

## OTTAWA LIGHT RAIL TRANSIT PROJECT

### CONTRIBUTION AGREEMENT WITH THE ONTARIO MINISTRY OF TRANSPORTATION

#### OVERVIEW OF STRUCTURE AND CONTENT

The Contribution Agreement (the “**Contribution Agreement**”) was entered into between the City of Ottawa (the “**City**”) and Her Majesty the Queen in Right of Ontario, represented by the Minister of Transportation for the Province of Ontario (the “**Ministry**”) on September 1, 2011, in respect of a contribution of up to \$600 million by the Ministry for the Ottawa Light Rail Transit (“**OLRT**”) project.

This document is intended to be a summary of the material terms in the Contribution Agreement, but does not describe all the terms of the Contribution Agreement. In the event of any inconsistency between the description of the material terms in this document and those in the Contribution Agreement, the terms of the Contribution Agreement will prevail.

<b>Material Term</b>	<b>Description</b>
<b>Term</b>	The earlier of 18 months from the OLRT project substantial completion date and December 31, 2019.
<b>Future Amendment</b>	The City is to submit amended financial information for approval by the Ministry: (i) within 30 days of entering into the OLRT project agreement; and (ii) within 30 days of entering into a contribution agreement with the Federal government. If approved by the Ministry, in its sole discretion, the Contribution Agreement would be amended accordingly.
<b>Contribution Amount / Calculation</b>	A maximum contribution of \$600 million will be made by the Ministry.  The Ministry will provide funds (i) with respect to the OLRT project agreement, on an instalment basis; and (ii) with respect to general Eligible Costs (as set out in the Contribution Agreement) on an invoice basis.
<b>Obligation of Recipient</b>	City is responsible for: complete, diligent, timely, and on budget OLRT project implementation; any cost overruns; and operation, maintenance and repair for full lifecycle of infrastructure.
<b>Other Funding</b>	Other funding for the OLRT project must be disclosed to the Ministry, which can recover (or reduce its subsequent contributions by a similar amount): (i) any funding provided to the City over the Ministry’s maximum contribution (excluding Gas Tax amounts); (ii) any amounts received by the City over 100% of Eligible Costs; and (iii) any funds used for ineligible costs, as set out in the Contribution Agreement.
<b>Appropriations and Budgeting</b>	The Ministry’s contribution to the OLRT project is subject to annual appropriations for the applicable fiscal year, provided that the Ministry will use efforts to secure an annual appropriation. The City releases the Ministry from any liability arising as a result of termination or reduction of funding due to appropriations.

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	Subject to the Contribution Agreement, the Ministry will commit funds in a fiscal year towards the OLRT project in accordance with the schedule set out in the Contribution Agreement. If, in a fiscal year, an amount lesser than the estimated contribution is paid or payable by the Ministry, the Ministry will, subject to the Contribution Agreement, make reasonable efforts to re-allocate the difference to a subsequent fiscal year.
<b>Increase in Project Costs</b>	If it will not be possible to complete OLRT project construction unless the City expends amounts in excess of available funding, notification is to be provided; the City will provide a plan to remedy the shortfall and the Ministry may exercise its remedies available on a default if it is not satisfied with the plan.
<b>Aboriginal Consultation</b>	<p>Aboriginal consultation by the City is to be in accordance with the requirements of the Contribution Agreement.</p> <p>The City shall develop and follow an Aboriginal Consultation Plan that meets the approval of the Ministry. The Ministry may direct changes to such plan. The Ministry shall also receive notice of contact between the City and defined aboriginal groups and the discovery of aboriginal archaeological resources and the Ministry may give directions in respect thereof.</p>
<b>Agreement Management Committee</b>	<p>A four member committee (two from each party) will be established to administer and monitor the Contribution Agreement. The committee will review procurement procedures, monitor the progress of the project, review claims and review and approve reports and cash flows, make non-significant amendments to the project schedule and cost breakdown, establish subcommittees, resolve disputes between the parties, ensure the Contribution Agreement is implemented in accordance with its terms, and undertake other tasks as directed by the Ministry.</p> <p>Each of the Ministry and the City appoints a co-chair of the committee and quorum for a meeting requires that both co-chairs be present.</p> <p>The co-chairs are the only voting members of the committee and their decisions must be unanimous.</p>
<b>Change Control</b>	<p>Changes with respect to the OLRT project that are not significant changes can be approved or rejected by the committee.</p> <p>Significant changes shall be decided by the Ministry (with a recommendation from the committee), and are defined as those which: (i) modify a quantifiable element of a project component, as determined by the Ministry; (ii) significantly modifies the location, timing or scope of a project component, as determined by the Ministry; (iii) adds or removes a project component; (iv) may require a further environmental assessment; (v) are an increase in the total estimated Eligible Costs of a project component which may result in the Ministry's total contribution towards Eligible Costs exceeding 20% of the total estimated Eligible Costs of that project component; or (vi) any other change so deemed by the Ministry.</p> <p>Any changes to the contribution fiscal year breakdown require consent of the Ministry.</p>
<b>Procurement and Required provisions</b>	<p>All project contracts are to be granted and managed in accordance with City policies and procedures, which shall be provided to the committee.</p> <p>All contracts, including the Concession Agreement, shall: (i) be awarded in a manner that is transparent, competitive, consistent with value for money</p>

