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The Regional Municipality of Durham Report

To: Committee of the Whole
From: Commissioners of Planning and Economic Development, Finance, and Works
Report: #2024-COW-20
Date: June 12, 2024

Subject:

Municipal Infrastructure Agreement with Metrolinx for the Extension of the Rail Service to Bowmanville

Recommendations:

That the Committee of the Whole recommends to Regional Council:

A) That Council approve a Municipal Infrastructure Agreement with Metrolinx for the construction of a new 600-millimetre watermain crossing of the Canadian Pacific Kansas City rail line at Albert Street to replace the existing 300-millimetre watermain crossing at Simcoe Street (Regional Road 2) in the City of Oshawa, in the general form and content as provided in Attachment #1;

B) That financing be provided from the following sources:

Metrolinx Share	<u>\$5,100,000</u>
Total Metrolinx Share	<u>\$5,100,000</u>

Region Share

2024 Water Supply System Capital Budget

Item #29 Replacement of watermains in conjunction with the Metrolinx Toronto East Rail Corridor Expansion to Bowmanville (Project ID: D2222)

User Rate	\$445,300
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Total Regional Share	<u>445,300</u>
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Total Project Financing	<u>\$5,545,300</u>
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- C) That the standard requirement for a letter of credit as security for the Municipal Infrastructure Agreement for 100 per cent of the cost of the Regional Municipality of Durham works be waived; and
- D) That the Regional Chair and Clerk be authorized to execute any necessary documents or agreements required.
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Report:

1. Purpose

- 1.1 The purpose of this report is to seek Regional Council approval to enter into a Municipal Infrastructure Agreement (MIA) with Metrolinx, including cost sharing, for the early works associated with the Bowmanville GO East Rail Extension, specifically the replacement of the existing 300 millimetre (mm) watermain crossing under the Canadian Pacific Kansas City (CPKC) rail line at Simcoe Street (Regional Road 2) with a 600 mm watermain crossing at Albert Street in the City of Oshawa.

2. Background

- 2.1 On December 7, 2017, Metrolinx awarded a contract to Stantec to provide technical advisory, design, and construction support services for the Lakeshore GO East Extension to Bowmanville. The Technical Advisor designed the rail extension to approximately 50 per cent, in anticipation of awarding a Construction Manager at Risk contract to refine and bring the rail extension to 100 per cent design and price for construction.
- 2.2 On June 15, 2023, Metrolinx awarded the rail extension Construction Manager at Risk (CMAR) contract to Bowmanville Construction Partners, which is a general partnership between Ledcor CMI Ltd. and Dragados Canada Inc. This consortium will advance the rail extension to 100 per cent design for Metrolinx and will be the preferred contractor to build the rail extension. The CMAR has designed the rail corridor extension to 70 per cent design, which continues to advance quickly.
- 2.3 As part of the CMAR contract, Metrolinx is commencing the work required to extend rail service to Bowmanville. Many Regional roads, storm sewers, sanitary sewers, and watermains cross the rail line and will be impacted by the proposed construction required to facilitate this expanded rail service.

- 2.4 At many of these crossings, Metrolinx will be required to install, relocate, remove, reinstate, protect, restore, build or rebuild infrastructure and assets owned by the Region.
- 2.5 The Regional Municipality of Durham's (Region) standard procedure for facilitating construction of Regional services by a third party such as Metrolinx is to enter into a servicing agreement with the owner of the benefiting lands. In this case, Metrolinx recommends a similar approach using a Municipal Infrastructure Agreement (MIA).
- 2.6 Staff have been negotiating the terms of this agreement over the past few months. The recommended general form of the agreement can be found in Attachment #1. The intent is to use this format for all works required by Metrolinx. However, the only design sufficiently advanced to recommend to Council is the watermain early work proposed at Simcoe Street (Regional Road 2) and Albert Street in the City of Oshawa. Construction is intended to commence in August of 2024.
- 2.7 A future report(s) will be provided to Council to address the remainder of the works required to be completed by Metrolinx, once the design has advanced sufficiently to provide reliable cost estimates.
- 2.8 The other works for which Regional cost sharing is anticipated but are not included in the MIA are the Region-requested rehabilitations of five (5) overhead bridges that Metrolinx will modify as part of their project. These bridges are located on Stevenson Road (Regional Road 53), Park Road (Regional Road 54), Ritson Road (Regional Road 16), and Harmony Road (Regional Road 33) in the City of Oshawa, and Courtice Road (Regional Road 34) in the Municipality of Clarington.

3. Works Included in the Municipal Infrastructure Agreement

- 3.1 Part of the early works required by Metrolinx is to replace the Simcoe Street (Regional Road 2) bridge over the CPKC rail line. A 300 mm watermain exists within this structure and must be decommissioned before the removal of the existing bridge. The preferred location to replace the function of this watermain is Albert Street, one block east of Simcoe Street.
- 3.2 Due to the design and construction methodology being used at the Albert Street crossing, the use of concrete pressure pipe (CPP) is required. The smallest available size of CPP is a 400 mm diameter, which will be considered equivalent to the existing 300 mm watermain being replaced.

- 3.3 The existing watermain was constructed in 1905 and is a candidate for rehabilitation works in the near future. Regional staff estimated the rehabilitation work to cost \$445,300, including HST. Staff consider it reasonable to cost-share on the replacement watermain for this amount. This amount is a fixed contribution and will not vary based on the actual costs of the project.
- 3.4 Metrolinx is also willing to upsize this watermain from 400 mm diameter to 600 mm diameter at their cost. Doing so allows them the flexibility of abandoning an existing 450 mm diameter watermain crossing at Front Street, located one street east of Albert Street, which is operationally feasible for the Region of Durham and has the potential for overall cost savings for Metrolinx.

4. Terms of the Municipal Infrastructure Agreement

- 4.1 The draft MIA is included in Attachment 1. The Region's Legal Department and Metrolinx's Legal Representatives are drafting the final details of the MIA; however, no substantive changes will be made to the attached draft agreement.
- 4.2 All projects to be constructed through this format of agreement will either be Regional Infrastructure Works, designed, constructed, and funded by Metrolinx, or Shared Infrastructure Works, designed and constructed by Metrolinx and funded by both parties in the proportions provided in Schedule B of the agreement.
- 4.3 The draft MIA includes mechanisms for both the Region and Metrolinx to add works to the project, should the need arise. Additional works requested by the Region, which Metrolinx does not require, would need to be funded by the Region. No such additional works are anticipated for the subject works addressed by this report.
- 4.4 Engineering design drawings, submittals, and schedules for work on Regional infrastructure will be provided to the Region for approval, and such approval shall not be unreasonably withheld. The Region agrees to expedite its review of such engineering drawings, submittals, and schedules upon request by Metrolinx, acting reasonably.
- 4.5 Metrolinx agrees to acquire any lands required for Regional infrastructure resulting from their work and transfer the lands to the Region at no cost for regional infrastructure works and in keeping with the cost-sharing terms contained in Appendix B of the MIA for shared infrastructure works. Regional contributions toward land costs is not anticipated for the subject works addressed by this report.

- 4.6 Metrolinx will provide the Region access to all construction sites to allow necessary inspections and, if required, to perform emergency repairs.
- 4.7 Metrolinx will carry appropriate insurance and include the Region as an additional insured party. Indemnification of the Region will be provided through Metrolinx's contractor.
- 4.8 The agreement also contains a dispute resolution process should disputes arise between the Region and Metrolinx.
- 4.9 If this construction of Regional services followed a standard process through a servicing agreement, the Region would require a letter of credit equal to 100 per cent of the cost of the Regional works. As Metrolinx is a provincial agency, they cannot and will not provide a letter of credit against non-performance of the works.

5. Financing of the Works in the First MIA

- 5.1 Financing be provided from the following sources:

<u>Metrolinx Share</u>	\$5,100,000
Total Metrolinx Share	<u>\$5,100,000</u>

Region Share

2024 Water Supply System Capital Budget

Item No. 29 Replacement of watermains in conjunction with the Metrolinx Toronto East Rail Corridor expansion to Bowmanville (Project ID: D2222)

User Rate	<u>\$445,300</u>
Total Regional Share	\$445,300
Total Project Financing	<u>\$5,545,300</u>

6. Previous Reports and Decisions

- 6.1 On June 12, 2019, Committee of the Whole considered [Report #2019-COW-19](#), "GO East Extension Update and Transit Oriented Development (TOD) Evaluation", which included information on the Metrolinx Market Driven Strategy. Under the strategy, the province advised that it would no longer fund new GO stations and instead would rely on third-party funding for GO stations. The strategy highlighted the importance of planning for transit-oriented communities by ensuring land use

planning, economic development and revitalization opportunities offered by the stations were fundamental considerations when evaluating rail alignment options.

- 6.2 On November 13, 2019, Committee of the Whole considered [Report #2019-COW-26](#), “Advancing Rapid Transit Implementation and Transit Oriented Development in Durham Region”, which not only reaffirmed the Region’s commitment to the extension but further elevated its importance by accelerating the Municipal Comprehensive Review to support station implementation and establish a TOD office to support implementation efforts. On November 27, 2019, Council resolved:
- a) “That Metrolinx be advised that Durham Region supports the extension of all-day GO train service along the Lakeshore East line, including new stations at Thornton’s Corners, Central Oshawa, Courtice and Central Bowmanville.
 - b) That Regional Planning staff be directed to accelerate the review and development of policies, including delineations and density targets for Major Transit Station Areas under “Envision Durham.”
 - c) That a Rapid Transit Implementation/Transit Oriented Development Office (RT-TOD Office) be established for Durham Region.”
- 6.3 On December 14, 2022, Committee of the Whole considered [Report #2022-COW-30](#), “Update on the Approval of the Lakeshore East GO Extension to Bowmanville.” This report included details on the provincial budget approval in August 2022, including the extension to Bowmanville, the preliminary design business case details, Metrolinx RFP, and the scope of work.

7. Relationship to Strategic Plan

- 7.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:
- a) Goal 1: Environmental Sustainability: Objective 1.5: Expand sustainable and active transportation.
 - b) Goal 3 Economic Prosperity: Objective 3.3: Enhance communication and transportation networks to better connect people and move goods more effectively.

8. Conclusion

- 8.1 Metrolinx is commencing construction of the GO East Rail Extension to Bowmanville. In lieu of a typical servicing agreement with the Regional Municipality of Durham, Metrolinx is suggesting a Municipal Infrastructure Agreement be executed between the Regional Municipality of Durham and Metrolinx to allow them to install, relocate, remove, reinstate, protect, restore, build, or rebuild infrastructure and assets owned by the Region as required by their construction project.
- 8.2 Staff have been negotiating the terms of this agreement over the past few months. The recommended general form of the agreement can be found in Attachment #1. The Regional Municipality of Durham's Legal Department and Metrolinx Legal Representatives are drafting the final details of the Municipal Infrastructure Agreement; however, no substantive changes will be made to the draft agreement.
- 8.3 The only design sufficiently advanced to recommend to Council is the early watermain work proposed at Simcoe Street (Regional Road 2) and Albert Street in the City of Oshawa. This work is intended to commence in August of 2024. It is recommended that the Regional Municipality of Durham enter into the Municipal Infrastructure Agreement for these early works only.
- 8.4 Future works required to be completed by Metrolinx will be the subject of future reports and future MIAs, using the same agreement format.
- 8.5 This report has been reviewed by Legal Services – Office of the CAO.
- 8.6 For additional information, please contact Heather Finlay, Acting Manager, Transit Oriented Development at 905-668-7711, extension 2561.

