V (Municipal Service and Right of Way Access) of the BTFA, and all provisions of the BTFA related or ancillary thereto will apply to the Project and this Agreement.
- 2.2. Upon the designation by Order in Council of transit corridor lands required for the Project, Part II (Corridor Control) and Part III (Expropriation) of the BTFA and all provisions of the BTFA related or ancillary thereto will apply to the Project and this Agreement.

3. Roles, Responsibilities and Rights of Metrolinx

- 3.1. This Agreement, including without limitation, the provisions of this Section 3, is not a covenant by Metrolinx to the City to undertake or complete the Project, which is in the sole discretion of the Province and Metrolinx.
- 3.2. Metrolinx is the owner of the Project, as Crown agent of the Province, with responsibility for, among other things:
 - (i) scope,
 - (ii) budget,
 - (iii) scheduling,
 - (iv) contractual responsibility for design, planning, construction, maintenance and operations,
 - (v) acquisition of the real property required for the Project, and
 - (vi) public consultation,

except, in each case as otherwise agreed to by the Parties and specified herein, or in an amendment hereto, or in another written agreement that is subsequently entered into and executed by the Parties.

- 3.3. Metrolinx will develop project specific output specifications (the "**PSOS**") for the Project, taking into account, among other things, constructability, appropriate risk transfer, achieving value for money and guarding taxpayer dollars, design excellence, and the provision of benefit to riders including transit service. The provisions of the PSOS are in Metrolinx's sole discretion,

including any amendments to it from time to time, unless specifically stated otherwise in this Agreement.

- 3.4. Project specific output specifications were developed by Metrolinx for the Project in consultation with the City prior to the termination of the Project. Such project specific output specifications and any amendments or modifications to them agreed to by the Parties prior to termination of the Project are hereinafter collectively, the "**Benchmark PSOS**".
- 3.5. Without limiting the provisions of Section 3.3, Metrolinx will work in consultation and collaboration with the City in developing the PSOS, particularly with respect to a material change from the Benchmark PSOS, or a change that requires further amendment to the TPAP. The City will be afforded an opportunity to provide comments and Metrolinx will carefully consider the City's input with a view to endeavouring to accommodate the City's comments having regard to, among other things, whether or not the changes requested by the City are material changes that result in an undue adverse impact on the Project or an increase in overall Project cost or will have a detrimental effect on schedule. For any material change as contemplated in this Section 3.5, the City will provide notice of any such proposed change to Metrolinx and to each of the Steering Committee and the Executive Committee. The Committees will endeavour to address and resolve the City's concerns to the satisfaction of the Parties. If neither the Steering Committee nor the Executive Committee is able to resolve the City's concerns and address the City's comments to the satisfaction of the Parties within timelines that ensure that there is no adverse impact on the Project, including its cost and schedule, Metrolinx will be permitted to proceed without implementing the City's comments and proposed changes. For any change that requires an amendment to TPAP, Metrolinx will engage in public consultation required by Applicable Law.
- 3.6. Metrolinx will draft and negotiate a Train Operator Services Agreement with the operator of the LRT system when the operator is chosen. Such Train Operator Services Agreement or relevant excerpts, when negotiated and executed, will be appended as "Schedule A," (Train Operator Services Agreement) to this Agreement.
- 3.7. Metrolinx will draft and negotiate a Municipal Funding Agreement with the City that will set out the terms applicable to payment of operating and maintenance costs ("**O&M Costs**") for the Project by the City. The Municipal Funding Agreement when agreed to and executed will be appended as "Schedule B," (Municipal Funding Agreement) to this Agreement.
- 3.8. Metrolinx is responsible for the following, among other, costs:
 - (i) design, construction and commissioning of the Project;
 - (ii) land acquisition costs;

- (iii) life-cycle refurbishment costs after completion of construction;
- (iv) the costs of relocating, building and commissioning infrastructure and assets owned by the City that must be relocated to facilitate construction of the Project, including without limitation, City utilities;
- (v) the cost of relocating third party assets and utilities to facilitate construction of the Project;
- (vi) the cost of obtaining required permits, licenses, and approvals;
- (vii) the cost of repairing and restoring any damage caused by reason of construction of the Project; and
- (viii) all taxes exigible on the foregoing and other costs,

in each case on the terms set out in this Agreement and except as otherwise provided herein.

- 3.9. Metrolinx confirms that the City is not responsible for costs incurred by Metrolinx, the Province or third parties, including third party utilities, in connection with the Project even if such costs exceed the costs of any approved budget for the Project save and except only if the City has agreed to pay such costs as set out in this Agreement or in any other agreement subsequently entered into between the City and Metrolinx or between the Province and the City. Notwithstanding Metrolinx's responsibility for the cost of relocating third party utilities, the City will endeavor to exercise its rights to require utility companies to pay for or share the cost of utility relocation pursuant to any agreement that the City has with utility companies or pursuant to any statutory right available to the City. The City will provide Metrolinx with copies of any such agreements.
- 3.10. Metrolinx confirms that it will be responsible for the costs to construct or reconstruct any bridge or grade separation that is required to facilitate the Project.
- 3.11. The City confirms that upon completion of construction, the City will assume the road portion of any bridge or grade separation provided that such bridge or grade separation has been:
- (i) properly commissioned, and
 - (ii) accepted by the City in accordance the provisions of the Commissioning and Acceptance Protocol that will be appended as "Schedule C", (Commissioning and Acceptance Protocol) to this Agreement. Following assumption by the City, the City will be

responsible for maintenance of and maintenance costs attributable to the road portions of such bridge or grade separation.

