

Dated as of the ____ day of _____, 2011

MEMORANDUM OF UNDERSTANDING

B E T W E E N:

CITY OF TORONTO ("Toronto")

Of the First Part

**THE PROVINCE OF ONTARIO IN RIGHT OF HER MAJESTY THE QUEEN
AS REPRESENTED BY
THE MINISTRY OF TRANSPORTATION
("the Province")**

Of the Second Part

- AND -

METROLINX ("Metrolinx")

Of the Third Part

RECITALS:

1. The Mayor of Toronto and Metrolinx have brought forward a proposal to make adjustments to the Metrolinx transit plan known as the "5 in 10 plan" (the "Metrolinx Plan") in order to make progress in delivering transit in Toronto and the Greater Toronto and Hamilton Area;
2. Toronto and Metrolinx have been in discussions to develop a revised plan since December 2010;
3. Under this proposed plan, Toronto would be responsible for delivering transit projects along Sheppard Avenue and Metrolinx would be responsible for a delivering a transit project along Eglinton Avenue and the Scarborough RT line as further described in this Memorandum of Understanding ("**MOU**");
4. Under this MOU, the parties would build transit services to serve regional and local transportation objectives in support of Metrolinx's regional transportation plan known as The Big Move;
5. The parties recognize that improving transit in Toronto will reduce the impact of congestion in the region and enhance the quality of life for its residents;
6. To achieve the foregoing, the Province and Metrolinx have agreed to contribute an aggregate of no more than \$8.4 Billion to the Toronto Projects and Metrolinx Project as further described in this MOU; and

7. The parties are, therefore, entering into this non-binding MOU in order to provide a framework for the negotiation of agreements to be approved by their respective governing bodies.

NOW THEREFORE Toronto, Metrolinx and the Province enter into this non-binding MOU to establish the guiding principles for continuing to move forward.

1. DEFINITIONS

In this MOU the following terms have the following meaning:

- (a) The "**Eglinton-Scarborough Crosstown LRT Project**" or "**Metrolinx Project**" means a new underground light rail transit corridor along Eglinton from Jane Street / Black Creek to Kennedy Station and continuing along the existing Scarborough RT grade separated guideway between Kennedy Station and the Scarborough Centre, all as further described in Schedule A;
- (b) The "**Initial Projects**" means the light rail projects known as Sheppard East, Finch West and Eglinton Crosstown Light Rail Projects as well as the replacement and extension of the Scarborough Rapid Transit line, all as further described in Schedule A;
- (c) The "**Sheppard East Project**" means an extension of the existing Sheppard Subway from the existing terminus at Don Mills station easterly to the Scarborough City Centre, as further described in Schedule A;
- (d) The "**Sheppard West Project**" means a subway extension extending westerly along Sheppard Avenue to the Downsview Station as further described in Schedule A;
- (e) The "**Toronto Projects**" means the Sheppard East Project and the Sheppard West Project.

2. SCHEDULES

The Schedules to this MOU form part of this MOU and are as follows:

Schedule A – Project Descriptions

Schedule B – Map

3. PROJECT RESPONSIBILITIES

The parties agree that the adjustments to the Metrolinx Plan as contemplated in this MOU shall, subject to the approval of their respective governing bodies, require the cancellation of the Initial Projects and the undertaking of the Metrolinx Project and the Toronto Projects as follows:

3.1 Metrolinx General Project Responsibilities

Metrolinx shall be responsible for securing environmental approvals, structuring, designing, coordinating, planning, constructing and implementing the Eglinton-Scarborough Crosstown LRT Project.

3.2 Toronto General Project Responsibilities

Toronto shall be responsible for securing environmental approvals, structuring, designing, coordinating, planning, constructing and implementing each of the Sheppard East and the Sheppard West Projects.