9. Attachment

Attachment #1 Draft Municipal Infrastructure Agreement

Respectfully submitted,

Original signed by:

Brian Bridgeman, MCIP, RPP, PLE
Commissioner of Planning and
Economic Development

Original signed by:

Nancy Taylor, CPA, CA
Commissioner of Finance/Treasurer

Original signed by:

Ramesh Jagannathan, M.B.A., M.Eng., P.Eng., P.T.O.E.
Commissioner of Works

Recommended for Presentation to Committee

Original signed by:

Elaine Baxter-Trahair
Chief Administrative Officer

MUNICIPAL INFRASTRUCTURE AGREEMENT

Dated this _____ day of _____, 2024

Between

THE REGIONAL MUNICIPALITY OF DURHAM
(the "Region")

and

METROLINX
("Metrolinx")

(together the "Parties")

RECITALS

WHEREAS:

- A. Metrolinx has or will retain a **design consultant and the construction manager** (collectively "**Project Co**") to **design and construct the Bowmanville Extension** project (the "**Project**") pursuant to the project agreement for the Project (as amended from time to time, the "**Project Agreement**");
- B. In constructing the Project, Metrolinx is required to relocate, reconstruct, and/or otherwise impact existing Regional infrastructure, which is only required because of the Project;
- C. The Region may request Metrolinx to build Region Infrastructure Work, Shared Infrastructure Work and Additional Infrastructure Work in the course of constructing the Project, and the costs in connection therewith, including Incremental Costs or Variation Price, as applicable, will be paid by Metrolinx and the Region in accordance with the cost allocations set out in Schedule "B" to this Agreement; and
- D. The Region and Metrolinx have agreed to execute this Agreement with respect to the construction of Infrastructure Work.

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NOW THEREFORE, in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Definitions

- (a) Throughout this Agreement, unless inconsistent with the subject matter or context:

- (i) **“Acceptance”** means acceptance by the Region of Infrastructure Work, or such component thereof, as the case may be, for all purposes including, without limitation, transfer of ownership of entirely new Infrastructure Work, and all operational and maintenance responsibility over such Infrastructure Work, or component thereof, following Commissioning in accordance with Section 18 below, and **“Accept”** shall have a corresponding meaning.
- (ii) **“Additional Infrastructure Work”** means either or both of the following: (i) upgrades and changes to Region Infrastructure Work or Shared Infrastructure Work including from Basic Standard to the Region Standard, unless previously agreed to by both Parties, and (ii) construction of new infrastructure that is not Region Infrastructure Work or Shared Infrastructure Work, in each case requested by and constructed for the Region, at the Region’s expense and paid for in accordance with Schedule ‘B’ to this Agreement, and to be owned by the Region, and in each case any changes or modifications thereto that are requested by the Region, from time to time.
- (iii) **“Agreement”** means this Municipal Infrastructure Agreement and the schedules to this Agreement, together with all executed Scopes of Work, all executed Change Orders, and any other written amendment to this Agreement.
- (iv) **“Ancillary Costs”** means, (a) in respect of a Variation Enquiry: (i) in the case of Metrolinx, Metrolinx’s external consultant and technical advisor costs, and the costs payable for any independent third party review requested by the Region whether by a surveyor or other expert, all with a view to determine whether or not Metrolinx, in its sole discretion, will proceed with such Variation Enquiry, but for clarity does not include Metrolinx’s internal administration costs, and (ii) in the case of Project Co, the costs to determine the Variation Price; or (b) in respect of a Change requested by Metrolinx pursuant to Section 4 of this Agreement: Regional external consultant and technical advisor costs, and the costs payable for any independent third party review requested by Metrolinx whether by a surveyor or other expert, but for clarity does not include the Region’s internal administration costs.
- (v) **“Basic Standard”** means (i) the standards and guidelines pertaining to the design and construction (including rehabilitation and protection) of the Infrastructure Work which are available upon request to engineers and architects licensed to practice in the Province of Ontario and which will be applied on a “like for like” basis with respect to function, size, capacity and location, and (ii) municipal laws and those federal and provincial laws, rules and regulations applicable to and enforceable against the Region including the Design and Construction Specifications for Regional Services.
- (vi) **“Business Day”** means a day other than a Saturday, Sunday or statutory or designated holiday that is observed in the Region of Durham.
- (vii) **“Change”** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Infrastructure Work.
- (viii) **“Change Order”** means a written amendment executed by the Region and Metrolinx to any Infrastructure Work described in Schedule “B” to this Agreement that is substantially in the form attached as Schedule “C”, and that sets out a description of the Change, the method of adjustment or the amount of the adjustment in the Estimated Cost as applicable, and the resulting change to the works schedule for the

Infrastructure Work, including completion time.

- (ix) **“Commissioning”** means the process of achieving and verifying the functional and operational criteria of Infrastructure Work and of systematically bringing Infrastructure Work into an operational mode as required to be fully operational, and **“Commissioned”** has a corresponding meaning.
- “Critical Non-Conformance”** means any defect or deficiency in construction, in each case pertaining to Infrastructure Work that (i) if not immediately corrected, will reasonably be expected to lead to Project Co being unable to satisfy the requirements for Acceptance, or (ii) by its continued existence or through the process of rectification, will reasonably be expected to create a serious threat to the health, safety or security of persons or the public or to an essential service.
- (x) **“Estimated Cost”** has the meaning given in Section 3.1 of Schedule “B” to this Agreement.
- (xi) **“Incremental Costs”** means (i) the cost of Additional Infrastructure Work undertaken by Metrolinx as part of a Project that is in excess of the cost otherwise payable by Metrolinx for work on the Project.
- (xii) **“Infrastructure Work”** means all work required for Region Infrastructure Work, Shared Infrastructure Work and Additional Infrastructure Work that is agreed to pursuant to this Agreement.
- (xiii) **“Milestone Payment Date”** and **“Milestone Payment Dates”** has the meaning set out in Section 1.7 of Schedule “A” of this Agreement.
- (xiv) **“Non-Conformance”** means any deficiency or defect in construction, in each case pertaining to Infrastructure Work that does not conform to the specifications set out in Schedule “B”.
- (xv) **“Region Infrastructure Work”** means the work to be undertaken and built by and at the expense of Metrolinx unless specifically stated herein to the contrary, which work is comprised of the installation, relocation, removal, reinstatement, protection, restoration, building or rebuilding of infrastructure and assets owned by the Region that will be impacted by the Project in order to accommodate and facilitate the Project and more specifically detailed in Schedule “B” to this Agreement.
- (xvi) **“Region Property”** means Region owned real property required to be acquired by Metrolinx in fee simple, by way of easement or by way of license, or otherwise whether permanent or temporary, in order to construct the Infrastructure Work.
- (xvii) **“Region Standard”** means the Basic Standard unless the Parties have agreed to a different standard, in which case it means the standard agreed to by the Region and Metrolinx which standard shall in all cases include all municipal laws and those federal and provincial laws applicable to and enforceable against the Region.
- (xviii) **“Scheduled Substantial Completion Date”** means [X] [NTD: To be inserted based on applicable Project], as such date may be amended from time to time in accordance with the Project Agreement.
- (xix) **“Scope of Work”** means a scope of work in the form attached as Schedule “B” to this Agreement for the completion of the Region Infrastructure Work, the Shared Infrastructure Work and the Additional Infrastructure Work that is agreed to and executed by the Parties in accordance with this Agreement, as amended by any

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applicable Change Order.

- (xx) **“Substantial Completion”** means the point at which all infrastructure that Project Co is required to construct under the Project Agreement has been completed in accordance with the Project Agreement and all Critical Non-Conformance has been rectified a certificate of substantial completion of the works is published pursuant to Section 32(1) of the Construction Act; and all commissioning requirements under the Project Agreement, other than in respect of minor deficiencies, have been satisfied in respect of the new infrastructure Project Co is constructing under the Project Agreement as a whole, as such definition may be amended from time to time in accordance with the Project Agreement.
- (xxi) **“Shared Infrastructure Work”** means the work to be undertaken and built by Metrolinx which work is comprised of the installation, relocation, removal, reinstatement, protection, restoration, building or rebuilding of infrastructure and assets owned by the Region that will be impacted by the Project in order to accommodate and facilitate the Project and more specifically detailed in Schedule “B” to this Agreement, which work shall be undertaken at the expense of both Metrolinx and the Region in the proportions set out in Schedule “B” to this Agreement.
- (xxii) **“Variation Enquiry”** means a written notice by the Region to Metrolinx requesting a Change which specifies the following:
 - (a) the particulars of such request for a Change in sufficient detail, and
 - (b) any contractual obligations binding on the Region that the Region requires Metrolinx to assume if it undertakes the Change,in each case to enable Metrolinx to assess the impact of the requested Change
- (xxiii) **“Variation Price”** means the cost payable by the Region to implement and include a Change requested by the Region in a Variation Enquiry as part of a Project as set out in Section 3 below. For clarity, Variation Price does not include costs that are otherwise payable by Metrolinx as part of a Project had the Change not been performed.
- (xxiv) **“Warranty Period”** means two years, or such other period of time as agreed to by the Parties, commencing on the date upon which the Region has Accepted the Infrastructure Work.

2. Infrastructure Work

- (a) This Agreement is not a covenant by Metrolinx to the Region to undertake or complete the Project, or any parts thereof. The decision to undertake, continue with, amend, expand, de-scope and/or complete the Project, or any parts thereof is and remains in the sole discretion of Metrolinx having regard to, among other things and without limitation, budget constraints. Metrolinx covenants that it will complete any Infrastructure Work commenced by it prior to handing such Infrastructure Work over to the Region in accordance with this Agreement.
- (b) Subject to Section 2 (a) above, the Parties agree that Metrolinx will cause Project Co to complete the (i) Region Infrastructure Work, the (ii) Shared Infrastructure Work and (iii) the Additional Infrastructure Work set out in Schedule “B” to this Agreement in accordance with the terms and conditions of this Agreement.

- (c) Metrolinx shall be responsible for the preparation of all plans and specifications with respect to the Infrastructure Work (collectively the "Plans"). Metrolinx shall provide on a timely basis copies of the Plans for the Infrastructure Work to the Region for review and comment, and shall cooperate fully with the Region to make reasonable changes to the Plans requested by the Region and shall adjust the scope of Infrastructure Work accordingly, to the extent such changes are commercially and technically practicable and do not have any negative impacts on the Project.
- (d) The Parties acknowledge that, as of the date of this Agreement, the Scope of Work set out in Schedule B is subject to further review and refining before it is fully settled upon by the Parties. The Parties agree that the Scope of Work in Schedule B may be revised by the Parties from time to time. Adjustments to the Scope of Work shall be evidenced through revisions to Schedule B signed by the representatives of each Party.