- 3.12. Metrolinx will construct or cause the Project to be constructed in compliance with all federal, provincial and municipal laws in force in the Province, including statutes, proclamations, regulations, by-laws, and any judgment of a relevant court of law, arbitrator or administrative agency, in each case which now or at any time hereinafter are both applicable to the Project and binding on Metrolinx ("**Applicable Law**").
- 3.13. Metrolinx will require Project Co to not cause the City to be in violation or breach of any of the City's collective agreements applicable to the Project work. Metrolinx is not a party to, bound by, or agreeing hereby, to voluntarily be bound by the City's collective agreements. If proceedings are initiated before the Labour Relations Board under the *Labour Relations Act, Ontario*, or before a court of law, by a union counterparty to a City collective agreement and the determination is made by the Labour Relations Board or such court of law that the union has rights to the Project work or a portion of it, Metrolinx or Project Co, as the case may be, will be bound by and comply with such determination. Metrolinx and Project Co, as the case may be, shall not be precluded from being a party to any such proceedings or from appealing any determination.
- 3.14. The Parties acknowledge the importance of achieving a seamless customer experience to the maximum extent possible taking into account the Metrolinx asset ownership and Metrolinx design standards, and will work together to endeavour to provide for:
 - (i) coordinated transit scheduling between the LRT system and the Hamilton Street Railway ("**HSR**") bus system;
 - (ii) coordinated provision of customer service including customer information and handling of customer inquiries and complaints; and
 - (iii) a coherent or complementary branding and wayfinding of the Project with the broader HSR transit system,and any other matters agreed to by the Parties.

4. Roles, Responsibilities and Rights of the City

- 4.1. The City will pay O&M Costs, save and except life-cycle costs, whether or not the City or HSR is the operator. Such O&M Costs will include, without limitation, the following:
 - (i) all costs payable to Project Co or any other entity to perform maintenance on the Project save and except only life-cycle costs, which are the responsibility of Metrolinx;

- (ii) all costs payable to the operator of the LRT system save and except life-cycle costs;
- (iii) utility consumption charges;
- (iv) costs to administer and enforce the Project Agreement, the Train Operator Services Agreement, the Municipal Funding Agreement and any other agreements referable to operations and maintenance of the LRT system;
- (v) realty taxes or payments in lieu thereof; and
- (vi) all taxes exigible on O&M Costs,

all as will be more specifically set out in the Municipal Funding Agreement.

- 4.2. In consideration of the payment of O&M Costs by the City, the City will be entitled to all fare box revenue generated by the Project. The City will also be entitled to certain non-fare box revenue. For example, the City will be entitled to a portion of advertising revenue. Metrolinx may utilize any advertising contracts it may have to maximize advertising revenue for the Project, and any revenues and costs from such advertising agreements will be shared by Metrolinx and the City. Metrolinx will provide a copy of any such advertising agreement to the City. The terms of any revenue and cost sharing for non-fare revenue, including advertising on the LRT system, and a framework for setting fares, will be appended as "Schedule D", (Fare and Non-Fare Revenue) to this Agreement.
- 4.3. The Province confirms that ridership on the LRT will be included as part of the City's overall ridership for the purposes of gas tax calculations on substantially the same basis as bus ridership.
- 4.4. The City will contribute to the cost of replacing City utility assets that are required to be protected, removed, relocated or replaced to facilitate construction of the Project as reflected in the PSOS only if:
 - (i) provision for the relocation or repair of any such specific utility asset is not in the Benchmark PSOS; and
 - (ii) such specific utility asset is both scheduled for replacement as reflected in a capital budget existing as at the date of this Agreement, and funds have been allocated by the City to the repair or replacement of such asset, in which case the City will pay the cost included in such budget or a reasonable amount as agreed to between the City and Metrolinx.

It is anticipated that any change from the Benchmark PSOS in the location of City utility assets will only be made for the overall benefit of the Project.

- 4.5. Without limiting or derogating Council's right to grant or refuse any delegation of its authority, the City will take reasonable steps to facilitate the construction of the Project including, without limitation, as follows:
- (i) where City staff do not already have delegated authority, City staff, at the request of Metrolinx, will, where appropriate, seek from Council delegated authority to City staff to make determinations regarding the granting of lane closures, the closure of intersections, road closures, road diversions, the assumption of temporary roads, and similar road uses; and
 - (ii) City staff will, at the request of Metrolinx, seek waivers from Council of fees for road cut permits and road occupancy permits and all other such fees that Council has the authority to waive.
- 4.6. In addition to the provisions of Section 4.5, the City will:
- (i) notify Metrolinx as soon as possible regarding any fees that Council has decided not to, or does not have the authority to, waive to enable Metrolinx to seek waivers and exemptions to the extent that it is able to do so, and
 - (ii) endeavour to align or adjust the timing of City infrastructure projects that conflict with construction of the Project to the extent that it is able to do so and will liaise and collaborate with Metrolinx in determining how best to manage such conflicts.
- 4.7. The City will retain its authority over traffic operations within and adjacent to the transit corridor, through matters such as traffic signal timing, and will endeavour to maintain such in a manner that meets the operational performance standards for the Project and operational requirements of the City.
- 4.8. The City will endeavour to streamline municipal approval processes to the extent that it is able to do so. The City will work with Metrolinx in identifying such processes.
- 4.9. The Project will be designed to allow for the use of the fare payment system identified by the Ministry of Transportation.
- 4.10. The Parties acknowledge that the City as municipal planning authority has regulatory authority regarding the issuance of planning approvals and building permits, but that Metrolinx may not be subject to or bound by all or any of them and is, among other things, not subject to the *Planning Act*, Ontario. Metrolinx is not required to engage in a site plan approval process, to obtain site plan approval or to enter into a site plan agreement with the City. However, in developing the PSOS, Metrolinx will endeavour to agree on a process with the City pursuant to which the City, subject to and without derogating from the provisions of Section 3.3, will be entitled to provide comments to Metrolinx that would normally be expected to be included in the site plan or design review

process, provided that engaging in any such process will not have the result of impeding construction of the Project on the Project schedule.