3.3 Financial Responsibilities and Acknowledgments

- (a) The parties agree that Metrolinx will be responsible for all costs relating to the discharge of the Metrolinx Project Responsibilities defined in section 3.1. The parties agree that, subject to section 3.3(c), Toronto will be responsible for all costs relating to the discharge of the Toronto Projects Responsibilities defined in section 3.2.
- (b) Toronto acknowledges that the proposed use of tax increment financing does not include an education property tax portion.
- (c) Metrolinx will contribute to the costs of the Toronto Projects where the Province's and Metrolinx's aggregate costs relating to the Metrolinx Project are less than \$8.4B (in 2010 \$). In this event Metrolinx's contribution to the Toronto Projects (the "**Residual Amount**") will be equal to the difference between \$8.4B (\$8.73 B minus federal share on Sheppard of \$0.33 B equals \$8.4 B in 2010 \$) and costs incurred by or on behalf of Metrolinx under Section 3.3(a) relating to the Metrolinx Project. Metrolinx agrees to use reasonable commercial efforts in consultation with Toronto to control Metrolinx Project costs so as to maximize the Residual Amount.

Notwithstanding the foregoing, regardless of the size of the Residual Amount, in no event shall the Province's contribution to the Toronto Projects exceed \$650M (in 2010\$). The Province and Metrolinx agree that, to the extent the Residual Amount exceeds \$650M (in 2010\$), all amounts over \$650M will be dedicated to transit projects in the City of Toronto as mutually agreed to by the Province/Metrolinx and Toronto.

- (d) Metrolinx and the Province agree to use all reasonable efforts to (i) support Toronto's efforts to obtain Transport Canada funding contributions promised to Metrolinx (estimated at \$333M) relating to the Sheppard LRT Project so funds flow to the City for the Sheppard Subway Project; and (ii) facilitate and support Toronto's application for funding from the P3 Canada Fund. Metrolinx and the Province will waive any entitlement to such funding for the Toronto Projects.
- (e) Metrolinx agrees to stipulate in a letter to the Toronto Transit Commission (TTC) that any and all costs being incurred pursuant to the Memorandum of Agreement dated December 22, 2009 between TTC, Toronto and Metrolinx only continue to be incurred for the Metrolinx Project.
- (f) Subject to section 5.6, Toronto acknowledges that Toronto will be responsible for reimbursing Metrolinx for all reasonable unrecoverable net losses, penalties, damages and other costs for work (collectively "Losses") incurred or sustained by Metrolinx, by a third party on Metrolinx's behalf, or by the Province on Metrolinx's behalf relating to the suspension of, change to, or cancellation of any portion of Initial Projects including, but not limited to, (i) Losses relating to the design of the

surface portion of the Eglinton LRT, the Finch West LRT and Sheppard East LRT; and (ii) amounts payable to vendors pursuant to contractual commitments that must be altered as a result of the suspension, change or cancellation .

Metrolinx acknowledges that Toronto will not be responsible to repay any Losses relating to Metrolinx general overhead including Metrolinx staff time. Metrolinx undertakes to work with Toronto and with project contractors and vendors to minimize Losses.

The amount and terms of Toronto's repayment of such Losses shall be agreed by Toronto and Metrolinx acting reasonably.

4. APPROVALS

The parties agree that they shall each independently seek all necessary approvals from their respective authorities and governing bodies as required for any agreement resulting from this MOU.

Toronto will be solely responsible for securing necessary approvals from Toronto City Council and the TTC.

Metrolinx will be solely responsible for securing necessary approvals from its board of directors and from the Province of Ontario.

5. GENERAL

5.1 Environmental Assessments

Toronto will be responsible at its cost for completing environmental assessments for the Toronto Projects. Metrolinx will be responsible at its cost for completing environmental assessments for the Metrolinx Project. The parties will work together as soon as possible, quickly and in good faith to facilitate the planning and undertaking of the parties' respective environmental assessments.

5.2 Operations

Toronto shall be responsible for the transit operations of the completed Toronto Projects.

The parties agree to enter into a future negotiation identifying the parties' entitlement and responsibility relating to the Metrolinx Project operations, revenues and expenditures.