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	<p>principles and that accords with the Agreement on Internal Trade, the Ontario and Quebec Trade Cooperation Agreement and the Canadian Content Policy; (ii) are consistent with, and incorporate, relevant provisions of the Contribution Agreement, such as maintenance of and access to records and compliance with laws.</p>
<p><b>Independent Engineer Agreement</b></p>	<p>The following provisions must be included in an Independent Engineer Agreement (to which the Ministry will not be a party and a copy of which shall be supplied to the Ministry within 30 days of its effective date): (i) it may not be amended or assigned without the written consent of the Ministry; (ii) the independent engineer will have an equal duty of care to the Ministry and the City and will be independent of the OLRT project contractor; (iii) the independent engineer will represent and warrant that all information provided to the City is true, accurate, and prepared to the best of his or her skill, judgment and knowledge; (iv) the independent engineer will provide the Ministry with copies of all reports and certificates delivered to the City; (v) the Ministry shall have the right to request information and investigation (copies of such requests will be provided to the City); and (vi) the independent engineer will maintain accurate and complete records for at least 7 years after the end of the Contribution Agreement.</p>
<p><b>Claim and Payment Structure</b></p>	<p>Reimbursement of Eligible Costs is for amounts previously paid in full by the City.</p> <p>Where claims are under the Concession Agreement, the claim must be accompanied by a certificate describing Eligible Costs and a claim certification and request from the City, a certificate from the independent engineer or, if applicable, a declaration of substantial completion by the independent engineer, and such other documentation as may be required by the Ministry.</p> <p>Where claims are for general Eligible Costs, the claim must be accompanied by a certificate describing Eligible Costs and a claim certification and request from the City, the quarterly report and audit report for the required timeline, and such other documentation as may be required by the Ministry.</p> <p>The Ministry shall use reasonable efforts to make payments within 30 days of receipt of a proper and complete claim, subject to annual appropriations.</p> <p>The City must submit its claims prior to the end of the term of the Contribution Agreement, following which date the Ministry has no obligation to make a payment.</p> <p>Following the delivery of final reports by the City, the Parties will carry out a joint reconciliation and make any required adjustments. The Ministry may holdback ten percent of its contribution until the joint reconciliation.</p>
<p><b>Dispute Resolution</b></p>	<p>The parties will keep each other informed of any disagreement or contentious issue relevant to the Contribution Agreement and use reasonable efforts to resolve it.</p> <p>Either party may refer a disagreement or contentious issue to the committee for resolution. The co-chairs will attempt to resolve the disagreement or issue within 30 days of referral, failing which the disagreement or issue will be referred to the Ministry for resolution. Any obligations, including payments, related to the issue in dispute will be suspended until resolved.</p>