- 4.11. Subject to any legal limitations, including any limitations under the *Municipal Freedom of Information and Protection of Privacy Act, Ontario*, the City 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 infrastructure and assets owned by the City or by third party utilities and others to the extent known to the City and will also advise Metrolinx of the City's requirements for preserving or relocating City owned utilities with a view to including such information and requirements in any request for qualifications, request for proposal, and PSOS for the Project. The City will in all instances make reasonable efforts to ensure that its responses are provided in a timely manner and within timelines specified by Metrolinx.
- 4.12. The City will support requests submitted by MTO to secure funding contributions by the Government of Canada for the Project.
- 4.13. Immediately after the execution of this Agreement by the Parties, the City will take steps to remove itself as a proponent of the TPAP such that Metrolinx will be the sole proponent, and will notify Metrolinx when it makes such application, of its progress and when it has successfully been removed as a proponent.

5. Project Delivery

- 5.1. At Metrolinx's sole discretion, the Project may be delivered by a single contract or by a number of contracts including early works contracts. All contracts collectively are referred to as the "**Project Agreements**" and individually as a "**Project Agreement**". The Project may be delivered by any one or a combination of procurement models. For the purposes of this Agreement, bidders or proponents are each referred to as a "**Proponent**", and each agreement or contract entered into between Metrolinx and a successful Proponent is referred to as a "**Project Agreement**".

The Project Agreements will contain robust contract management and enforcement provisions intended to drive on time and on budget performance. These may include liquidated damages and other rights typical to contracts similar in scope, size, and procurement model to the specific applicable Project Agreement.

6. Agreement for the Provision and Payment of City Services

- 6.1. Metrolinx and the City intend to enter into an agreement or agreements from time to time (each a "**Staffing Agreement**") which, among other things, will provide for, the delivery of services by City dedicated staff, which services will include but not be limited to the general coordination of the City's role in the Project, expediting permit issuance and other approvals, reviewing and

administering project documentation and agreements, attending meetings with Proponents as provided for in this Agreement, responding to questions, undertaking communications as required, commenting on submittals, inspecting and accepting the City's infrastructure, and generally facilitating delivery of the Project and performing the City's roles and responsibilities pursuant to this Agreement. The City will make reasonable efforts to adhere to the timelines set out in any Staffing Agreement. The Staffing Agreement will set out the payment provisions for payment by Metrolinx to the City for the services provided by the City as set out therein or as may be otherwise requested by Metrolinx to facilitate delivery of the Project. No additional payments will be required to be made by Metrolinx to the City for services that are covered by the Staffing Agreement. The Staffing Agreement when agreed to will be appended as a "Schedule E", (Staffing Agreement) to this Agreement.

7. Participation by Hamilton

- 7.1. Metrolinx acknowledges that the City has unique knowledge of local conditions and considerations related to the Project and that the City, as owner of infrastructure and assets that will be affected by the Project, has important input in the development of the PSOS or the specifications in accordance with which the Project will be built. Accordingly, the City will be accorded the rights hereinafter set forth.
- 7.2. Prior to the issuance of a request for proposal to Proponents (the "**Pre-Market Phase**") and during the period between the issuance of a request for proposal to Proponents and the entering into of a Project Agreement with the successful Proponent (the "**In-Market Phase**"):
- (i) the City will enter into non-disclosure agreements with Proponents, utilities, and others before being permitted to attend meetings or engage in correspondence or discussions with them;
 - (ii) Metrolinx will consult with the City and provide an opportunity to the City to review and comment on the PSOS, including any changes proposed to the Benchmark PSOS, consistent with the various provisions of this Agreement;
 - (iii) at the specific request of Metrolinx, the City will attend and participate in design consultation meetings, commercially confidential meetings and other meetings with Proponents;
 - (iv) other than at the request of Metrolinx, the City will not contact, meet or liaise with or respond to the Proponents on any aspect of the Project;
 - (v) the City will have the right to review and provide comments to Metrolinx on the PSOS, particularly but not limited to the design and specifications of infrastructure to be built by Project Co and owned by

the City, aspects that have a material impact on O&M Costs, or that are proposed changes to the Benchmark PSOS;

- (vi) Metrolinx will endeavour to incorporate changes to the PSOS that minimize to the extent possible the direct or indirect impact on O&M Costs, and capital budgets, provided that such changes do not negatively impact the Project, including costs, schedule, completion date or other key factors. All comments by the City during the Pre-Market and the In-Market Phases must be provided to Metrolinx by the date specified by Metrolinx having regard to the requirement to make no changes to PSOS for a stipulated time period prior to bid submission; and
- (vii) Metrolinx will endeavour to provide the City with the PSOS in sufficient time to enable the City to review and provide comments, if any, to Metrolinx on the PSOS to enable Metrolinx, in turn, to consider and, if acceptable to Metrolinx in its discretion, include them in the PSOS.

