

AGREEMENT IN PRINCIPLE

This Agreement in Principle dated for reference and effective as of the thirtieth day of November, 2016

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Transportation for the Province of Ontario

("the Province")

AND

THE CITY OF TORONTO

("the City")

WHEREAS the Province of Ontario and the City of Toronto support the need for investment in transit infrastructure in the City and the Greater Toronto and Hamilton Area (GTHA);

AND WHEREAS on November 28, 2012, the City, the TTC and Metrolinx entered into a Master Agreement governing the relationship between the parties and the obligations of each party in respect of the construction of various Light Rapid Transit lines (LRTs) within the City, including the Eglinton Crosstown LRT, the Finch West LRT, and the Sheppard East LRT;

AND WHEREAS the Province, with Metrolinx, has been engaged in discussions with the City and the TTC since 2015 on an approach to cost-sharing the implementation of major transit projects within the City which have shared provincial, regional and municipal objectives;

AND WHEREAS the Province has made a commitment of \$13.5 billion (2014\$) in capital construction costs related to the implementation of GO Regional Express Rail (RER), which will be owned, operated and delivered on behalf of the Province by Metrolinx;

AND WHEREAS the Province is required to meet Public Sector Accounting Board (PSAB) requirements in order to retain ownership and control of provincial assets;

AND WHEREAS the City has adopted a plan to implement SmartTrack, establishing six new stations located at Finch, Lawrence, Gerrard and Unilever on the Stouffville/Lakeshore East GO corridors and Liberty Village and St. Clair West on the Kitchener GO corridor, and a western extension of the Eglinton Crosstown LRT from its current terminus at Mount Dennis to Pearson Airport;

AND WHEREAS an estimated \$3.7B (2014\$) of the Province's commitment to GO RER supports key infrastructure for SmartTrack, including infrastructure on parts of the Kitchener, Stouffville/Lakeshore East and Union Station Rail Corridors required to support electrified rail service, operating in both directions between Bramalea GO station in the City of Brampton and Union Station, and between Unionville GO station in the City of Markham and Union Station;

AND WHEREAS it is necessary to set out the principles of the arrangement between the Province and the City- (collectively, “the Parties”), for the purpose of governing how the Parties shall work together to advance enhanced transit services, including entering into various further agreements along with Metrolinx and the Toronto Transit Commission;

NOW THEREFORE, this Agreement in Principle sets out the following core principles and responsibilities of the Parties.

1. Smart Track/RER Integration

1.1 Stage Gate Process

The City and Province agree to establish a "Stage Gate Process" for SmartTrack/GO RER integration that refers to a phased decision-making process, attached to this Agreement in Principle as Appendix A, which allows for reconsideration of commitments by City Council at various pre-defined stages of the SmartTrack Project, and which:

- (a) allows the City to commit to expenditures at the planning (current) and procurement Request for Quotations (RFQ) phases, as costs are refined and incurred through the various stages;
- (b) identifies decision points in the Project where the City and the Province reserve the right to assess whether City and Province’s conditions outlined through this Agreement in Principle have been addressed to the City and Province's satisfaction and to cancel or alter the Project scope, subject to the party who has cancelled or altered the Project or its scope making the other party whole for costs incurred to date, of which key City conditions (as referenced in other parts of this Agreement in Principle) include:
 - Section 6.9: mutual agreement on governance and dispute resolution
 - Section 1.3: further assessment of foundational station design requirements and validation of costs associated with the construction of the SmartTrack stations (Section 1.2) and SmartTrack operating and maintenance (Section 1.4)
 - Section 1.6: fare setting for SmartTrack will be combined with the broader regional fare integration framework and address the related request from the City in July 2016 City staff report EX16.1, titled “Developing Toronto's Transit Network Plan to 2031.”
 - Section 1.9: consideration of through service at Union Station
 - Section 1.11: treatment of federal funding to SmartTrack
 - Section 4.2: confirmation of federal funding for the Scarborough Subway
- (c) requires City Council to make decisions in a timely manner so as to not cause delays in Metrolinx's processes.