3. Requests for Changes by the Region

- (a) The Region may request a Change by delivering to Metrolinx a Variation Enquiry.
- (b) Upon receipt of a Variation Enquiry, Metrolinx may, in its sole discretion, either (a) agree to invoke the variation procedure set out in this Section 3 with a view to ascertaining the Variation Price, or (b) reject the Variation Enquiry. In making its determination, Metrolinx may have regard to, among other things, the following: (i) the impact of the Change on overall costs to Metrolinx, (ii) whether the Change will have any other adverse impacts on Metrolinx, (iii) whether or not Metrolinx is prepared to comply with the Region's contractual changes as set out in the Variation Enquiry, (iv) the impact of the Change on scheduling and on-time completion of the Project, (v) the disruption that may occur if Metrolinx does not implement the Change noted in the Variation Enquiry and the Region has to undertake such work on its own at a later date after completion of the relevant Project, and (vi) any rights Project Co has to refuse a variation in accordance the provisions of the applicable Project Agreement.
- (c) If Metrolinx rejects the Variation Enquiry, Metrolinx has no obligation to effect or endeavor to effect or implement the Changes requested by the Region in the Variation Enquiry and the Region has no right to require or request them.
- (d) Upon receipt of a Variation Enquiry from the Region, as a first step and prior to making a determination under Section 3(e) below, Metrolinx will undertake such due diligence as it deems necessary to make a determination as to whether it is prepared to proceed with the Variation Enquiry. In undertaking such due diligence, Metrolinx will incur Ancillary Costs. Metrolinx's Ancillary Costs will be payable by the Region regardless of whether Metrolinx determines it will proceed with the Variation Enquiry.
- (e) Upon receipt by the Region of Metrolinx's determination to proceed with the Variation Enquiry, the Region will have the number of days specified by Metrolinx, acting reasonably, to notify Metrolinx, in writing, either that (a) the Region does not wish to proceed further with the Variation Enquiry, or (b) it authorizes Metrolinx to obtain Project Co's Ancillary Costs and the Variation Price. In either case, the Region is responsible for the payment of Metrolinx's incurred Ancillary Costs.
- (f) Upon receipt of the Region's notification of authorization pursuant to Section 3(e) above, Metrolinx will ask Project Co to provide it with Project Co's Ancillary Costs and the Variation Price, and will promptly provide both Project Co's Ancillary Costs and the Variation Price to

the Region upon receipt. The Region will be responsible for payment of Project Co's Ancillary Costs regardless of whether or not (i) the amount of such costs have been provided to or approved by the Region, and (ii) the Region proceeds with the Change.

- (g) If the Region elects to proceed with the Change, the parties will execute a Change Order reflecting the terms of the Change, and the Region will pay the Variation Price and the Ancillary Costs in accordance with this Agreement. If the Region fails to deliver written notice within the time provided by Metrolinx acting reasonably or opts to not proceed with the Change, the Region will have no further rights with respect to such Variation Enquiry. The Region acknowledges and agrees that Metrolinx is under no obligation to commence any design or construction work in respect of any Change unless and until a Change Order in respect of such Change is executed by the Parties.
- (h) The Parties acknowledge and agree that there may be circumstances in which, pursuant to a Project Agreement, a Project Co is entitled to refuse to deliver its Ancillary Costs, a Variation Price or carry out a variation, in which case Metrolinx will not carry out the Region's request for a Change and will provide written notice thereof to the Region, and Metrolinx will not be liable to the Region in any way with respect to any such determination.
- (i) If the Region has provided written notice to Metrolinx that the Region elects to proceed with the Change, then, subject to Metrolinx's right to refuse to proceed with such Change,
 - (i) the Parties shall execute a Change Order describing the Change that Metrolinx shall ensure is consistent with the variation documentation agreed to by the parties under the Project Agreement, and such Change Order shall include a commitment for the Region to pay to Metrolinx the Ancillary Costs; and
 - (ii) following the step described in the immediate preceding subsection, Metrolinx shall cause Project Co to implement the Change as described in the Change Order, as applicable, and Metrolinx shall ensure that the Change is performed and completed by Project Co in accordance with the Project Agreement.
- (j) Subject to the provisions of this Agreement, unless and until,
 - (i) Metrolinx agrees to require Project Co to implement a Change; and
 - (ii) the Parties finalize and execute a Change Order,
 - (iii) Metrolinx shall have no obligation to undertake or to request Project Co to implement the requested Change as applicable.

4. Requests for Changes by Metrolinx

- (a) Metrolinx shall obtain the Region's prior written consent for any Changes that Metrolinx may require from time to time (and prior to Metrolinx causing Project Co to proceed with such Changes pursuant to the Project Agreement) to Additional Infrastructure Work in accordance with the following:
 - (i) Metrolinx shall provide to the Region a written request for the Change,

including a detailed description of and the reasons for the Change;

- (ii) The Region shall, no later than 10 Business Days, or on such other date as may be agreed by the Parties, following the written request for the Change described in Section [4\(a\)\(i\) above](#), provide written notice to Metrolinx indicating whether the Region disagrees with the proposed Change, or whether the Region agrees with the proposed Change and requires an estimate with respect to the proposed Change. In the event that the Region disagrees with the proposed Change within the prescribed timeline, the Parties agree to immediately refer the matter to the dispute resolution protocol (Schedule D attached). Metrolinx, acting reasonably, shall duly consider the Region's response, however Metrolinx reserves the right to proceed with the Change in which case the cost of the Change shall be borne by Metrolinx;
- (iii) if the Region requires an estimate with respect to the proposed Change, then Metrolinx shall provide such estimate at Metrolinx's sole cost and expense no later than 10 Business Days, or on such other date as may be agreed by the Parties, following receipt of an estimate from Project Co;
- (iv) at the Region's request, Metrolinx shall provide to the Region a copy of any updated estimates at Metrolinx's sole cost and expense, and a copy of any proposed, draft variation documentation (including any technical details of the proposed Change) that the Region requires to make an informed decision on the proposed Change and to the extent that such estimates or documentation have been prepared pursuant to the Project Agreement; and

no later than the number of days specified by Metrolinx, acting reasonably, following the receipt of the estimate or the updated estimate (whichever is later), the Region shall provide notice to Metrolinx with respect to whether or not the Region approves of the proposed Change. If the Region approves the proposed Change, then the Parties shall sign a Change Order that Metrolinx shall ensure is consistent with the variation documentation agreed to by the parties under the Project Agreement describing the Change.

5. General Provisions for Infrastructure Work

- (a) The following provisions shall apply to Infrastructure Work that has been agreed to by the Parties pursuant to this Agreement:
 - (i) with respect to Infrastructure Work, Schedule "B" attached hereto shall set out the scope of work, the deliverables, the standards applicable to the Infrastructure Work, each Party's contact, and the cost for the Infrastructure Work, including the Ancillary Costs;
 - (ii) The Region will provide its comments on the design and submittals pertaining to Infrastructure Work and connections for purposes of ascertaining conformance with: (a) Region Standards, (b) the Infrastructure Work specifications set out in Schedule "B" attached hereto, as amended or varied in accordance with this Agreement, and (c) all required permits including amendments to existing Regional crossing agreements with Canadian Pacific Kansas City Rail

- (iii) Metrolinx shall be responsible for causing Project Co to complete the Infrastructure Work,
 - (a) in a careful, professional, and worker-like manner, according to the industry standards of practice, care, skill and diligence to be expected of professionals and contractors in the performance of services similar to those called for in this Agreement;
 - (b) in accordance with this Agreement, and
 - (c) as more particularly detailed in the Scope of Work;
- (iv) unless stated expressly otherwise, Metrolinx shall ensure that all material used by Project Co in the Infrastructure Work, and parts thereof, are new and of high-grade quality throughout and shall be entirely suitable for the function and purpose intended and conditions of use described or known to Metrolinx;
- (v) without limiting the generality of any provision of this Agreement, the Parties confirm and agree that Metrolinx shall submit all designs and submittals that it receives from Project Co from time to time that pertain to Infrastructure Work for review and comment by the Region within 15 Business Days of receipt thereof, or on other such time limit as may be agreed by the Parties. The Region's comments shall be regarding whether or not the submittals are in compliance with the Scope of Work and Region Standard and in accordance with Section 5 (g) of this Agreement;
- (b) The person designated by Metrolinx as the individual to whom notice is to be provided (the "**Metrolinx Contact**") shall be responsible for keeping the person designated by the Region as the individual to whom notice is to be provided (the "**Region Contact**") regularly informed of the progress of the Infrastructure Work required under Schedule "B" attached hereto, as applicable, and shall provide immediate notice of all emergencies related to the Infrastructure Work and all significant developments. Progress updates should be reported on a quarterly basis, or as otherwise required by this Agreement, and reviewed by both Parties to confirm the accuracy of the content contained therein and to confirm that the Infrastructure Work is being completed and remains on budget and on schedule.
- (c) The Metrolinx Contact shall respond promptly to all reasonable requests by the Region for information and documentation relating to the Infrastructure Work completed pursuant to this Agreement.
- (d) All Infrastructure Work (unless otherwise agreed to in writing by the Parties) will be designed and constructed on property owned by the Region or in which the Region has or will have a sufficient right to use, operate and maintain the infrastructure and assets completed.
- (e) The Metrolinx Contracts shall provide a minimum of 10 Business Days advanced notice for final commissioning and testing of water supply infrastructure by Regional forces. Water supply infrastructure cannot be put into service and/or connected to existing water supply systems without commissioning and testing completed by Regional forces.
- (f) Metrolinx will provide or cause Project Co to provide or obtain a minimum 2-year standard warranty with respect to all Infrastructure Work, unless otherwise agreed to in writing by the Parties. The warranty period for the Infrastructure Work, or component thereof, shall

commence and terminate in accordance with the terms set out in Section 18 below.

- (g) Metrolinx shall obtain or shall cause Project Co to obtain all necessary permits required under Applicable Law from the relevant governmental authorities in order to construct the Infrastructure Work, including, but not limited to, approval of all engineering drawings, submittals, and schedules by the Region where applicable, which approval shall not be unreasonably withheld. The Region agrees to expedite its review of such engineering drawings upon request by Metrolinx acting reasonably.
- (h) Notwithstanding anything to the contrary in this Agreement, if at any time Metrolinx or Project Co applies for a permit, license or approval but does not meet all of the legal, statutory or regulatory requirements applicable to issuance of that permit, license or approval, then the Region is under no obligation to issue or provide that permit, license or approval to Metrolinx or Project Co, in which case (a) the Region acknowledges that Metrolinx may, in its discretion, proceed without such permit, license or approval, and (b) Metrolinx accepts and acknowledges (and agrees to similarly accept and acknowledge vis-à-vis third party claimants) that the Region has no responsibility and bears no liability for the work that Metrolinx has chosen to undertake without such permit, license or approval. Notwithstanding the above, Metrolinx acknowledges the need for approvals under the Safe Drinking Water Act and the Ontario Water Resources Act when required, because the Region cannot operate the Infrastructure Works without those approvals in place.

6. Changes in Circumstances – General

- (a) If a change in circumstances occurs that Metrolinx could not have reasonably anticipated and Metrolinx determines, in its sole discretion, acting reasonably, that such change in circumstances may cause the further implementation of any Infrastructure Work to have a material adverse impact on the Project, including Project scheduling, completion dates and completion costs, then Metrolinx may, in its sole discretion, acting reasonably, elect to remove such Infrastructure Work from the requirements of “Substantial Completion” for the Project, and require Project Co to complete the applicable Infrastructure Work following “Substantial Completion” of the Project. For the purposes of this Section 6, “material adverse impact on the Project” shall include any delay to Project Co in achieving the Scheduled Substantial Completion Date under the Project Agreement. The Parties will cooperate to develop a plan for completion of the applicable Infrastructure Work, with Metrolinx making reasonable efforts to minimize operational impacts to the Region.

7. Unknown Site Conditions

- (a) If the Region provides Metrolinx with any information, materials and/or documents in its possession pertaining to the conditions of any Region Property (collectively, the “**Information**”) relating to, without limitation, contamination, geological, archaeological, heritage, species-at-risk or unknown utilities (collectively, the “**Site Conditions**”) and confirms to Metrolinx that Metrolinx and the applicable proponents may rely on such Information, then Metrolinx is entitled to a Change Order arising out of any discrepancy between the Information provided by the Region to Metrolinx and the actual Site Conditions to the extent Metrolinx is responsible for costs associated with such discrepancy under the Project Agreement; and if Project Co discovers any Site Conditions which have not been disclosed or made available to Metrolinx, the applicable proponents or Project Co, and Metrolinx is responsible for costs associated with such Site Conditions, Metrolinx is entitled to a Change Order arising therefrom.