7.3. Following the entering into of a Project Agreement with the successful Proponent (the "**Implementation Phase**") provided that the City has executed a non-disclosure agreement as required:

- (i) the City will have the right to participate in consultation meetings with Project Co on design and other submissions pertaining to infrastructure that Project Co builds for the City at Metrolinx's expense to replace City infrastructure and assets that must be replaced or relocated to facilitate the Project ("**New City Infrastructure**") or to O&M Costs;
- (ii) the City will have the right to review design and submittals pertaining to New City Infrastructure for purposes of ascertaining conformance with Basic Standards (as defined in Section 8.1), and the provisions of the PSOS;
- (iii) the City will have the right to review submittals pertaining to New City Infrastructure, Additional City Infrastructure (as defined in Section 9.1) and O&M Costs. With respect to O&M Costs submittals will include, without limitation, the following:
 - o Building envelopes and finishes,
 - o Custodial Maintenance Plan,
 - o Maintenance Plan,
 - o Facility Management Plan,
 - o Signalling and Train Control System Management Plan,
 - o Revenue Vehicle Handover Plan,
 - o Annual Maintenance Workplan - Traction Power, Assets,
 - o Management Plan - Overhead Catenary, and
 - o Vehicle Maintenance Plan,

in each case for the purpose of ascertaining conformance with the provisions of the PSOS;

- (iv) the City will provide its comments on the design and submittals pertaining to New City Infrastructure to Metrolinx in reasonable detail and will categorize any non-compliance as a major deficiency or a minor deficiency, or such other designation specified by Metrolinx from time to time and will specify the nature of the non-compliance in as much detail as possible; and
 - (v) the City will have the right to accompany Metrolinx on any inspections of New City Infrastructure that Metrolinx or Project Co propose to undertake from time to time. Metrolinx will give the City advance written notice of the date and time of any such inspection. The City also has the right to perform inspections of New City Infrastructure on reasonable prior written notice to Metrolinx and Project Co providing the date and time of any such inspection and provided that the City complies fully with safety and other requirements of Project Co and does not interfere with or interrupt Project Co's construction activities.
- 7.4. The City shall have the right to participate in the evaluation of those portions of bid submissions that are specifically related to New City Infrastructure, Additional City Infrastructure or O&M Costs provided that:
- (i) the City and any evaluators representing the City execute a non-disclosure agreement covenanting and agreeing to keep all information disclosed during the evaluation process or otherwise known to the City or to participating evaluators strictly confidential; and
 - (ii) no conflict of interest exists.

8. New City Infrastructure

- 8.1. New City Infrastructure will be:
- (i) owned by the City;
 - (ii) built to the standards and guidelines for the design, construction, rehabilitation and protection, as the case may be, of such New City Infrastructure in force in Hamilton on the date which is three months prior to the request for proposal issuance date and which are available upon request to engineers and architects licensed to practice in the Province of Ontario (the "**Basic Standard**"). Notwithstanding the foregoing, the City will accommodate requests by Metrolinx to build New City Infrastructure to standards that may differ from Basic Standard in the interest of obtaining better value provided that such change in standard does not negatively impact the City;
 - (iii) built to replace existing City infrastructure and assets on a "like for like" basis with respect to function, size, capacity and location, unless otherwise provided in the Benchmark PSOS for a particular asset; and

- (iv) built in compliance with the City's laws and those federal and provincial laws applicable to and enforceable against the City.
- 8.2. All New City Infrastructure must be properly commissioned and comply with the terms of the Commissioning and Acceptance Protocol before the City is required to accept it.

9. Additional City Infrastructure

- 9.1. The City may at any time request Metrolinx to upgrade New City Infrastructure or to build new infrastructure (any such upgrade or new infrastructure is herein "**Additional City Infrastructure**") at the cost of the City and to include it in the scope of a Project, in accordance with the provisions of this Section 9.
- 9.2. To exercise its right under Section 9.1, the City must deliver written notice to Metrolinx specifying with reasonable particularity the Additional City Infrastructure that the City is requesting Metrolinx to construct. The notice must:
- (i) provide sufficient detail in order to enable Metrolinx to assess the impact of the request on the Project; and
 - (ii) if delivered during the Pre-Market or the In-Market Phase be delivered in sufficient time to allow Metrolinx to include it in the PSOS. The determination of whether or not to incorporate such Additional City Infrastructure within the scope of the Project, whether during the Pre-Market, the In-Market or the Implementation Phase is in Metrolinx's sole discretion having regard to, among other things, the impact on the Project as a whole, including cost, schedule and completion date.
- 9.3. If the City makes a request for Additional City Infrastructure in accordance with the provisions of Section 9.2 during the Pre-Market Phase or the In-Market Phase, and Metrolinx agrees to proceed with it, Metrolinx or a third party retained by Metrolinx for this purpose will make a determination of the cost, if any, of such Additional City Infrastructure. The City acknowledges and agrees that the cost will be based on Metrolinx's expertise or the expertise of such third party and may include costs that are specific to the procurement model in question but will not be the actual costs that will be incurred by Proponents or included in their bid submissions. If the City accepts the cost, if any, within the timeline specified by Metrolinx, and enters into a municipal infrastructure agreement setting out the cost, payment terms and other pertinent covenants and provisions pertaining to such Additional City Infrastructure (an "**MIA**"), Metrolinx will include the Additional City Infrastructure in PSOS. The City will be required to reimburse Metrolinx for the cost (and all taxes exigible thereon) incurred by it in making a determination of the cost of such Additional City Infrastructure and its impact on the Project whether or not the City elects to proceed with such Additional City Infrastructure. The MIA will be substantially in accordance with the form that will be attached as "Schedule F", (Municipal Infrastructure Agreement) to this Agreement.