5.3 Legislative Amendments

The Province, other relevant Ministries and Metrolinx will work with Toronto to identify legislative amendments and regulations which may be necessary or desirable to facilitate Toronto's ability to finance and build the Toronto Projects. Toronto may propose amendments that include, but are not limited to, its ability to finance the Toronto Projects through the use of development charges and municipal tax increment financing, subject to section 3.3(b). Once such amendments have been identified by Toronto working together with the Province, the relevant Ministries and Metrolinx, and mutually agreed to by the parties, the relevant Ministries will propose the legislative and regulatory amendments to the Government.

5.4 Construction/Permit Approvals

Toronto commits to expedite the process for approval of municipal permits required for construction of the Toronto and Metrolinx Projects, consistent with the project implementation schedule, including granting a perpetual easement on mutually agreeable terms for transit improvements owned by Metrolinx and located in, under or over municipal streets and rights of way operated as part of the Metrolinx Project.

5.5 Finch West Enhanced Bus Service

Toronto will provide enhanced bus services along the Finch corridor between Finch West Station and Humber College.

5.6 Non-Binding

The parties agree that this MOU is to establish a statement of intent and proposed set of guiding principles. The parties confirm that this MOU is not intended to create any legally binding permissions or obligations. The parties agree, subject to the approval of their respective governing bodies, to proceed in good faith to finalize definitive legal agreements consistent with these principles as soon as practicable.

5.7 Communications

The Province, Metrolinx, and Toronto agree to work together on joint communication activities that will enhance opportunities for open, transparent, effective and pro-active communications with the public and recognize the contribution of the Parties under this MOU.

5.8 Presto

Toronto acknowledges that Toronto, TTC and Metrolinx will continue working together on mutually agreeable terms to implement the Presto fare card system across the TTC and that Presto shall be implemented on the Metrolinx Project.

IN WITNESS WHEREOF the Province and Metrolinx have executed this Memorandum of Understanding through their duly authorized officers and, in the case of Toronto, by the Mayor as indicating his desire that the parties give consideration to this proposal.

CITY OF TORONTO

Per: _____
Name:
Title:

THE MINISTRY OF TRANSPORTATION

Per: _____
Name:
Title:

METROLINX

Per: _____
Name:
Title:

SCHEDULE A

PROJECT DESCRIPTION

The Sheppard East Project

An extension of the existing Sheppard Subway, easterly from the current terminus at Don Mills Station to a new terminus at Scarborough Centre. The extension is approximately 8 km in length and includes 7 new subway stations. The Project shall include all infrastructure normally associated with the operation of a transit service, including rolling stock, stations, maintenance and storage facilities, rail and signal systems.

The Sheppard West Project

An extension of the existing Sheppard Subway westerly from the current terminus at the Yonge-Sheppard Station to a new terminus at Downsview on the University-Spadina Subway line. The extension is approximately 5.5 km in length and includes 2 new subway stations. The Project shall include all infrastructure normally associated with the operation of a transit service, including rolling stock, stations, maintenance and storage facilities, rail and signal systems.

The Eglinton-Scarborough Crosstown LRT Project

A new Light Rail transit corridor, firstly along Eglinton Avenue from Jane Street/Black Creek in the west to Kennedy Station in the east, in a tunnel except for short sections in the area of the Don Valley and, potentially, near the Jane Street / Black Creek and Kennedy Stations; and secondly along the existing grade separated guideway for the Scarborough RT between Kennedy Station and Scarborough Centre. The Project is approximately 25.2 km. The Project shall include all infrastructure normally associated with the operation of a transit service, including rolling stock, stations, maintenance and storage facilities, rail and signal systems.

The Initial Projects

The initial projects included Sheppard East, Finch West, and Eglinton Crosstown LRT Projects and the Scarborough Rapid Transit replacement and extension project as described and included in the approved Environmental Assessments of 2009 and 2010 for each project.

SCHEDULE B

(Sheppard West Subway, Sheppard East Subway,
Eglinton / Scarborough Crosstown LRT)