8. Payment and Liens

- (a) Subject to compliance with the *Construction Act* (Ontario), to the extent applicable, the Region shall pay Metrolinx for the Infrastructure Work in accordance with Schedule "A" to this Agreement.
- (b) Any lien or written notice of lien under the *Construction Act* (Ontario) received by the Region referable to Infrastructure Work performed by Project Co pursuant to this Agreement shall be the obligation of Metrolinx.

9. Work Schedules and Scheduled Substantial Completion Date

- (a) All Infrastructure Work shall proceed in accordance with a works schedule developed and updated by Project Co as set out in Schedule "B" attached hereto. And in keeping with Section 5 (g) of this Agreement.
- (b) Metrolinx shall promptly advise the Region of any changes to the Scheduled Substantial Completion Date under the Project Agreement or as set out in the attached Schedule "B".

10. Claims

- (a) Metrolinx shall give notice to the Region of any situation which, to its knowledge, may lead to a claim for additional payment (beyond the amount previously agreed to by the Parties) by the Region for any Infrastructure Work as soon as possible upon becoming aware of the situation but failure to do so shall not prejudice or waive Metrolinx's entitlement for reimbursement by the Region as provided for in this Agreement.
- (b) Metrolinx shall make reasonable efforts to submit detailed written particulars of any such claim within 10 working days of when Metrolinx following the date when Metrolinx has received such detailed particulars of the claim from Project Co. Metrolinx shall provide the written particulars no later than 60 days after completion of work set out in the attached Schedule "B" giving rise to such claim for additional payment by the Region. The particulars shall:
 - (i) identify the item or items in respect of which the claim for additional payment arises;
 - (ii) state the grounds, contractual or otherwise, upon which the claim for additional payment is made; and
 - (iii) include the records maintained by Metrolinx or Project Co supporting such claim for additional payment.
- (c) No later than 10 Business Days following receipt of Metrolinx's detailed written particulars for additional payment (or such other date as may be agreed by the Parties), the Region, acting reasonably, may request Metrolinx to submit any further and other particulars as the Region considers necessary to assess the claim. Metrolinx shall submit the requested information, if available, within 10 Business Days of receipt of such request or as soon as possible thereafter.

- (d) No later than 20 Business Days of receipt of the detailed written particulars, the Region or someone acting on its behalf shall advise Metrolinx, in writing, of the Region's opinion with regard to the validity of the claim. Metrolinx and the Region shall endeavour to resolve any dispute in accordance with the dispute resolution provisions under Section 18 of this Agreement, failing which each of the Region and Metrolinx shall have all rights otherwise available to it, contractually or at law.
- (e) The parties shall not be liable to one another for delay in completion of Infrastructure Work, provided that the parties have complied with the timing obligations set out in this Agreement. .
- (f) In the event an adjudication under the *Construction Act* (Ontario) between Metrolinx and the Region is properly commenced, nothing in this Section 10 shall amend or modify the adjudication provisions set out in Schedule "A" to this Agreement.

11. Lands

- (a) Subject to any applicable Scope of Work or Change Order, the Parties acknowledge and agree that utility locates or other site investigations that may be solely required to complete the Additional Infrastructure Work, other than those utility locates and site investigations that have already been conducted by Metrolinx or by the Region and provided to Metrolinx, as of the date of this Agreement, shall be conducted by Metrolinx at the Region's sole cost and expense. Upon the same terms, the cost and expenses for utility locates on Shared Infrastructure Work shall be apportioned between the Region and Metrolinx pro rata.
- (b) Metrolinx shall acquire any and all property, leasehold or right of way rights over all property required for the Infrastructure Work, and if the property is transferred to the Region prior to or during the course of the Infrastructure Work, the Region shall grant Metrolinx all access rights that Metrolinx may require to conduct or complete the Infrastructure Work. In such case the Region shall provide such access rights at no cost and on terms reasonably satisfactory to Metrolinx no less than 30 calendar days in advance of the estimated start of the Infrastructure Work or such other time as may be agreed upon by the Parties. If the Infrastructure Work is completed prior to the transfer to the Region, then the transfer shall take place at a time and in a manner agreed to in writing by both Parties.
- (c) As a result of the Project, Region infrastructure, utilities and/or other assets will be constructed and/or relocated by Metrolinx, and on or prior to the completion of the Project, Metrolinx will transfer to the Region all lands required for such Region infrastructure and assets (collectively, the "**Acquisition(s)**"), at no cost to the Region, subject to the provisions set out below:
 - (i) there must be Acceptance by the Region of each Acquisition;
 - (ii) Metrolinx will provide draft reference plan(s) identifying the land to be transferred to the Region for approval, will register the final reference plan(s) and will provide as-built drawings of the infrastructure; and

12. Connections and Utilities

- (a) To the extent that the Region is able to do so without resorting to litigation and to the extent that such agreements extend to utility relocations necessitated by reason of the Infrastructure Work, at Metrolinx's request, the Region will endeavor to exercise its rights under and to enforce any cost sharing or similar agreements that it has with third party utility companies requiring such utility companies to relocate or share the cost of relocation of utilities if required to do so by the Region to facilitate construction by or for the benefit of the Infrastructure Work.
- (b) Notwithstanding anything contained in this Agreement to the contrary, the Region will contribute to Metrolinx's costs of designing and building utility assets that replace Region utilities (sewers, water mains and related utility works, but does not include roadway assets, streetscape or other non-utility works) which must be relocated and replaced to facilitate construction of the Shared Infrastructure Work and the Additional Infrastructure Work in accordance with Schedule B. The cost attributable to the construction of such relocation and replacement works will be determined jointly by Metrolinx and the Region using expertise available to Metrolinx.
- (c) Prior to connecting or re-connecting sanitary sewers and watermains being installed under the terms of this Agreement to the existing Regional sanitary sewer and water supply systems, Metrolinx shall or shall cause Project Co to obtain approvals to connect from the Region. The Region shall not issue a approval to connect until the relevant Infrastructure Work is inspected by the Region and the Region confirms that the relevant Infrastructure Work has been constructed in accordance with this Agreement

13. Construction

- (a) Metrolinx shall ensure that Project Co is responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Infrastructure Work. Metrolinx shall ensure that Project Co provides or arranges to provide adequate labour, required professionals, equipment, and material to ensure the completion of the Infrastructure Work in accordance with this Agreement.
- (b) Metrolinx shall be responsible for ensuring that all portions of the Infrastructure Work are kept well, properly and efficiently drained during construction and until the Infrastructure Work is completed.
- (c) Metrolinx shall ensure that Project Co coordinates with the appropriate utility authorities to obtain the locates of all underground utility and service connections that are necessary to carry out the Infrastructure Work.
- (d) If any interruptions in the supply of utility services are required by reason of the Infrastructure Work, Metrolinx shall immediately inform the Region Contact, shall negotiate the terms of these interruptions with the respective utility owners and shall arrange such interruptions so as to create a minimum of interference to those affected. The incremental increase in cost of any interruptions, beyond what Metrolinx is responsible for paying to facilitate the construction of the Project, shall be included in the cost of the Infrastructure Work as set out in the attached Schedule "B".
- (e) Metrolinx shall be responsible for the clean-up and repair of all Regional and local roads, including boulevards, which become dirty or damaged as a result of the Infrastructure Work. Within 48 hours of written notification to Metrolinx by the Region, or within a time otherwise agreed to by the Parties, Metrolinx shall undertake or cause Project Co to

undertake such works as are necessary to clean-up or repair such roads. Metrolinx shall ensure that Project Co shall coordinate inspections of all Infrastructure Work with Regional staff including providing access for inspections.

14. Emergency Repairs

- (a) The Region may enter upon the project site at any time for the purpose of making emergency repairs to any assets owned by the Region. In such situations the Region shall not be deemed to have accepted any of the Infrastructure Work or assumed any liability in connection with the Infrastructure Work, save and except for liability resulting from the Region's actions and omissions in the performance of such emergency repairs. Access by the Region, its employees, or contractors to the project site shall be subject to compliance with Metrolinx and Project Co's access and safety policies, including without limitation any advance notice and flagging requirements.
- (b) The Region shall notify Metrolinx as soon as possible of any emergency repairs and no later than 24 hours of the Region becoming aware of such emergency.

15. Intellectual Property

- (a) To the extent that any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed by Metrolinx, Project Co or any of its subcontractors, or the Region to the exclusion of any other party in relation to the Infrastructure Work, the Region shall be the sole and exclusive owner of all right, title and interest in such materials, any intellectual property associated therewith (including moral rights) and any and all modifications thereto, without the payment of any additional compensation by the Region. Metrolinx shall itself, or shall cause Project Co to, at the request of the Region, execute such further agreements and cause Project Co's subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) Upon expiry or earlier termination of the Project Agreement, Metrolinx shall deliver, or cause Project Co to deliver, any and all of the materials described in Sections 15(a) and (b) above that are in the custody or possession of Metrolinx or Project Co, as applicable, to the Region.

16. Insurance

Before undertaking or permitting any construction activity (a) on the Project on Region Property, (b) pertaining to Infrastructure Work, or (c) which will impact Region assets and infrastructure, Metrolinx will ensure that either Metrolinx or Project Co obtain and maintain throughout the term of construction, at a minimum, and may extend to completion of nonconformities, including those covered by warranty, the following policies: (i) all-risks course of construction property insurance written in the joint names of the Contractor, Owner, Sub-contractors, and underwritten by an insurer licensed to conduct business in the Province of Ontario; (ii) wrap-up or commercial general liability for a limit of not less than \$10 million, including coverage for XCU (explosions, collapse, and underground), a product and completed-operations period of not less than 24 months and non-owned automobile liability insurance ; (iii) pollution liability insurance for a limit of not less than \$5 million. Coverage shall include bodily injury, property damage, clean-up and remediation costs.(iv) automobile liability insurance having an inclusive limit of \$5 million per occurrence for Third Party Liability, in respect of the use or operation of a vehicle owned or operated

by Metrolinx/and or its Contractor; and (v) WSIB and such other insurance as Metrolinx in its discretion or the law may deem necessary or appropriate from time to time. Notwithstanding the foregoing, Metrolinx will have the right to self-insure certain risks it considers appropriate instead of obtaining commercial insurance and any self-insured retentions or deductibles shall be the responsibility of Metrolinx. Any additional Coverage and terms of insurance will be determined by Metrolinx and will be consistent with the level of coverage and the terms applicable to policies generally obtained in accordance with good industry practice for comparable Projects. The Region will be provided with evidence of insurance coverage, will be noted as an additional insured on the Commercial General Liability or Wrap Up policy, and will be provided notice of policy cancellation.

17. Responsibility, Breach and Termination

- (a) Without limiting any other right or remedy the Region may have under applicable law, if,
 - (i) subject to Metrolinx exercising its rights as set out in this Agreement, Metrolinx has not completed the Infrastructure Work on or before the Scheduled Substantial Completion Date or such other scheduled date as may be expressly agreed to by the Parties and set out in the attached Schedule "B", subject to any changes to that date in accordance with this Agreement; or
 - (ii) Metrolinx commits a material breach of the requirements of this Agreement,

then the Region may notify Metrolinx of such breach, with a copy to the Metrolinx Contact, and shall set out the breach(es) to be remedied. Upon receipt of the notice, Metrolinx and the Region, each acting reasonably, shall confer to mutually agree upon the time within which the breach(es) will be remedied, the required course of action (including corrective, protective or maintenance works that may be required), and the schedule for same, having regard to concerns Metrolinx may identify in completing the Project on time and also having regard to the potential impact to Region services and operations and related works. For clarity, failure by Metrolinx to complete the Infrastructure Work on or before any deadline specified in this Agreement shall not constitute a "material breach of the requirements of this Agreement" pursuant to Section [17\(a\)\(ii\)](#) unless otherwise provided for in Schedule "B" attached hereto.