- 9.4. If a formal, written request for Additional City Infrastructure is made during the Implementation Phase, Metrolinx will initiate an inquiry pursuant to the provisions of the applicable Project Agreement to ascertain the cost that will be payable to Project Co to construct the New City Infrastructure as part of a Project. The City will be responsible for all costs incurred by the City in assessing the City's request, including Project Co's costs of determining the price of such New City Infrastructure, whether or not Metrolinx agrees to the New City Infrastructure and whether or not the City elects to proceed with it.
- 9.5. Metrolinx will notify the City of the cost of such New City Infrastructure. If the City notifies Metrolinx in writing that it accepts the cost and enters into an MIA within the timeline specified by Metrolinx, Metrolinx will direct Project Co to build it as part of the work undertaken for the Project.
- 9.6. The City acknowledges and agrees that there may be circumstances in which, pursuant to a Project Agreement, a Project Co is entitled to refuse to deliver an estimate or carry out a variation, in which case Metrolinx will be entitled, in its sole discretion, to elect not to carry out the City's request for Additional Infrastructure by providing written notice to this effect to the City. Metrolinx will not be liable to the City in any way with respect to any such determination.
- 9.7. Metrolinx may, in its discretion and from time to time, make changes to Additional City Infrastructure accepted and approved by both Parties provided that:
- (i) all changes will be at Metrolinx's expense; and
 - (ii) Metrolinx provides the City with particulars of the design, plans, specifications and other technical components of any changes that Metrolinx proposes to make for the City's approval, not to be unreasonably withheld or delayed.

If the City does approve such changes, Metrolinx is not entitled to proceed with them.

10. Real Estate Matters

- 10.1. Metrolinx will endeavour to relocate and minimize the impact on tenants of real properties that it acquires whether from the City or from third parties and in respect of which it requires vacant possession.
- 10.2. Metrolinx will manage and maintain properties that it acquires and owns pending hand over to by way of license to Project Co for Project purposes, as would a diligent property owner, including voluntarily complying with municipal by-laws, including grass cutting and snow clearance.

- 10.3. The Parties will work together to establish a real estate protocol to more fully and completely set out a process relating to the acquisition, occupation and use of lands required for the Project that are owned by the City, whether on a temporary or permanent basis. Such real estate protocol will be appended as "Schedule G", (Real Estate Matters) to this Agreement. Additionally, transfer of lands from Metrolinx to the City at nominal consideration to complete the City's road right-of-way by reason of the Project will be included in such protocol.
- 10.4. Metrolinx, as a Crown Agency created by the Metrolinx Act, 2006 has the power under the Metrolinx Act, 2006 to expropriate land for the purpose of carrying out its objects. Nothing in this Agreement shall override or supersede such right, which Metrolinx may invoke at any time. Metrolinx will endeavour to provide the City with as much advance notice as possible before exercising its power of expropriation.
- 10.5. Metrolinx will own or have a real property interest in all City lands on which the Project infrastructure will be located and will be responsible, unless otherwise agreed, for acquiring such lands or interest therein at its cost. Metrolinx does not intend to use the services of City staff for the legal work and due diligence required in connection with such acquisition.
- 10.6. Metrolinx will acquire any required City lands or real property interest therein, as the case may be, that lie within the transit corridor for nominal consideration. For the purposes of the above, the transit corridor shall include the area of land to be used for the LRT track, stations and stops, vehicular lanes, sidewalks, bike lanes and associated landscape areas. If such lands or portions of lands are not on the transit corridor, or are used for an operation and maintenance facility or a traction power sub-station, Metrolinx will acquire such lands for fair market value determined in accordance with the principles for the determination of fair market value in the *Expropriations Act*, Ontario. Metrolinx acknowledges that any lands acquired from the City whether by way of fee simple, easement or license and whether temporary or permanent will be acquired on an "as is, where is" basis. This provision does not change or affect the provisions or conditions upon which City properties have been acquired or have been contracted to be acquired prior to the effective date of this Agreement.
- 10.7. The City will grant to Metrolinx temporary licenses and temporary easements for the lands referred to in Section 10.5 pending the transfer of such lands in fee simple or by way of easement, as the case may be, to Metrolinx; and for lands required by Metrolinx temporarily for Project purposes, including without limitation, for construction of temporary infrastructure, due diligence investigation, access, laydown and other temporary uses. The terms of such licenses will be sufficient to permit Metrolinx to carry out the activities that it requires. Metrolinx will acquire the temporary interest in such lands for nominal consideration:
 - (i) if such City lands are right-of-way lands; and

- (ii) if such lands are lands referred to in Section 10.5 on the basis that Metrolinx will pay the purchase price for such Section 10.5 lands upon acquisition.
- 10.8. Compensation payable to the City for any interest that Metrolinx acquires in park lands will be determined in accordance with the foregoing principles and not by way of rental or other fee which may be applicable to park land use.
- 10.9. Upon the expiry of the term of any license or easement for lands that will be returned to the City and not acquired by Metrolinx permanently, Metrolinx will be required to repair at its expense, all damage to such City lands caused by Metrolinx or its authorized users and to restore such City lands to substantially the same condition that such lands were in immediately prior to their use by Metrolinx.
- 10.10. At any time, at the request of Metrolinx (which may be on completion of the Project when as-built or record drawing are available), the City will grant Metrolinx:
 - (i) a permanent easement over right-of-way and other City lands on which Project infrastructure is located, and
 - (ii) a permanent easement or licence for any lands required for access and other such ancillary purposes, in each case for nominal consideration, and on terms sufficient to enable Metrolinx to fully and completely operate the Project unimpeded, including without limitation, all matters pertaining to safety.
- 10.11. The obligations of the City as set out above extend to and include lands owned by the City and its boards, agencies and commissions to the extent that the City has sole jurisdiction and control over them.
- 10.12. The City will provide Metrolinx with a list of transfers, grants of easements and licences to Metrolinx or waiver or exemption of fees payable by Metrolinx that require Council approval. Metrolinx may request the City to seek delegated authority from Council to City staff for such approvals. Metrolinx acknowledges that Council has the discretion to grant or reject any such request and further acknowledges that Council may subsequently revoke or amend any delegated authority that it grants. City staff will endeavour to obtain such delegated authority from Council in a timely manner to ensure that the lands are available to Metrolinx within timelines dictated by a Project.
- 10.13. In all aspects of the Project, including design and construction, Metrolinx will, or will cause Project Co to, take all reasonable efforts to minimize impacts to trees and parks and City lands. The Parties acknowledge that tree replacement or compensation to the City in lieu thereof is, at minimum, 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 Section 10.13 derogates from Metrolinx's expropriation authority including with respect to trees owned by the City or third parties.