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<b>Default by City</b>	<p>Where the City defaults by: (i) not completing the project on the terms and conditions in the Contribution Agreement; (ii) by submitting false or misleading information or making a false or misleading representation (excluding errors in good faith); (iii) by not complying with any condition, undertaking or term of the Agreement; (iv) by not making required payments to the Ministry, the Ministry may after 30 days notice suspend or terminate any obligation to contribute to the project and require the City to reimburse all or part of the contribution already paid.</p>
<b>Audit and Reporting</b>	<p>Audits and progress reports are to be conducted and provided in accordance with the Contribution Agreement, including the City providing quarterly project status reports and annual progress reports. The Ministry and/or the Auditor General of Ontario may audit at their own expense. The City will provide the Ministry, its representative, the independent auditor, and the Auditor General with reasonable access to project sites, facilities, and documentation and will coordinate access for the same parties under the OLRT project agreement.</p> <p>The City shall submit quarterly status reports as well as an annual progress report (due June 30 of each year) to the Ministry.</p> <p>The City is responsible for requesting and managing all audits. Financial audits shall be conducted yearly by external auditors. The City shall develop and implement an audit plan, which shall be submitted to the Ministry for approval within three months of the execution of the Contribution Agreement. There shall be two compliance audits conducted by external auditors in the course of the Project (one midway through and one after substantial completion); the Ministry may, in its sole discretion, alter the frequency of the audits.</p> <p>The City shall conduct a final audit satisfactory to the Ministry within six months of OLRT project substantial completion and a post project evaluation, which shall be a public document.</p>
<b>Communications</b>	<p>The City shall acknowledge the support of the Ministry in any and all publications relating to the project</p> <p>The City agrees to undertake joint communications activities with the Ministry, ensuring equal recognition and prominence of the Ministry's financial contribution with the City and the Government of Canada. All communications, including signage and electronic communication, is subject to this policy.</p> <p>All written communications shall be prepared in a manner that supports the communications objectives and branding of the City and the Ministry. The City is responsible for operational communications (including calls for tender, constructing, design, property, emergency and public safety notices).</p> <p>The City shall notify and consult with the Ministry a minimum of 15 working days before all news releases, new media communications, or public announcements. A communications plan will be developed. In the event of an election call that affects a riding that the Project is located in (whether federal, provincial, or municipal), no public announcements will be permitted. A joint news conference may be held when the Contribution Agreement is signed. The City and the Ministry may develop joint information kits and news releases. Within an agreed upon time period, the City agrees to produce and erect temporary signage acknowledging the Ministry's contribution (which must be of at least equal size and prominence of other contributors' signage), which shall remain until 90 days after construction is completed. A permanent plaque or sign shall be installed on the completed OLRT project. Any advertising campaigns must reflect the provisions of the Contribution Agreement and notice thereof will be given between the parties 90 days prior to commencement. Costs will follow the eligibility rules. The Ministry will monitor compliance and may advise the City of required adjustments.</p>