- (b) If Metrolinx does not commence the required course of action determined pursuant to Section [17\(a\)](#) within 30 Business Days following the date of the Region's notice of Metrolinx breach, or if Metrolinx does not cure the breach in an expeditious manner within a reasonable timeframe, given the nature of the breach, then the Region may, acting reasonably and without prejudice to any other right or remedy Metrolinx or the Region may have,

- (i) terminate Metrolinx's right to continue with all or any part of the Infrastructure Work, as applicable; or

- ~~(ii) complete the Infrastructure Work related to the breach; or address the situation as an Emergency Repair per section 14~~

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- (ii) terminate this Agreement,

in each case, by providing written notice to Metrolinx. Notwithstanding the foregoing, prior to the Region exercising any of its ~~termination~~ rights set out in this Section 17(b), the Parties shall submit the matter, including any claim for excess costs, to the dispute resolution process set out in Schedule D of this Agreement.

~~If the Region exercises any of its rights set out in Section 167(b), then Metrolinx shall pay the Region for (i) costs incurred by the Region with respect to any Infrastructure Work, or portions thereof, that has been completed by the Region up to the date of the termination, including costs of time by Regional staff reviewing documents and assisting with the Infrastructure Work, and (ii) excess costs beyond the original price incurred by the Region completing or correcting any partially completed Infrastructure Work on the Project. The Region's entitlement under this Section 1716(c) to payment for work performed is without prejudice to any other rights or remedies to which the Region may be entitled in law as a result of Metrolinx's breach.~~

- (c) Without limiting any other right or remedy that Metrolinx may have under applicable law, if:

- (i) the Region fails to pay Metrolinx for Infrastructure Work in accordance with this Agreement; or
- (ii) the Region commits a material breach of the requirements of this Agreement, then Metrolinx may notify the Region of such breach, with a copy to the Region Contact, and shall set out the breach(es) to be remedied. Upon receipt of the notice, Metrolinx and the Region, each acting reasonably, shall confer to mutually agree upon the time within which the breach(es) will be remedied and the schedule for same having regard to concerns Metrolinx may identify in completing the Project, the consequences identified by Metrolinx of the breach and the potential impact to Region services and operations and related works.

- (d) If the Region does not commence the required course of action determined pursuant to Section 17(d) within 30 ~~Business~~ Days following the date of Metrolinx's notice of the Region's breach, or if the Region does not cure the breach in an expeditious manner within a reasonable timeframe, given the nature of the breach, then Metrolinx may, in its sole discretion and without prejudice to any other right or remedy Metrolinx or the Region may have,

- (i) stop the applicable Infrastructure Work; or
- (ii) terminate the Agreement,

in each case, by providing written notice to the Region. Notwithstanding the foregoing, prior to Metrolinx exercising any of its termination rights set out in this Section 17(e), the Parties shall submit the matter, including any claim for integration costs, to the dispute resolution process set out in Section 20 of this Agreement.

- (e) If Metrolinx exercises any of its rights set out in Section 17(e), then the Region shall pay Metrolinx for: (i) costs incurred by Metrolinx with respect to any [Additional Infrastructure Work](#), or portions thereof, that has been completed by Metrolinx or Project Co up to the date of the termination, and (ii) costs incurred by Metrolinx and Project Co related to integrating any partially completed [Additional Infrastructure Work](#) into the Project. Metrolinx's entitlement under this Section 17(f) to payment for work performed for the Region is without prejudice to any other rights or remedies to which Metrolinx may be entitled in law as a result of the Region's breach.

18. Commissioning and Acceptance

- (a) Metrolinx shall ensure that the Infrastructure Work is Commissioned and handed over to the Region by Project Co in accordance with the Commissioning and acceptance process set out in the Project Agreement and that process shall include a final inspection by Regional staff and Metrolinx addressing any outstanding Non-Conformances which are not Critical Non-Conformances, both parties acting reasonably.
 - (i) Acceptance shall occur at Substantial Completion. The Warranty Period shall commence at Substantial Completion. Prior to the end of the Warranty Period shall include a final inspection by Regional staff and rectify all remaining Non-Conformances, both parties acting reasonably;
 - (ii) Metrolinx shall cause Project Co to correct any Non Conformances (other than those Non Conformances attributable to the Region's improper use) which appear during the Warranty Period and which are attributable to work on the Project.
 - (iii) Prior to completion of the Warranty Period, Metrolinx shall submit or cause Project Co to submit to the Region, completed in accordance with Regional standards, "as recorded" drawings to the satisfaction of the Region for the Infrastructure Work.

19. Application of the *Construction Act*

- (a) The Parties acknowledge and agree that the provisions set out in Schedule "A" to this Agreement pertaining to matters under the *Construction Act* (Ontario), including those relating to statutory prompt payment and adjudication, shall apply to the Parties in respect of the Infrastructure Work.

20. Dispute Resolution

- (a) Any and all disputes under this Agreement shall be resolved in accordance with the Dispute Resolution Protocol attached as Schedule "D" to this Agreement.

21. Indemnification

- (a) Metrolinx shall ensure that the Region is named as an indemnified party Project Agreement or relevant purchase order with Project Co in the same manner that Metrolinx is indemnified by Project Co.

22. General

- (a) In the event of any conflict or inconsistency between or among any provisions of this Agreement which cannot be reasonably reconciled, the order of precedence shall be, in descending order of priority:
- (i) Change Orders;
 - (ii) Schedule "B" attached hereto;
 - (iii) the main body of this Agreement; and
 - (iv) the remaining Schedules to this Agreement.
- (b) Any notice or demand to be given pursuant to this Agreement shall be duly and properly made and delivered to the Party for whom it is intended at the address as set out below, either personally, or by means of prepaid registered mail, and e-mail addressed to such Party as follows:
- (i) in the case of the Region, the Region contact identified in the applicable Scope of Work with a copy to:
The Regional Municipality of Durham
**605 Rosland Road East,
Whitby, Ontario
L1N 6A3**
Attention: Commissioner of Works
Email: Ramesh.Jagannathan@Durham.ca
 - (ii) in the case of Metrolinx, the Metrolinx contact identified in the applicable Scope of Work, as applicable, with a copy to:
Metrolinx
20 Bay Street, Suite 600
Toronto, ON, M5J 2W3

Attention:
Tina D'Ettorre
Manager Rail Corridor Extensions
437-427-0673

Email: tina.d'ettorre2@metrolinx.com

or such other addresses as one Party may from time to time notify the other Party in writing, and any demand or notice so made or given shall be deemed to have been duly and properly given and received on the next day on which it was personally delivered, or if mailed, then in the absence of any interruption in postal service in the Region of Durham affecting the delivery or handling thereof, on the day following three full Business Days following the date of mailing. A notice delivered by email which is transmitted prior to 5:00

p.m. on a Business Day shall be deemed to have been received by the recipient on that day or on the next Business Day if delivered after 5:00 p.m. or on a calendar day that is not a Business Day, provided in all cases that during or after the transmission of any notice by email no indication of failure of receipt is communicated to the sender.

- (c) Neither Party shall assign this Agreement without the prior written consent of the other Party.
- (d) Provided that Metrolinx has the right to prior notice in the Project Agreement, Metrolinx shall not substitute Project Co, its contractors, sub-contractors or suppliers for the Infrastructure Work without prior written notice to the Region. Nothing in this Agreement shall create a contractual relationship between Project Co and the Region.
- (e) The failure of either Party at any time to require, or a Party's decision not to require, performance by the other Party of any obligation under this Agreement shall not constitute a waiver by such Party to require full and complete performance of such obligation, or any other obligation under this Agreement and shall in no way affect such Party's rights thereafter to enforce such obligation.
- (f) No remedy herein conferred upon or reserved to a Party shall exclude any other remedy, but each remedy shall be cumulative and in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute.
- (g) This Agreement may be changed only by a written amendment signed by authorized representatives of both Parties.
- (h) If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such provision shall be deemed to be severable and all other provisions of this Agreement shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found invalid, void or unenforceable.
- (i) 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. If this Agreement is executed in counterparts, such counterparts shall together constitute a single agreement.
- (j) The Parties acknowledge and agree that this Agreement does not confer any benefit to any third party and no third party shall have any right of action against the Parties arising in any way solely as a result of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers.

THE REGIONAL MUNICIPALITY OF DURHAM

By: _____
Name:
Title: [POSITION]

I have authority to bind the corporation

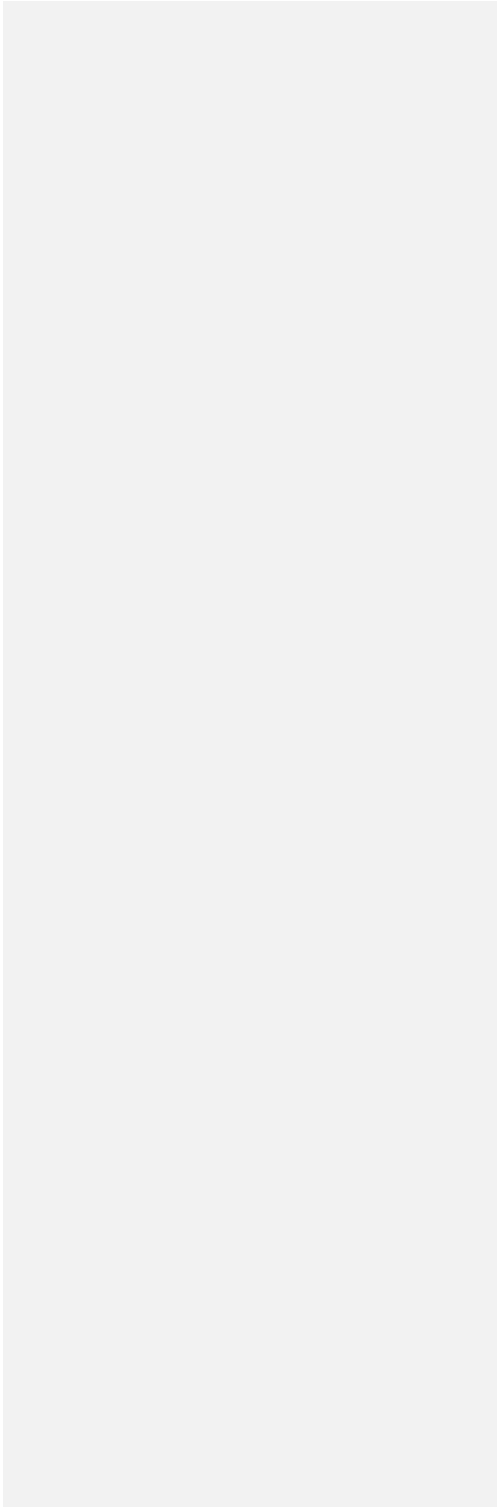
METROLINX

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation

DRAFT



Schedule "A"

to a Municipal Infrastructure Agreement between the Region and Metrolinx
dated _____, 20