11. Permits, Licenses and Approvals to Construct

- 11.1. Metrolinx, at its expense, contractually agrees that it will obtain and be bound by, or may require Project Co to obtain and be bound by:
- (i) those permits that it is required to obtain by Applicable Law for infrastructure that it will own; and
 - (ii) all permits that are required by the City for the construction of infrastructure that the City or by third parties will own. Unless City by-laws or other laws preclude a contractor from applying for and obtaining a permit and stipulates that an owner must do so, Project Co may apply for and obtain such permits.
- 11.2. Metrolinx may, in its discretion, apply for permits for the construction of infrastructure that it will own, which will not be deemed to be an attornment or waiver of Crown immunity. If Metrolinx does not meet or satisfy the statutory, legal or regulatory requirements of the City for issuance of such permits, the City is under no obligation to issue such permits to Metrolinx or Project Co, and Metrolinx may exercise its right to proceed without a permit. Metrolinx acknowledges that the City has no responsibility and bears no liability for any work that Metrolinx has chosen to undertake without a permit. Metrolinx may at any time after permit issuance elect in its discretion to proceed without such permit, in which case Metrolinx will notify the City and will ask the Chief Building Official to revoke such permit.
- 11.3. The City will review all applications for permits, licenses and approvals, as the case may be, promptly and in any event within the timelines that may be set out from time to time in a Staffing Agreement. The City will notify the applicant in writing as soon as possible following receipt of a permit application either that:
- (i) the application is complete (contains sufficient material and information required by the City to make a determination on the application); or
 - (ii) that the application is deficient, in which case the City will specify the deficiency. Upon receipt of a completed application the City will make a determination on issuance expeditiously and promptly and in any event within the timelines specified in a Staffing Agreement in order to enable work on the Project to proceed without delay.

- 11.4. Metrolinx understands that, if a temporary diversion road for public use is required for any work on the Project, including any grade separation, Metrolinx may have to provide the City at Metrolinx's expense with either a license, or a real property interest in the nature of fee simple, easement, or lease, as determined by the City in its sole discretion over the lands that will constitute the temporary diversion road until the permanent public highway is opened to the public by the City. The City will advise Metrolinx of the advance notice that it requires for any such proposed road diversion, and Metrolinx will, or will require Project Co to, provide the City with such advance notice and will provide all documentation and information to the City that it requires, both to facilitate the City's ability to obtain the consents it requires and to designate, as a public highway, those lands intended to be used as a temporary diversion road. Unless otherwise expressly provided in this Agreement, or otherwise agreed to in writing by the Parties, the construction and maintenance of any temporary diversion road required for a Project shall be the sole responsibility of Metrolinx.
- 11.5. The Parties will work together to establish protocols and procedures expanding the provisions of this Section 11, including to identify fees and approval times and requirements for applicable permits, licenses and approvals. At the request of Metrolinx, City staff will seek delegated authority from Council in respect of permits, licenses and approvals that would otherwise require Council approval and will seek an exemption or waiver of fees. If the City and Metrolinx settle the terms of such protocol it will be appended as "Schedule H", (Permits, Licences and Approvals) to this Agreement.

12. Artifacts

- 12.1. As between the Parties, all fossils, artifacts and other objects having artistic, geological, historic, archaeological or monetary interest or value, including human remains and burial sites, which may be found on or at City Property are or will be the sole and absolute property of the City. Upon discovery of any such item:
- (i) Metrolinx will promptly inform the City of such discovery;
 - (ii) Metrolinx will cause Project Co to take all steps not to disturb the item and, if necessary, cease any part of its work on the Project in so far as performing such work would endanger the item or prevent or impede its excavation, and the City will respond promptly in a timely manner to minimize delays;
 - (iii) Metrolinx will cause Project Co to take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
 - (iv) Metrolinx will advise the City if a change to the Project infrastructure or to New City Infrastructure is required as a result of the discovery of any artifact.

13. Streetscape

- 13.1. Metrolinx will pay for the repair or replacement of any and all roads, sidewalks trees, parks, plants and streetscape generally damaged by the Project (collectively, the "**Streetscape**"). Any such damaged Streetscape will be restored or replaced on a like for like basis to a standard commensurate in cost with the cost of repairing and replacing comparable streetscape in the vicinity of the Project at the date of this Agreement, as agreed to by the City and Metrolinx, acting reasonably during the Pre-Market or the In-Market Period in sufficient time to enable it to be included in the PSOS (the "**Streetscape Standard**"). Any upgrades from the Streetscape Standard requested by the City will constitute Additional Infrastructure and be dealt with in accordance with the terms of this Agreement applicable to Additional Infrastructure.
- 13.2. Without limiting the generality of any other provision of this Agreement, Metrolinx will endeavour to mitigate impacts to Streetscape resulting from the Project at its expense and in accordance with its obligations and commitments. Metrolinx will consult with the City regarding such mitigation measures, and changes to such measures from time to time.