1.2 Capital Costs – New SmartTrack Stations

The Province is prepared to include six new stations – located at Finch, Lawrence, Gerrard and Unilever on the Stouffville/Lakeshore East GO corridors and Liberty Village and St. Clair West on the Kitchener GO corridor – into GO RER procurement and implementation provided the City agrees to fund sunk costs and additional costs associated with planning and design, capital construction (including land acquisition, utility relocation, etc.), financing and escalation costs, including Alternative Financing and Procurement (AFP), for the six new stations. The City will commit to fund the incremental planning, design, Environmental Assessment (EA) preparation and property acquisition, enabling works (including investigative and planning work for utility relocation), as well as AFP costs associated with the six new SmartTrack stations (the "Preliminary Costs") that are incurred up to Stage 5 in the Stage Gate Process, up to a maximum of \$22 million (the "Maximum").

If the Preliminary Costs incurred reach 90% of the Maximum, Metrolinx will notify the City and the City agrees to seek additional funding authority from City Council in a timely manner once it receives such notice from Metrolinx.

The City commits to contribute 100% of the SmartTrack capital, property acquisition, financing, AFP and escalation costs associated with the six new SmartTrack stations at mutually agreeable locations and any unforeseen capital investment identified during design or construction implementation required for SmartTrack stations, subject to a right to reconsider through the Stage Gate Process.

The City will be responsible for any additional infrastructure costs that are required for a service concept or frequency (e.g., through service at Union Station) that deviates from the planned service for GO RER.

The City is the party responsible for nominating and funding SmartTrack infrastructure and services.

1.3 Station Planning and Design

Foundational station design standards for SmartTrack stations will be determined by the Province/Metrolinx in consultation with the City / TTC, and will consider TTC operational needs and safety and City planning guidelines.

Any requested enhancements to SmartTrack stations beyond the agreed to foundational station design standard will be jointly determined by the Province/Metrolinx and the City/ TTC, and will be paid by the party that requests the enhancement (including private third parties).

1.4 Operating and Maintenance (O & M)

Operating and Maintenance (O&M) standards for SmartTrack services operating on the GO Transit network will be determined by the Province / Metrolinx, in consultation with the City. The City is responsible for the incremental O&M costs resulting from SmartTrack stations and any required incremental service operating on GO corridors. The Province/Metrolinx will work with the City to determine an appropriate methodology for determining the City's share of such incremental O&M costs, to be verified by an independent third party.

1.5 Revenue Sharing

Revenue sharing associated with farebox and non-farebox revenues for GO Transit service that may be connected to SmartTrack will be determined in tandem with the SmartTrack O&M cost-sharing formula.

1.6 Fare

Fare setting for SmartTrack service will be combined with the broader Provincial GO Transit regional fare integration framework, and address the fare related requests from the City made in July 2016 per City staff report EX16.1, titled “Developing Toronto's Transit Network Plan to 2031.”

1.7 Ownership and Lifecycle Maintenance

The Province as owner of the SmartTrack stations is responsible for lifecycle maintenance costs.

1.8 Property Acquisition

The City will provide funding to the Province for land acquisition of privately-held properties required for new stations, for which the related property acquisition work will be done by Metrolinx. Any severable air rights associated with these properties will be transferred to the City. Alternatively, if the air rights are not transferred to the City, the City will provide funding only in respect of the value of the properties associated with the stations and will not fund the value of any air rights associated with the land.

Where a private landowner/developer is contributing funding and/or land to Metrolinx for the construction of a station, municipal contributions for land acquisition will not be required.

For City-owned lands required for new stations, the City will retain the air rights and transfer the remainder of the property to Metrolinx at nominal value. If the City does not retain air rights, Metrolinx will pay the fair market value of the air rights for the transfer of the property.

Where the Province/Metrolinx currently owns land required for new stations, no land acquisition contributions will be required from the City, and any air rights associated with these properties will remain with Metrolinx, or as otherwise already deeded, if previously severed.

1.9 Service Concept

The SmartTrack service concept along existing GO Transit corridors is intended to operate at the planned GO RER-level service for those corridors. To the extent that SmartTrack stations result in increased demand for more SmartTrack service, the City is responsible for those additional costs. Metrolinx will continue to examine the potential for through service at Union Station as part of its service planning; however, determinations about service configuration will be based on operational considerations for the GO network. To the extent that the City requires through service at Union Station between the Stouffville and Kitchener GO corridors that does not align with the Province’s GO RER service plan, the Province will inform the City of any resulting capital infrastructure or operating costs required, which the City will consider as part of a future decision point in the Stage Gate process as outlined in Section 1.1.