1. PAYMENT

- 1.1 For the Infrastructure Work, the Region shall pay Metrolinx the actual costs incurred by Metrolinx as reasonably evidenced with supporting documentation in accordance with the applicable Milestone Payment Dates set out in Schedule B. Schedule "B" provides estimates of the costs of work as of the date of this Agreement.
- 1.2 Payments for all Infrastructure Work shall include full compensation as set out in the Project Agreement for all overhead, non-recoverable tax incurred by Metrolinx, labour, services, equipment and material required in its performance, including, but not limited to, hand tools, supplies and other incidentals.
- 1.3 Payment for all Infrastructure Work not specifically detailed as part of any one item and without specified details of payment shall be deemed to be included in the items with which it is associated.
- 1.4 For payment of costs and expenses associated with Ancillary Costs, Metrolinx shall submit to the Region invoices certified by Metrolinx.
- 1.5 Without limiting the generality of any other obligation in this Agreement, Metrolinx agrees it shall comply with all applicable requirements in the Construction Act (Ontario).
- 1.6 For payments in accordance with this Agreement for the Infrastructure Work, Metrolinx and the Region shall comply with the following procedures:
 - (a) Using the form attached as Appendix 1 to this Schedule "A", Metrolinx shall submit an invoice containing the following information, with all reasonable supporting documentation attached to the satisfaction of the Region, acting reasonably (each, a "**Proper Invoice**"):
 - (1) the name, telephone number, mailing address, and other contact information of the Metrolinx Contact;
 - (2) remittance payment information;
 - (3) Proper Invoice number;
 - (4) the date of the Proper Invoice and the Proper Invoice period during which the work was performed;

- (5) Region purchase order number, if made available to Metrolinx by the Region;
- (6) Region Contact's contact information for the Project;
- (7) a general description of the work;
- (8) the amount of the total cost of the work previously paid as of the Milestone Payment Date for the Project;
- (9) where the work is being performed on a unit-price or time-and-materials basis:
 - (i) a description of the work performed during the Proper Invoice period and a specific itemization with quantities, including Project Co's estimate of units and Metrolinx's estimate of units, where Project Co has been paid or will be paid by Metrolinx on the basis of Metrolinx's estimate of units;
 - (ii) the amount payable for the work performed during the Proper Invoice period with reasonable details and with costs reasonably broken down in accordance with the attached Schedule "B" for Agreed Infrastructure Work; and
 - (iii) Project Co's applicable subcontractors' daily work records (only to the extent made available to Metrolinx by Project Co in the ordinary course of payment administration on the Project);
- (10) where the work is being performed on a lump sum basis:
 - (i) percentage of work completed to date with reasonable details as to the various components included in the Proper Invoice, with costs reasonably broken down in accordance with the attached Schedule "B" for Infrastructure Work;
 - (ii) the total cost of the work, as agreed to by the Parties in accordance with this Agreement;
 - (iii) the amount payable for the work and changes in the work (as agreed to by the Parties in accordance with the Agreement) performed during the Proper Invoice period; and
 - (iv) the schedule of values (to the extent applicable);
- (11) evidence of Project Co's compliance with worker's compensation legislation including a WSIB clearance certificate;

- (12) a statutory declaration using the latest form of CCDC 9A - 2018 Statutory Declaration of Progress Payment Distribution by the Construction Contractor, confirming that all accounts of each subcontractor of the "Construction Contractor" have been paid in full by the Construction Contractor up to and including the latest progress payment received from Metrolinx. For the purposes of this section, "Construction Contractor" is the contractor(s) directly retained by Metrolinx for the work included in the Proper Invoice but if Metrolinx is using a P3 model of procurement then "Construction Contractor" is defined as a contractor (as that term is defined in the Construction Act (Ontario)) that Project Co has a direct agreement with for any work that is subject of the Proper Invoice;
- (13) list the basic statutory and other statutory holdbacks, and any holdbacks retained in accordance with Section [1.10](#) of this Schedule "A", each as a separate line item; and
- (14) Metrolinx's registration number for HST and list the total amount of HST separate from the total amount claimed in the Proper Invoice.

1.7 Metrolinx will submit a draft Proper Invoice to the Region on the specified milestones and/or dates set out in Schedule "B" (each, a "**Milestone Payment Date**" and, collectively, the "**Milestone Payment Dates**"). The draft Proper Invoice shall be submitted in the same format and with the same content as the Proper Invoice. The Region will review and provide Metrolinx with comments on the draft Proper Invoice within 15 calendar days of receipt of the draft Proper Invoice for the purpose of the Parties resolving any outstanding issues, where reasonably possible. Subject to Section [1.9 of this Schedule "A" below](#), Metrolinx will submit a Proper Invoice in respect of such draft Proper Invoice any time 30 calendar days after submission of the draft Proper Invoice.

1.8 In respect of any disputes that arise out of or in connection with the draft Proper Invoice submitted by Metrolinx pursuant to Section 1.7 above, if the Parties are unable to resolve outstanding issues within 30 days of submission of the draft Proper Invoice by Metrolinx, the following provisions apply:

- (a) resolution of the amounts in dispute will be referred to the dispute resolution process set out in attached Schedule "D" [Dispute Resolution Protocol] notwithstanding that there may be concurrent adjudication;
- (b) the Region shall confirm in writing within 15 calendar days after receipt of a draft Proper Invoice all amounts claimed under the draft Proper Invoice which are accepted by the Region, and such amounts may be claimed by Metrolinx by submission of a Proper Invoice in accordance with this Schedule "A"; and
- (c) when the terms of the draft Proper Invoice or a portion thereof have been disputed by the Region and subsequently settled, either by agreement of the Parties, confirmed in writing, or by dispute resolution, Metrolinx will submit a Proper Invoice at any time after the 30th calendar day following such agreement or conclusion of such dispute resolution.

1.9 The Region shall pay the amount set out in the Proper Invoice within 30 calendar days following receipt of the Proper Invoice submitted in accordance with this Schedule "A". Without limiting

any other of the Region's rights or remedies in this Agreement, at law or equity, the Region shall have the right to holdback from payment of such Proper Invoice, the following amounts:

- (a) amounts equal to all outstanding written notices of lien and outstanding claims for lien plus security for costs as prescribed under the Construction Act (Ontario), and
- (b) any amounts subject to a dispute pursuant to Section [1.8](#) of this Schedule "A".

1.10 After the date on which all liens that may have been claimed against the lien holdback retained under the Project Agreement have expired or been satisfied, discharged or otherwise provided for under the Construction Act (Ontario) as applicable, and provided Metrolinx has provided reasonable evidence that the Project work under the Project Agreement has been totally completed or substantially performed, as applicable, Metrolinx shall submit to the Region a Proper Invoice for lien holdback amounts retained by the Region under this Agreement in order to ensure that the lien holdback is paid or a notice of non-payment of holdback is published in accordance with the Construction Act (Ontario). No draft Proper Invoice is required to be submitted for any Proper Invoice or portion of a Proper Invoice requesting only payment of a statutory holdback, nor is such Proper Invoice subject to the timing provisions applicable to the submission of Proper Invoices.

1.11 The Region shall provide a timely response in relation to the payment or withholding of amounts invoiced by Metrolinx in relation to a statutory holdback in order to ensure that the holdback can be paid or a notice of non-payment of holdback can be published by Metrolinx in relation to amounts claimed by its contractors or ProjectCo in accordance with the Construction Act (Ontario).

2. WITHHOLDING OF PAYMENT FOR LIENS

2.1 Metrolinx shall advise the Region in writing of any liens and written notices of lien, as it becomes aware of them, pertaining to the Project that includes work for which Metrolinx will invoice the Region in accordance with this Agreement.

- 2.2 Upon the receipt of a written notice of lien, claim for lien or a certificate of action under the Construction Act (Ontario) arising from the performance of the work for the Project associated with the Infrastructure Work:
- (a) Metrolinx, at its sole cost, shall itself, or arrange for Project Co, to take whatever steps are necessary to discharge, release or vacate such claim for lien or certificate of action, or withdraw the written notice of a lien within 10 Business Days of it coming to the notice of Metrolinx. If the claim for lien or certificate of action is merely vacated, Metrolinx shall, if requested, undertake the Region's defense of any subsequent lawsuit commenced in respect of the claim for lien or certificate of action at no cost to the Region;
 - (b) in relation to which the Region is an "owner" within the meaning of the Construction Act (Ontario), the Region may retain an amount sufficient to satisfy such claim for lien, certificate of action or written notice of a lien, including an amount sufficient to cover potential costs; and
 - (c) Metrolinx acknowledges that all claims for lien shall be given to the Clerk of the Region through its email at constructionliens@durham.ca.

2.3 Without limiting any other of the Region's rights or remedies in this Agreement, at law or equity, if Metrolinx fails or refuses to vacate or discharge the claim for lien or certificate of action, or cause the withdrawal of the written notice of a lien in accordance with Section [2.2\(a\)](#) of this Schedule "A", the Region shall at its option, be entitled (but not obliged) to take whatever steps are necessary to vacate and/or discharge the claim for lien or certificate of action, or cause the withdrawal of the written notice of a lien, and all costs incurred by the Region in doing so (including for security for costs) may be set-off by the Region.

2.4 The Region shall indemnify Metrolinx for all costs incurred (including legal costs) to discharge, release, vacate or otherwise arrange for the withdrawal of a lien or written notice of lien or in relation to the defense of any subsequent lawsuit commenced in respect of the claim for lien or certificate of action where such lien or lawsuit arises as a result of an improvement undertaken by the Region and not Metrolinx, to the extent of the Region's responsibility. Metrolinx shall provide the Region with notice with available particulars, of any claim or proceeding, whether actual or threatened, in respect of which an indemnity may be sought under this Section, when any such claim or proceeding become known to Metrolinx.

3. PROMPT PAYMENT AND ADJUDICATION

3.1 The Parties will take all reasonable measures to avoid Adjudication by resolving disputes using the dispute resolution procedure set out in Schedule D of this Agreement. However, while the Region and Metrolinx each reserve the right to argue that all or any particular issues may not be adjudicated, if Adjudication is commenced by Metrolinx or the Region and does not involve any other party, the following provisions apply to such disputes under this Agreement:

- (a) The Parties acknowledge and agree that for the purposes of paragraph 7 of s. 13.5(1) of the Construction Act (Ontario):

- (1) neither the Agreement nor any Schedule sets out "any other matter" that the

Parties agree may be referred to an Adjudication; and

- (2) the Parties may agree after the commencement of the Agreement to “any other matter” that may be referred to an Adjudication provided such agreement is in writing and explicitly identifies and refers to the other matter to refer to an Adjudication.
- (b) All Adjudications shall proceed in accordance with the provisions of the Construction Act (Ontario) and the additional provisions set out in Section 3 of this Schedule “A”, subject to the exercise of the powers provided to the Adjudicator under section 13.12 of the Construction Act (Ontario).
 - (c) If the Party issuing the Notice of Adjudication is:
 - (1) Metrolinx, then the Notice of Adjudication shall be given by email with a copy of the Notice of Adjudication, and any additional documentation, delivered to the mailing address as follows:

The Regional
Municipality of
Durham

Commissioner of
Works
605 Rossland Rd E,
Whitby, ON L1N 0B7
Emairamesh.jagannathan@durham.ca

- (2) the Region, then the Notice of Adjudication shall be given by email with a copy of the Notice of Adjudication, and any additional documentation, delivered to the mailing address as follows:

Metrolinx
277 Front Street West
Toronto, Ontario M5V
2X4

Email: Constructionliens@metrolinx.com

3.2 The seat of the Adjudication shall be in Toronto, Ontario.

3.3 The Adjudicator nominated by the Party issuing the Notice of Adjudication shall:

- (a) have relevant qualifications and experience with respect to the Project or projects of a similar nature and magnitude, to the Project;
- (b) be independent of and at arm’s length to Metrolinx, the Region and any other

person having an interest in the Project or any of the documents comprising the Agreement; and

- (c) have no conflict of interest relating to the parties or the Adjudicable Dispute.