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<b>Representations and Warranties</b>	<p>The City provides representations and warranties in respect of: (i) its good standing under applicable laws; (ii) its power and capacity to own its assets and to carry-on the activities under the Agreement; (iii) its authority and power to enter into the Agreement; (iv) the enforceability of the Contribution Agreement; (v) the non-contravention of the Contribution Agreement with applicable laws and by-laws, judgements, orders, licenses, permits, contracts and other similar matters; (vi) the existence of no actions, claims or proceedings that are pending or threatened that could adversely affect the City's ability to carry out the Contribution Agreement; and (vii) that all information from the City has and will be true and complete.</p>
<b>Indemnity</b>	<p>Indemnity from the City to the Province of Ontario (and its ministers, directors, officers, appointees, servants, employees and agents) for any and all claims, demands, losses, costs, damages, actions suits or other proceedings based upon any injury to persons, damage to or loss or destruction of property, economic loss, or infringement of rights caused by, in connection with, or arising directly or indirectly from: (i) the project; (ii) the performance or breach of the Contribution Agreement by the City or a third party involved in project implementation or their respective officers, servants, employees, or agents; (iii) any stage of the project, including consultation, assessment, monitoring, design planning, procurement, construction, testing, operation, maintenance, repair, rehabilitation, demolition or reconstruction; (iv) any omission or other wilful or negligent act of the City or a third party involved in project implementation and their respective employees, officers or agents; (v) the entering into by the City or a third party involved in project implementation or their respective employees, officers or agents of a loan, capital lease or other long term obligation in relation to the project; (vi) any actions taken by the Ministry as co-chair or member of the committee; and (vii) any decision of a court that prevents the Ministry from performing any obligation under the Contribution Agreement. The only limitation to the indemnity by the City is the indemnified parties' acts or negligence in the performance of their duties.</p> <p>The City must ensure adequate bonding is in place to protect itself and the Ministry and to support the indemnification of the Ministry.</p> <p>The City is to maintain minimum insurance requirements (\$2 million per occurrence).</p>
<b>Restrictions on Disposal of Assets</b>	<p>During the twenty-five years following OLRT project substantial completion, one hundred and eighty days prior notice is required by the City to sell, lease, encumber or use assets acquired, constructed, repaired, rehabilitated or improved with the Ministry's contribution in a manner differently than described in the Contribution Agreement. The City is to repay a portion of the Ministry's contribution, determined by the date of such disposition. A similar provision applies in respect of land, noting that repayment is 100% of the greater of book value or fair market value of the land, without time restriction.</p> <p>An exclusion exists for disposition of assets for technical or operational reasons, if replaced with assets of equal or greater value, subject to prior approval by the Ministry.</p>
<b>Revenues from Assets</b>	<p>For the first twenty-five years from the date of project substantial completion, City must notify the Ministry within ninety days of the end of a fiscal year where an asset to which the Ministry made a contribution has generated revenues which exceed its operating expenses and the Ministry may require a proportion of the excess to be paid to it.</p>
<b>Assignment</b>	<p>The City may not assign its rights under the Agreement without the prior written consent of the Ministry.</p>

<b>Material Term</b>	<b>Description</b>
<b>Amendment to Agreement</b>	Subject to the change control provisions, the Contribution Agreement may only be amended in writing by the parties.
<b>Construction Guidelines</b>	The City will apply and ensure that the OLRT project contractor and others participating in project implementation comply with all laws (including environmental laws), regulations, orders in council and the requirements of regulatory bodies. The City will undertake and cause to be undertaken all project construction and engineering work in compliance with industry standards.
<b>Freedom of Information / Access to Information</b>	<i>FIPPA</i> applies and, accordingly, information provided to the Ministry may be subject to disclosure.
<b>Other Special Conditions (in addition to those previously listed)</b>	<p>The Ministry's contribution is subject to prior conditions, including:</p> <ul style="list-style-type: none"> <li>(i) the City providing a certified copy of the municipal by-laws or resolutions authorizing the execution of this Agreement and the City's financial contribution of at least \$900 million;</li> <li>(ii) the City approving a final business case, satisfactory to the Ministry, for the Project;</li> <li>(iii) the City entering into an agreement prior to the OLRT project substantial completion with the Federal Government for the contribution of \$600 million to the OLRT project;</li> <li>(iv) the City providing necessary information to facilitate an electronic funds transfer to an interest bearing account in the name of the City;</li> <li>(v) the City providing the Ministry with detailed design information and verified cost estimates and cash flows;</li> <li>(vi) for Eligible Costs for the acquisition of an interest in real property, providing written notice to the Ministry and a certificate confirming acquisition of the interest;</li> <li>(vii) the City participating in the PRESTO program;</li> <li>(viii) the City consulting with Infrastructure Ontario in respect of value for money and the AFP model; and</li> <li>(xi) the City must complete all required environmental assessments in connection with a claim for reimbursement.</li> </ul> <p>Where funds are remitted by the Ministry without satisfaction of these conditions, absent a waiver thereof, the Ministry may exercise its remedies in connection with a default.</p>