1.10 Procurement and Project Delivery

Metrolinx will procure the SmartTrack stations within similar time frames as and possibly together with its GO RER procurement, contingent on City decision making and funding commitments, in accordance with the Stage Gate Process.

The Province and Metrolinx will consult with the City on procurement approaches for SmartTrack stations and the City will consider the procurement process at the identified stages of the Stage Gate Process but will not impede Provincial procurement decisions and project implementation timelines. Metrolinx will work with the City on development of the Project Specific Output Specifications (PSOS) related to the new SmartTrack stations.

1.11 Federal Contribution

The City will consult with the Province on the transfer and administration of federal funding the City receives for SmartTrack, in order to minimize administrative burden associated with the transfer and its disbursement by Metrolinx.

2. Regional Express Rail

2.1 GO Transit Growth Related Capital Costs

The City and the Province agreed that the City would pay \$20 million per year over a period of 10 years through 2016-2017 in respect of its GO Growth Related Capital Cost obligations under O. Reg. 446/04 by letter exchange between the then Deputy City Manager and Chief Financial Officer of the City and the Assistant Deputy Minister, Policy and Planning Division of the Ministry of Transportation, dated January 21, 2008 and February 21, 2008 respectively (the "Letter Agreements"). The City will make the outstanding payments in respect of its GO Transit Growth Related Capital Costs obligations under the Letter Agreement in the amount of \$60 million payable in three \$20 million instalments over three years starting in 2017.

The Province agrees such payment is deemed to be the City's contribution to the following capital expansion projects, and fully fulfills any City obligation to contribute to these capital GO expansion projects pursuant to the Letter Agreements:

- the two new GO RER stations located at Spadina and Bloor-Lansdowne
- upgrades to existing stations across the entire GO network in Toronto

Following the City's payments pursuant to the Letter Agreements, City obligations in respect of GO Transit Growth Related Capital will be fulfilled by the City's contribution to the SmartTrack Project for a period deemed to begin in 2017-2018 and ending 2024-2025. Should the City not provide the financial contributions to SmartTrack contemplated in this Agreement in Principle, the City's contribution towards GO Transit Growth Related Capital from 2017-2018 on will be governed by the terms of the Ontario Regulation 446/04, as amended, or any successor contribution framework, for municipal contributions to GO Transit Growth Related Capital.

2.2 Capital – Grade Separations – New and Existing

Metrolinx has identified five grade separations required for GO RER located at:

- Scarborough Golf Club Road
- Morningside Avenue
- Galloway Road
- Finch Avenue East
- Steeles Avenue East

The Province is responsible for 85% of the costs associated with the basic grade separation infrastructure for these five GO RER grade separations, and the City will contribute the remaining 15% of the basic grade separation costs. Consistent with CTA guidelines, enhancements will be 100% funded by authority seeking such enhancements, unless otherwise agreed.

Metrolinx and the City will develop implementation agreements for grade separations, including capital construction, operations and maintenance.

2.3 Utility Relocation

New and updated agreements for utility crossings will reflect the cost-sharing principles tentatively agreed by the City and Metrolinx, and put before City Council in March 2015.

Notwithstanding any existing agreements, all costs that are incurred for utility relocations or replacements on Metrolinx lands to implement the GO RER program (including alterations to utilities caused by GO electrification) will be apportioned between the City and Metrolinx based on the life-cycle depreciation formula cost sharing principles to be included in the updated utility agreements referred to above.

3. Metrolinx Light Rail Transit Projects

3.1 Capital Costs – Eglinton West LRT Extension (SmartTrack)

The City is responsible for the costs associated with the portion of the western extension of the Eglinton Crosstown LRT, which extension is deemed by the City and the Province to be part of the SmartTrack Project. The City will commit to full funding towards the planning, design, property acquisition, enabling works (including investigative and planning work for utility relocation), as well as AFP costs and EA preparation costs associated with the Eglinton West LRT Extension (the "Preliminary Costs") that are incurred up to Stage 5 in the Stage Gate decision making process outlined in Section 1.1. up to a maximum of \$51 million (the "LRT Maximum").

If the Preliminary Costs incurred reach 90% of the LRT Maximum, Metrolinx will notify the City and the City agrees to seek additional funding authority from City Council in a timely manner once it receives such notice from Metrolinx

City will contribute 100% of the costs of the property acquisition, utility relocation, capital construction (including deferred capital payments to the end of the AFP concession period) financing and escalation costs associated with the extension of the Eglinton LRT to the Renforth gateway, subject to Toronto Council's right to reconsider through the Stage Gate Process, per Section 1.1.