3.4 Any documents delivered to the Adjudicator by any Party shall be delivered to the other Party at the same time. In addition to the requirements of section 13.11 of the Construction Act (Ontario), the copy of the Agreement and any other documents delivered to the Party that received the Notice of Adjudication pursuant to section 13.11 of the Construction Act (Ontario) shall:

- (a) be delivered to such Party by the other Party in the manner as required by the Adjudicator;
- (b) if the contract and such documents have an aggregate file size in excess of twenty (20) MB, be delivered to such Party by the other Party on a USB flash drive or using a secure electronic document exchange service in a searchable format; and
- (c) include an index of documents with identifying information (for example, date, document description, author/recipient).

3.5 Metrolinx and the Region hereby acknowledge and agree that:

- (a) they shall, immediately after the appointment of the Adjudicator, either through the agreement of the parties or by the Authorized Nominating Authority ("ANA"), deliver a written agreement requesting that the Adjudicator provide the Party that received the Notice of Adjudication no less than fourteen (14) days from the date of receipt of the documents pursuant to section 13.11 of the Construction Act (Ontario) to respond;
- (b) if the documents delivered pursuant to section 13.11 of the Construction Act (Ontario):
 - (1) exceed 100 documents or 1000 pages in the aggregate, excluding the Agreement and all Schedules; or
 - (2) seek monetary relief in excess of one million dollars (\$1,000,000) exclusive of Value Added Taxes, they shall, immediately after the receipt of such documents, deliver to the Adjudicator a written agreement requesting that the Adjudicator provide the Party that received the Notice of Adjudication no less than sixty (60) days from the date of receipt of such documents to respond and extend the deadline for the Adjudicator to make its determination to no less than thirty (30) days after the deadline for the delivery of the response by such Party; and
- (c) if the documents delivered pursuant to section 13.11 of the Construction Act (Ontario) are delivered at any time between the Friday prior to December 25th in a given year and the first Monday of January of the following year, they shall, immediately after the receipt of such documents, deliver to the Adjudicator a written agreement requesting that the Adjudicator exclude the period between the date of

delivery of such documents and that first Monday of January from the counting of days for the purposes of the Adjudication and, as necessary to give effect to such exclusion, extend the deadline for the party that received the Notice of Adjudication to respond and the deadline for the Adjudicator to make its determination.

- 3.6 The Adjudicator shall be entitled to grant any remedy or relief which is consistent with the intentions of the Parties expressed under the Agreement but shall not be entitled to exercise the power of prerogative writs.
- 3.7 Other than in accordance with the Construction Act (Ontario), any determination and reasons of an Adjudicator on the work pertaining to the Project Agreement shall not be relied upon by either Party in relation to work on any other Project Agreements for the Program. The determination and reasons of any adjudicators on any other Projects shall not be relied upon by the Parties in any Adjudication on the Project Agreement under which the subject dispute is being Adjudicated.
- 3.8 If an Adjudicable Dispute is referred to Adjudication and such Adjudicable Dispute is already the subject of mediation, arbitration or a court proceeding, which has not been finally determined, the Party responding to the Notice of Adjudication shall be entitled, in its sole and absolute discretion, to choose to:
- (a) terminate, suspend or proceed with such mediation or arbitration, as applicable, and if the responding Party elects to terminate such mediation or arbitration, as applicable, the Party referring the Adjudicable Dispute to Adjudication shall be responsible for all costs of the mediator or arbitrator, as applicable, up to the date of receipt of the Notice of Adjudication; or
 - (b) stay or proceed with such court proceeding, and if the responding Party elects to stay such court proceeding, the Party referring the Adjudicable Dispute to Adjudication shall execute all further documents and do all other lawful things necessary to give full effect to such stay, and after the Adjudicator makes its determination, either Party may move to lift such stay, which the other Party shall consent to.
- 3.9 Metrolinx shall, in respect of any dispute impacting Additional Infrastructure Work, between:
- (a) Metrolinx and Project Co;
 - (b) Project Co and a subcontractor or supplier;
 - (c) a sub-subcontractor and a subcontractor or supplier; or
 - (d) a sub-subcontractor and another sub-subcontractor,

endeavour to provide to the Region, no later than five Business Days, a copy of a Notice of Adjudication, or other relevant documentation indicating the commencement of an Adjudication, after the receipt by Metrolinx of such documents. Notices delivered to the Region under this section shall be in accordance with Section [3.1\(c\) above](#).

3.10 The Region will advise Metrolinx within three Business Days whether it wishes to participate in an Adjudication for which a Notice of Adjudication has been forwarded. If the Region wishes to participate, Metrolinx will make a request to the Adjudicator that the Region be permitted to participate in the Adjudication, including in relation to procedural discussions. If the Region participates as a party or has rights equivalent to a party in the Adjudication, the Region agrees to be bound by a determination of an Adjudicator in respect of Additional Infrastructure subject to any further court decision including any legal proceeding related to the matter.

3.11 In this Schedule "A":

- (a) "**Adjudicable Dispute**" means a dispute respecting an Adjudicable Matter.
- (b) "**Adjudicable Matter**" means any matter
 - (1) referred to in s. 13.5(1) of the Construction Act (Ontario), other than in paragraph 7;
 - (2) that is prescribed under the Construction Act (Ontario) as referable to adjudication; or
 - (3) agreed to by the Parties as provided herein.
- (c) "**Adjudication**" means a construction dispute interim adjudication under Part II.1 of the Construction Act (Ontario).
- (d) "**Adjudicator**" means an individual who is qualified by the ANA as an adjudicator.

4. MISCELLANEOUS

4.1 Metrolinx acknowledges and agrees that the reimbursement made by the Region does not constitute an Acceptance of the Infrastructure Work pursuant to Commissioning and Acceptance as described in Section 18.

4.2 Where a change in Canadian federal or Ontario provincial taxes occurs after the date of this Agreement, and this change could not have been anticipated at the date of this Agreement, the Region shall adjust payments under this Agreement to account for the exact amount of the tax change involved, to the extent that it can be determined.

4.3 Claims for compensation for additional tax cost shall be submitted by Metrolinx to the Region in a form satisfactory to the Region. Such claims for additional tax costs shall be submitted not later than 20 Business Days after the date of Acceptance of the Infrastructure Work by the Region.

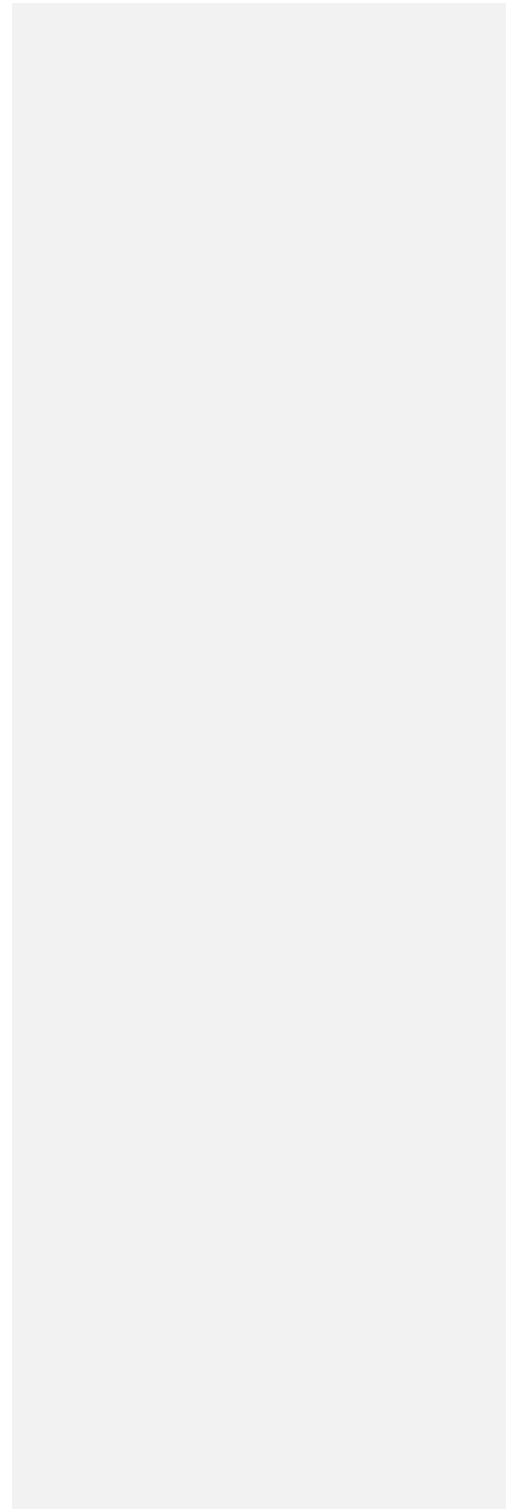
5 PAYMENT FOR CHANGES

5.1 The Region shall reimburse Metrolinx for the cost of any Changes set out in a Change Order

that has been executed by the Parties in keeping with the terms of this agreement.

- 5.2 It is understood and agreed that if Changes are required which would cause an increase in the Estimated Cost of the Infrastructure Work, identified in a Change Order or in Schedule "C" to this Agreement, as applicable, additional approvals, including Region Council approval, may be required, but Metrolinx is not required to do any work unless the Region has obtained all requisite approvals.
- 5.3 If any Change results in an increase in the Estimated Cost of the Additional Infrastructure Work, identified in the applicable Change Order or in Schedule "C" to this Agreement, as applicable, that is greater than what the Region, in its sole discretion, believes is reasonable for this work, the Region shall not agree to such Change and Metrolinx shall not undertake any work in respect thereof, it being the intention as provided for in this Agreement that no work in respect of a Change shall be undertaken or commenced until a Change Order has been signed by the Parties in accordance with this Agreement.

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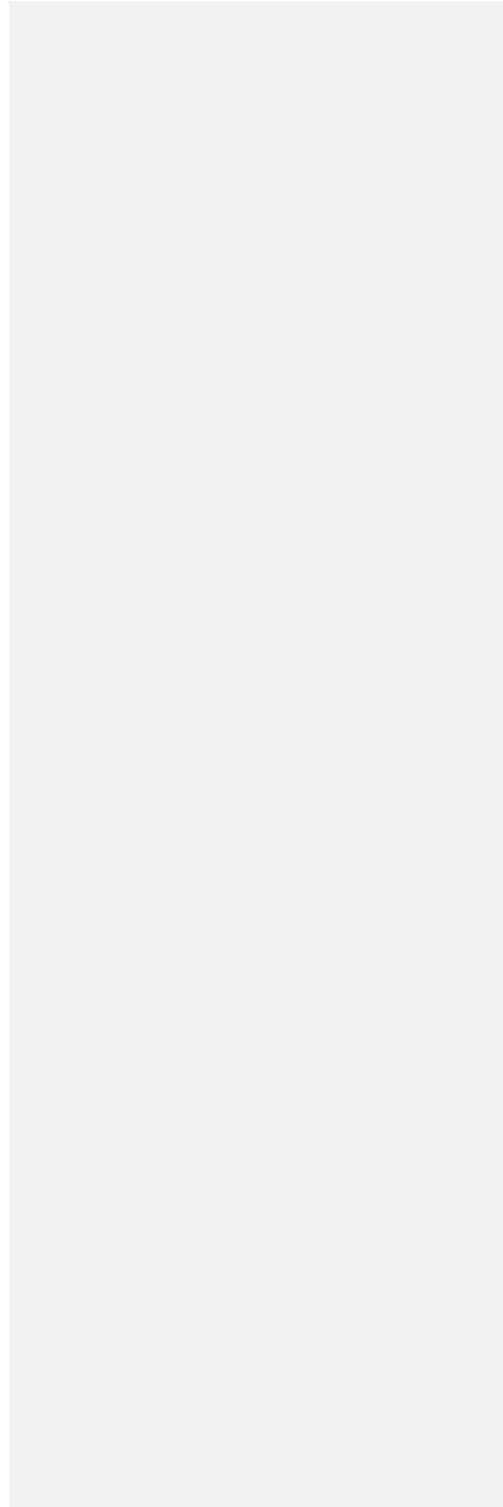