14. Capital Coordination

- 14.1. The City will provide Metrolinx, from time to time, with prior written notice of *infrastructure, utility and other work that the City intends to undertake, in as much detail as possible, including without limitation, any such work identified by the City in its 10 year capital budget and plan.* Metrolinx acknowledges that City Council may, at any time, modify its 10 year capital budget and plan and may add or delete capital projects in its sole discretion, in which case, the City will endeavour to provide Metrolinx with a detailed description of such added or deleted capital projects.
- 14.2. In addition to Section 14.1, and subject to any legal limitation precluding it from doing so, the City will provide Metrolinx with written notice of the following:
- (i) existing or future capital works that the City has or intends to undertake within 100 metres of any property owned, acquired or to be acquired, whether in fee simple, easement or license and whether temporary or permanent for the Project (collectively, the "**Project Lands**");
 - (ii) any development applications and zoning applications that the City receives from any third parties pertaining to proposed developments within 100 metres of the Project Lands; and
 - (iii) information in its possession or control relating to (i) and (ii) above, including, without limitation, plans and related schedules, drawings, mapping and any other information or materials reasonably requested by Metrolinx.

- 14.3. At the request of Metrolinx, the City will endeavour to assist in facilitating and coordinating any conflicts between City capital works and the Project in order to endeavor to ensure the efficient, expeditious and on-time and on-budget delivery of the Project and any City capital works.

15. Matters Pertaining to Safety

- 15.1. The City has the right to suspend work on the Project on prior notice to Metrolinx and Project Co if the City has reason to believe that the work being performed on the Project materially negatively impacts the following City services: fire, emergency medical services and police or if public safety is at risk. Suspension will be in effect for such reasonable time as may be necessary to protect, remedy or restore the situation. The City agrees to work diligently with Metrolinx and Project Co to resolve the City's concerns giving rise to the suspension of work, having regard to scheduled completion date(s) and overall costs of applicable Project(s).

16. Public Communication

- 16.1. The Parties will work 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 in each case for matters pertaining to the Project. It will be appended as "Schedule I", (Communications Protocol) to this Agreement.

17. Governance and Dispute Resolution

- 17.1. The Parties will establish and maintain a Project Steering Committee and an Executive Committee to oversee implementation of this Agreement and the Project and the commitments contained herein.
- 17.2. The Parties will meet to determine the composition of the Project Steering Committee and the Executive Committee, the number and frequency of meetings, and other matters that deal with the composition and the work of the Committees. All decisions of the Project Steering Committee and the Executive Committee must be unanimous.
- 17.3. In the event that a matter or dispute arises between the Parties that cannot be resolved at the project level such matter or dispute will immediately be escalated to the Project Steering Committee for resolution in accordance with the terms and protocols established. If the Project Steering Committee is unable to resolve the matter or dispute within the timelines set out in its protocol, the Steering Committee shall refer the matter or dispute to the Executive Committee for resolution in accordance with the terms set out in its protocol. If a resolution is achieved in respect of a matter or dispute by either the Project Steering Committee or the Executive Committee, as the case may be, the Parties will, and will instruct their staff, to take the necessary actions and steps to implement the

resolution, including entering into any further agreements or seeking any additional approvals as may be required to give effect to such resolution.

- 17.4. If the Project Steering Committee and the Executive Committee are unable to resolve a matter or a dispute, the Parties will have all the rights available to them in this Agreement and at law with respect to such matter or dispute.
- 17.5. No action or failure to act by a Party shall constitute a waiver by such Party of a matter or dispute nor shall any such action or failure to act constitute an approval or acquiescence in respect of a matter or dispute except as agreed to in writing.
- 17.6. The Parties agree that timely resolution of any dispute is mutually beneficial and will accordingly act expeditiously and adhere to timelines and limits that may be agreed to in the protocol governing the Committees. In respect of disputes that may require expedited resolution, the Parties hereby agree to work collaboratively to agree upon provisions applicable to waiving certain steps in order to achieve such expedited resolution.
- 17.7. Metrolinx may proceed at its own risk and in its discretion with construction prior to resolution of a dispute, including disputes pertaining to compliance with PSOS and Basic Standard.
- 17.8. The Parties will work together agree upon and set out the provisions pertaining to the resolution of disputes in a protocol. If agreed to such protocol will be appended as "Schedule J", (Dispute Resolution Protocol) to this Agreement.
- 17.9. The protocols and procedures established by the Project Steering Committee and the Executive Committee when finalized will be appended as "Schedule K", (Governance Protocol) to this Agreement.

18. Confidentiality

- 18.1. 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.
- 18.2. 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.
- 18.3. 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.

- 18.4. The provisions of this Section shall survive termination of this Agreement and remain in full force and effect.
- 18.5. The Parties acknowledge and agree that:
- (i) they are subject to access and privacy legislation, including, in the case of MTO and 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 required by Applicable Laws, but will not otherwise do so in contravention of this Agreement.
- 18.6. The Parties acknowledge and agree that Hamilton may make this Agreement and the draft 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.