The City will also work with Metrolinx to continue to advance the portion of the Eglinton West LRT project from the Renforth gateway to the Pearson Airport subject to a right to reconsider through the Stage Gate process, and the City of Mississauga, GTAA and/or a third party committing to the planning, design, AFP, capital, financing, and escalation costs associated with the extension of the LRT from Renforth Gateway to Pearson airport.

3.2 Operating and Maintenance Costs

Pursuant to the Master Agreement dated November 28, 2012, the TTC will operate the LRTs located in the City of Toronto on behalf of Metrolinx.

Metrolinx will continue to retain asset ownership and control of all LRTs in the City of Toronto, consistent with the Public Sector Accounting Board (PSAB) requirements, effective as of April 1, 2017.

The Province is responsible for the capital costs of:

- Eglinton Crosstown LRT
- Finch West LRT
- Sheppard East LRT

The Province is responsible for lifecycle maintenance costs for all provincially owned LRTs.

The City is responsible for the operating and regular (i.e., all non-lifecycle) maintenance costs of the:

- Eglinton Crosstown LRT
- Finch West LRT
- Sheppard East LRT
- Proposed Eglinton West LRT extension (within the City of Toronto)
- Proposed Eglinton East LRT extension

The City is responsible for the capital costs of:

- Proposed Eglinton West LRT extension (within the City of Toronto)
- Proposed Eglinton East LRT extension

The City and the TTC will set fares within a Metrolinx established range, in accordance with Metrolinx's requirements for asset ownership and control. The Metrolinx range will encompass fare structures of regional and TTC services.

The City/ TTC will retain LRT farebox revenue and non-farebox revenue, in order to recover all or a portion of the costs of operating the LRTs and TTC services, as a facilitation of payment for the TTC services.

The City/ TTC will establish service levels, in accordance with the predetermined services levels as set out by Metrolinx in the project agreement between Metrolinx and Project Co., as is the case with the Eglinton Crosstown LRT. Nothing in the establishment of service levels by the

City/ TTC is intended to derogate from or go beyond the terms of existing or future contracts with Project Co.

The principles set out in this Section 3.2 are in furtherance of and in addition to the provisions contained in Schedule G of the Master Agreement dated November 28, 2012 for the Implementation of the Toronto Light Rail Transit Program, between Metrolinx, the City, and the TTC. The Parties agree that the subsequent agreements contemplated in Schedule G shall be consistent with the principles set out in this Section 3.2.

4. Scarborough Subway Extension

4.1 Provincial contribution to Scarborough Subway Extension Capital Costs

The provincial contribution to the Scarborough Subway Extension (“SSE”) is \$1.48B (2010\$) less \$74.8M in sunk costs and any penalties associated with the cancellation of the original Scarborough LRT project.

4.2 Federal Contribution to SSE

Confirmation of Federal funding for the SSE is one of the City’s conditions set out in Section 1.1(b).

5. Other Transit Initiatives

5.1 Georgetown South Expansion Project Costs

Settlement of the City’s contributions towards the Georgetown South Expansion Project will be based on the terms of the tentative agreement reached between the City and Province, as set out in Appendix 1 of Attachment 6 to Item EX19.1 of the Executive Committee adopted by Council on November 8, 2016 titled Transit Network Plan Update and Financial Strategy.

New utility crossing agreements will be based on the principles set out in Appendix 2 of Attachment 6 to the above mentioned Item EX19.1.

The principles for future cost sharing for grade separations in Appendix 2 of Attachment 6 to the above mentioned Item EX19.1 shall apply only to those grade separations that were completed for the Georgetown South Expansion Project.

6. Implementation/General Issues

6.1 Implementation Timelines and Resources

The City shall provide feedback in a reasonable timeframe and to assist the Province/Metrolinx in navigating or seeking exemptions from municipal processes that unnecessarily delay project procurement and implementation.

The Province/Metrolinx shall also engage the City in a reasonable timeframe in the development of the procurement and other project documents related to SmartTrack.

6.2 Regional Engagement

The Parties recognize that SmartTrack extends beyond the boundaries of the City of Toronto and the City agrees to engage the affected municipalities with support from the Province and Metrolinx regarding elements of SmartTrack not located in the City of Toronto.