Appendix 1

Form of Proper Invoice
dated _____, 20__

(see attached)

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Schedule "B"

to a Municipal Infrastructure Agreement between the Region and Metrolinx
dated _____, 20__

INFRASTRUCTURE WORK

1. The following is Infrastructure Work that Metrolinx shall cause Project Co to provide, in accordance with the Agreement, except as may be otherwise specified herein:
 - 1.1 Metrolinx shall cause ProjectCo to provide the following Infrastructure Work, in accordance with the Agreement, except as may be otherwise specific herein:
 - a) Region Infrastructure Work
(intentionally left blank)
 - b) Shared Infrastructure Work
 - c) As set out in Section 3.2 to this Schedule B. Additional Infrastructure Work
(intentionally left blank)
 - 1.2 Metrolinx shall ensure that the design and construction of the Infrastructure Work by Project Co:
 - a) Complies with the Region Standard or agreed upon standards determined by both Parties;
 - b) Does not encroach onto or interfere with existing easements, services and infrastructure; and
 - c) Are in accordance with the corresponding drawings reviewed by the Region.
2. Contact
 - 2.1 For the Infrastructure Work to be completed pursuant to this Schedule "B":
 - a) The Region's contact shall be:

Road Related Design / Technical:

Doug Robertson, P.Eng.
Senior Project Manager
Works Department, Transportation Infrastructure Division
905-261-3345
doug.robertson@durham.ca

Watermain Related Design / Technical:

Alex Doran, P.Eng.
Project Engineer
Works Department, Environmental Services Branch, Design Contracts

Division
289-830-7689
alex.doran@durham.ca

Construction Related Issues:

Jeff MacDonald, C.E.T.
Project Manager
Works Department, Transportation and Field Services Branch, Construction
Services Division
905-261-7480
jeff.macdonald@durham.ca

b) Metrolinx's contact shall be:

Tina D'Ettorre
Manager Rail Corridor Extensions
437-427-0673
tina.d'ettorre2@metrolinx.com

3. Cost Allocation

- 3.1 The Parties have agreed that Metrolinx shall bear the cost of the Region Infrastructure Work.
- 3.2 The Parties have agreed that the cost of Shared Infrastructure Work shall be allocated between the Region and Metrolinx as shown in the following table :

Location Description	Existing Pipe Size and Material	Scope of Work	Cost Estimate (direct/indirect)	Region Cost	Metrolinx Cost
Simcoe St at CPR Bridge	300mm CI WM	The existing 300mm diameter watermain located on the existing Simcoe Street CPR bridge will be relocated crossing at Albert Street, between Fisher Street and Albany Street, and upsized to a 600mm diameter concrete pressure pipe. This work is being done to facilitate the demolition of the Simcoe Street CPR bridge at a later date.	\$5.5M	\$387,228.60	\$5.1M

- 3.3 The Parties have agreed that the Region shall bear the full cost of the Additional Infrastructure Work.

4. Costs payable by the Region

The Region's aggregate cost (including overhead, fees, disbursements, allowances, profit and HST) for the Shared Infrastructure Work identified has an fixed cost of \$387,228.60(the "Total Cost").

Table 1 – SHARED INFRASTRUCTURE COSTS PAYABLE BY THE REGION

Services & Deliverables	Amount
A. Simcoe St. Watermain	\$387,228.60
Total Cost	\$387,228.60

Table 2 – ADDITIONAL INFRASTRUCTURE COSTS PAYABLE BY THE REGION

(intentionally left blank)

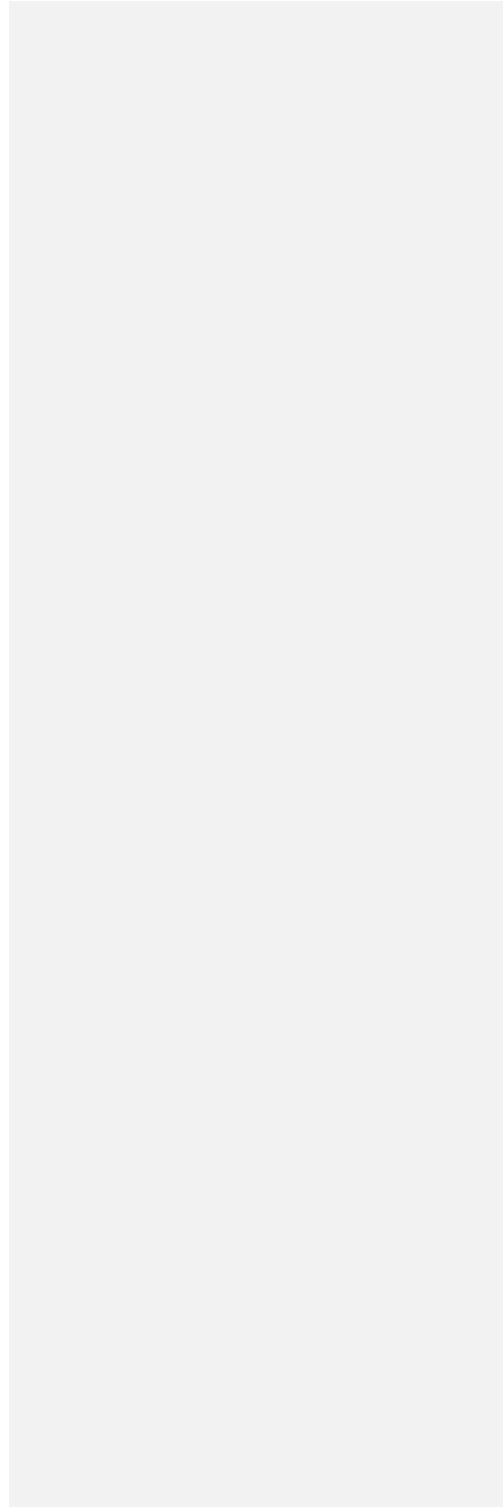
5. The Region shall pay the cost set out in Section 4 immediately above (including HST) in accordance with the following milestones:

The Region shall pay the Total Cost set out in Section 4 of this Schedule B at Acceptance in one milestone payment.

Appendix 1

(Drawings)

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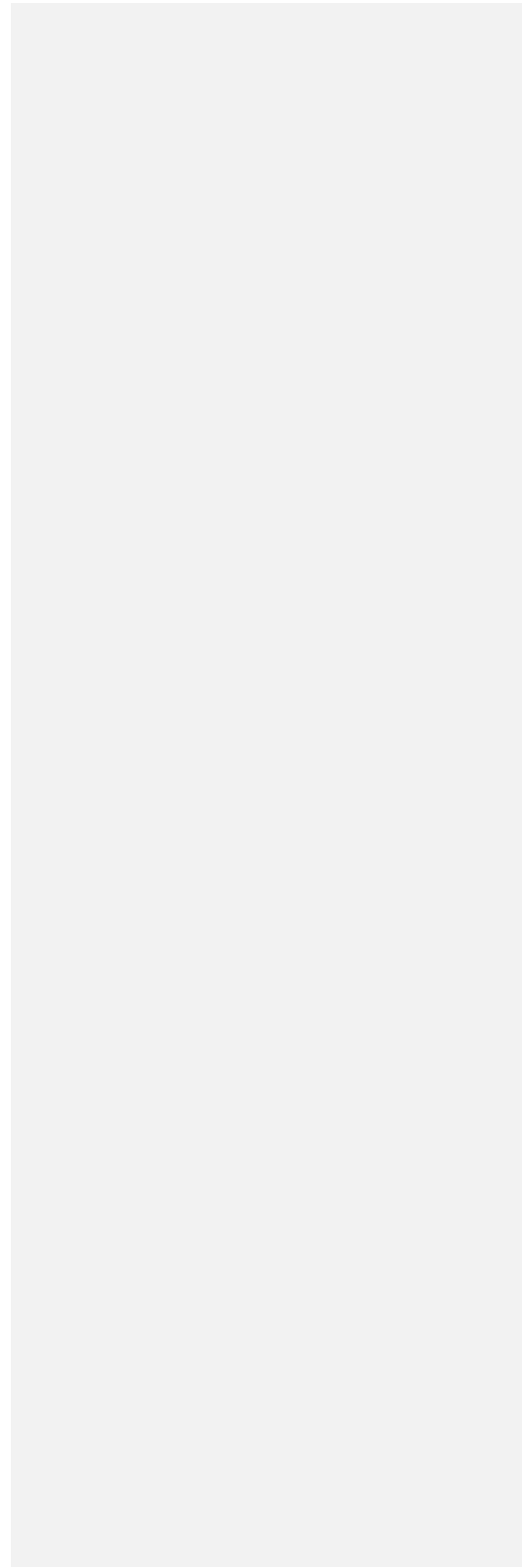
Schedule "C"

to a Municipal Infrastructure Agreement between the
Region and Metrolinx dated __, 20__

Form of Change Order

(see attached)

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Schedule "D"

to a Municipal Infrastructure Agreement between the
Region and Metrolinx dated __, 20__

DISPUTE RESOLUTION PROTOCOL

1. All disputes, controversies or claims arising out of or relating to any provision of this Agreement, or the alleged wrongful exercise or failure to exercise by a Party of any discretion or power or right given to that Party, or the interpretation, enforceability, performance, breach, termination or validity of this Agreement (collectively "**Dispute**") shall be resolved or determined in accordance with this Schedule "D".
2. The Parties shall be free to utilize the adjudication provisions of the Construction Act (Ontario) as they may apply to any Dispute, if either Party so wishes, in accordance with the terms outlined in Schedule "A" of this Agreement.
3. The Parties shall diligently carry out their respective obligations under this Agreement during the pendency of any Disputes, including adjudication proceedings, mediation proceedings, arbitration proceedings or litigation proceedings.
4. Otherwise, the Parties shall attempt in good faith to resolve any Dispute promptly by negotiations, as follows.
5. Either Party may give the other written notice of any Dispute not resolved in the normal course of business. The Parties shall appoint representatives to meet within ten (10) business days after the delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and attempt to resolve the Dispute.
6. If the Dispute has not been resolved by the representatives within twenty (20) business days of the disputing Party's notice, or if the representatives have not met in connection with the Dispute within fifteen (15) business days of the disputing party's notice, then the Dispute shall be referred to the senior management of the Region and Metrolinx, who shall exchange any outstanding relevant information and attempt to resolve the Dispute.
7. If the Dispute has not been resolved within ten (10) business days of referral to senior management then the Parties shall be able to submit the Dispute to mediation through the ADR Institute of Canada and its mediation rules (or such other successor or equivalent alternative resolution agency and its mediation rules).
8. If the Dispute is not resolved at mediation, or if the Parties did not agree to submit the Dispute to mediation, then such Dispute shall be referred to a single arbitrator agreed upon by the Parties, or if they are unable to so agree, a single arbitrator appointed by the court in accordance with the *Arbitration Act*, 1991 (Ontario) or any successor or replacement arbitration legislation in force in the Province of Ontario from time to time. Scheduling and other procedures relating to the arbitration shall be determined by the Arbitrator in accordance with the *Arbitration Act*, 1991 (Ontario) based on the complexity and nature of the Dispute in question and in a manner which permits the Parties

a full and fair hearing. The award of the Arbitrator shall be final and binding as between the Parties and shall not be subject to appeal.

9. Notwithstanding any provisions in this Schedule, no Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purposes of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under the Agreement, including temporary and preliminary injunctive relief and restraining order.

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