19. General Provisions

- 19.1. Notices: Any notice or other communication with respect to this Agreement shall be effectively given if delivered or sent by registered mail or email addressed:

- (i) in the case of Metrolinx to:

Chief Operating Officer
97 Front Street
Toronto, ON
Email: Steve.Levene@metrolinx.com

with a copy to:

Chief Legal Officer
97 Front Street
Toronto, ON
Email: Heather.Platt@metrolinx.com

- (ii) in the case of the City to:

City Clerk
City of Hamilton, City Hall
71 Main Street West
Hamilton, ON
L8P 4Y5
Email: clerk@hamilton.ca

with a copy to:

General Manager, Planning and Economic Development
City of Hamilton, City Hall
71 Main Street West
Hamilton, ON
L8P 4Y5
Email: Jason.Thorne@hamilton.ca

(iii) in the case of MTO

Associate Deputy Minister, Policy, Planning and Agency Relations
College Park, 30th Floor Suite 3000
777 Bay Street
Toronto, ON
M7A 2J8
Email: vinay.sharda@ontario.ca

with a copy to:

Assistant Deputy Minister, Agency Oversight and Partnerships Division
College Park, 30th Floor Suite 3000
777 Bay Street
Toronto, ON
M7A 2J8
Email: james.nowlan@ontario.ca

or to such other address or individual as Metrolinx, the City or MTO, as the case may be, may from time to time specify to the other in writing. Any notice that is delivered will be deemed to have been received if sent by email, one Business Day after the date upon which it was sent, and if sent by registered mail, four Business Days after the date upon which it was mailed.

- 19.2. Counterpart Execution and Delivery: This Agreement may be executed in counterpart and may be executed by electronic signature that is received by the Parties in a file format acceptable to the Parties. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.
- 19.3. Liability: Nothing herein is intended to limit, alter or relieve any 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 stated herein and as may be stated in subsequent amendments or future agreements. Metrolinx will require Project Co to add the City as an additional insured on insurance policies that Project Co is required to maintain for the Project.
- 19.4. Entire Agreement: This Agreement is the entire agreement between the Parties in respect of the subject matter hereof applicable to the Project and supersedes

the existing memorandum of agreement signed between Metrolinx and the City on March 8, 2016, and all intervening and other agreements, communications, and discussions, verbal or written.


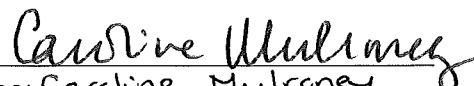
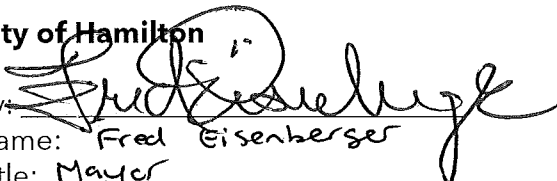
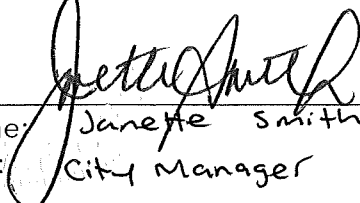
- 19.5. Time of the Essence: Time is of the essence of this Agreement.
- 19.6. Written Approvals: Any approval, authorization, consent, waiver or condition by a Party under this Agreement is effective only if given in writing and only in accordance with the terms and conditions stipulated in this Agreement in connection therewith. Any such approval, authorization, consent, waiver or condition is not deemed to be effective in respect of any similar or other act or omission unless given again in writing.
- 19.7. Successors and Assigns: This Agreement is binding upon and enures to the benefit of the successors and permitted assigns of the Parties. Neither Party may assign its interest in this Agreement without the written consent of the other Party, except that Metrolinx may, without the consent of the City, transfer or assign this Agreement to the Government of Ontario or to a Crown or to a third party acquiring Metrolinx's interest in the Project.
- 19.8. Amendment: The Parties may amend this Agreement from time to time only in writing.
- 19.9. Further Assurances: Each Party will do such act or thing and will enter into, execute and deliver such documents as may reasonably be required by the other Party in furtherance of and to give effect to the provisions of this Agreement.
- 19.10. Term and Termination: This Agreement will commence on the Effective Date and shall continue in force until the later of:
- (i) the date upon which the warranty period under all Project Agreements for the Project has expired, and
 - (ii) the date on which the last payment under this Agreement and any MIA for Additional City Infrastructure has been made by the City to Metrolinx, except as otherwise extended or terminated upon mutual agreement of the Parties (the "**Term**").

Following the Term, this Agreement shall automatically and without further action terminate and be of no further force or effect. Any termination shall not affect any obligations incurred prior to the effective date of termination or any other rights that the party may have arising out of any rights or obligations that are expressed to survive termination of this Agreement.

- 19.11. Governing Law: 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.

19.12. Binding Agreement: This Agreement is binding upon and enforceable against each of the Parties to it.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

<p>Metrolinx</p> <p>By:  _____ Name: Title:</p> <p>By: _____ Name: Title:</p> <p>I/We have the authority to bind the corporation</p>	<p>Ministry of Transportation</p> <p>By:  _____ Name: Caroline Mulroney Title: Minister of Transportation</p> <p>By: _____ Name: Title:</p> <p>I/We have the authority to bind the Province</p>
<p>City of Hamilton</p> <p>By:  _____ Name: Fred Eisenberger Title: Mayor</p> <p>By:  _____ Name: Janette Smith Title: City Manager</p> <p>I/We have the authority to bind the corporation</p>	

Schedules:

- Schedule A Train Operator Services Agreement
- Schedule B Municipal Funding Agreement
- Schedule C Commissioning and Acceptance Protocol
- Schedule D Fare and Non-Fare Revenue Matters
- Schedule E Staffing Agreement
- Schedule F Municipal Infrastructure Agreement
- Schedule G Real Estate Protocol
- Schedule H Permits, Licenses and Approvals
- Schedule I Communications Protocol

Schedule J Dispute Resolution Protocol
Schedule K Governance Protocol