6.3 Public Consultation

The Province is the sole lead on consultation/engagement of the broader GO RER program. The City will support the Province/Metrolinx.

The City and the Province/Metrolinx shall develop mutually agreed upon content and timing for integrating public consultations and engagement on SmartTrack. The City agrees to provide the funding necessary to undertake these consultations.

6.4 Branding/Communications Strategy

The Province and the City will develop by mutual agreement a branding and communications strategy.

6.5 Payment Terms

The Parties will work toward achieving mutual agreement prior to Metrolinx issuing the RFQ, and Stage 5 of the City's Stage Gate Process for capital projects.

Costs, including costs incurred to-date, associated with SmartTrack are the responsibility of the City of Toronto. Mechanisms for payments by the City to the Province will be defined through individual agreements between the Parties.

6.6 Costs Estimates and Actuals

All cost estimates previously provided by the City and Metrolinx in respect of projects to be carried out under this Agreement in Principle are based on best available information; however, final contributions will be based on actual project costs as determined through procurement processes.

6.7 Escalation, AFP and Financial Costs

The City assumes full responsibility for any AFP and financing and escalation costs associated with capital costs for which it is responsible.

6.8 Agreement Implementation Timeline

Formal detailed agreements, consistent with the principles set out in this Agreement in Principle, including for planning and design processes, planning and capital contributions, operations and maintenance contributions, fare and non-fare revenues, settlement of costs for Georgetown South, and other agreements as required shall be established at a later date using established oversight committees to determine appropriate timelines for each component of this AIP.

6.9 Dispute Resolution

The Parties will establish (or utilize existing) executive oversight committee(s), and working groups to address issues and resolve disputes arising out of the planning, design, EA preparation, property acquisition and AFP preparation work for SmartTrack.

The committee(s) will be supported by appropriate technical, financial and legal staff, and will be responsible for:

- Establishing a new dispute resolution process to prioritize the identification and resolution of issues to ensure progress towards the finalization of final binding agreements on matters addressed above
- Establishing an escalation process to ensure issues that cannot be resolved in a timely manner are elevated to the appropriate decision makers in both the Province and the City.

6.10 Confidentiality

A Party providing information to another Party may identify the information as confidential, and the receiving Party shall, subject to applicable law, keep such information 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.

6.11 Freedom of Information

The Parties acknowledge and agree that: (i) they are subject to, as applicable, the *Freedom of Information and Protection of Privacy Act* (FIPPA), and the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), and (ii) they may be required to disclose information as set out in the Acts, but will not otherwise do so in contravention of this Agreement in Principle. In processing access requests, the Parties shall abide by the transfer provisions set out in Section 25 of FIPPA and Section 18 of MFIPPA.

6.12 Information Sharing

Subject to any legal limitations including any limitations under FIPPA and MFIPPA, the Parties shall exchange such information as is reasonably required for the design, construction and implementation of the projects described in this Agreement in Principle, including without limitation information required for the purposes of Section 1.3.

6.13 Notice

Any notice or communication required under this Agreement in Principle shall be delivered to the following officials:

Province:

Director of Transit Policy
Ministry of Transportation
Policy and Planning Division

777 Bay St., 30th Floor
Toronto, ON M7A 2J8

City:

Executive Director
Strategic & Corporate Policy Division
City of Toronto
100 Queen Street West,
11th Floor East Tower
Toronto, ON M5H 2N2

6.14 Agreement in Principle Binding

This Agreement in Principle is binding according to its terms provided that the obligations of the City are conditional, as applicable, on the Stage Gate Process, and the obligations of the Province are conditional, as applicable, on there being an appropriation of moneys by the Ontario Legislature sufficient to satisfy the financial obligations hereby assumed by the Province, and on any other legislative, regulatory or other approvals or amendments required by the Province to implement the provisions of this Agreement in Principle.

6.15 Counterparts

This Agreement may be executed in one or more counterparts and by facsimile or e-mail signatures (PDF or other image format), each of which when so executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[Signature page follows]

Executed by the Parties on the dates written below.

**HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO, as represented by
the Minister of Transportation**

By: _____

Name: Stephen Rhodes

Title: Deputy Minister

Date: _____

THE CITY OF TORONTO

By: _____

Name: Peter Wallace

Title: City Manager

Date: _____

APPENDIX A – STAGE GATE PROCESS

