Federal Contribution Agreement - Principles

1 Purpose of the federal Contribution Agreement as between Canada, the City and York Region (“the Contribution Agreement”) is to establish terms and conditions under which the federal government (“Canada”) will reimburse the City and York Region (together, “the Recipients”) for a portion of the Project costs

2. The term will be effective from the date that the Contribution Agreement is signed to March 31, 2017, subject to early terminations rights of Canada in the event of a default by the Recipients

3. Canada will contribute up to one-third (1/3) of Eligible Costs of the Project, as of the date of signing of the Contribution Agreement, up to a total of $622 million, subject to

- there being an appropriation by parliament for the fiscal year in which the payment is to be made
- funding may be reduced or terminated in response to Canada’s annual budget, or a parliamentary spending decision that has an impact on the program under which this agreement is made
- Canada’s total financial assistance (from all sources, including the Contribution Agreement) to the Project may not exceed fifty percent (50%) of total Eligible Costs. Under this circumstance, Canada may reduce, or recover an amount equal to the excess
- total financial assistance received by the Recipients for the Project from all sources may not exceed 100% of total Eligible Costs. Under this circumstance, Canada may reduce, or recover an amount equal to the excess
- payment will be subject to a five percent (5%) holdback for each Project component until the completion of the Project component

4. Eligible Costs are Project costs eligible for reimbursement under the Contribution Agreement and are defined as “all necessary direct costs incurred properly and reasonably for the implementation of the Project”, including:

- capital costs of acquiring, constructing or renovating a tangible capital asset
- costs of joint communication activities and road signage recognition
- costs of project-related signage, lighting, project markings, and utility adjustments
- planning and assessment costs such as the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services
- costs of engineering and environmental reviews, including environmental assessments and follow-up programs as defined in the Canadian Environmental Assessment Act and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment
- costs of developing and implementing innovative techniques for carrying out the Project
- audit and evaluation costs as specified in the Contribution Agreement other costs that are direct and necessary for the successful implementation of the Project, in

the opinion of the Federal Government, and which are approved by the Management Committee set up under the Contribution Agreement

5. Ineligible Costs are Project costs which are not eligible for reimbursement under the Agreement, and include:

- costs incurred after the Project completion date
- costs incurred prior to signing the Contribution Agreement
- sole source contracts
- costs of land acquisition (and associated fees), leasing land, buildings, equipment and other facilities
- costs of general repairs and maintenance of Project work and related structures, unless they are part of a larger capital expansion Project
- costs of services or works normally provided by the Recipients, incurred in the course of implementation of the Project
- costs of any goods and services which are received through donations or in kind
- internal employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs, relating to services delivered directly by permanent employees of the Recipients or of a corporation owned and controlled by the Recipients
- costs of developing and implementing a Transit Demand Plan and associated measures
- cost of developing a business case or proposal for funding
- financing and interest charges on loans
- legal fees
- sales taxes

6. Management Committee

- comprised of representatives from both Canada and the Recipients
- established to monitor the progress of the Project, and administer, manage, and enforce the provisions of the Agreement
- all recommendations and decisions of the Management Committee must be unanimous

7. Municipal Responsibilities

- to fund all Project costs, including cost overruns, and seek reimbursement from Canada in respect of Eligible Costs
- to implement the Project in accordance with the terms and conditions of the Contribution Agreement
- to use the Province of Ontario’s contributions, held in the Move Ontario Trust, plus any interest earnings after January 1, 2008, solely and exclusively for the Project
- to disclose all financial assistance received for the Project
- in the event that there are cost over-runs in comparison to anticipated costs, to provide Canada with a summary of measures proposed to remedy the shortfall to Canada’s satisfaction so as to avoid suspension of payments under the Agreement by Canada and/or declaration of default under the Agreement by Canada

- to comply with environmental assessment obligations as per the Canadian Environmental Assessment Act (CEAA) report
- to provide a Transportation and Demand Management plan that meets federal requirements to the Management Committee by June 30, 2013
- within twelve (12) months, to provide Canada with an independent and objective Final P3 Screen and delivery strategy for specific Project Components that is consistent with the previously submitted Preliminary P3 screen and Federal guidelines.
- to award and manage all Contracts in accordance with relevant policies and procedures, and to ensure all Contracts are awarded in a way that is transparent, competitive and consistent with value for money principles and is in accordance with the Agreement on Internal Trade, or in a way that is otherwise acceptable to Canada
- to prepare and make available all documentation required under the Agreement, including payment claim forms, approval documents, Contracts, financial forecasts, status reports
- to ensure that any audit requested by Canada is performed and to provide, upon request, accurate and timely financial forecasts and status reports

8. Events of Default
    - the Recipients will be in default under the Contribution Agreement if they have submitted false or misleading information or made false or misleading representations to Canada, have not complied with any condition, undertaking or term of the Contribution Agreement, have neglected or failed to pay to Canada nay amount due in accordance with the Contribution Agreement or Canada has determined that they are unable to complete construction of the Project unless they expend in excess of the funding available to them.

9. Remedies available to Canada
    - if upon receipt of written notice, the Recipients fails to remedy a breach to Canada's satisfaction after 30 days, Canada may suspend payment, may declare the Recipients to be in default of the Agreement, may terminate the Agreement, and may require reimbursement of all or a portion of its contribution, with interest
    - if, over a 25 year period, the Recipients dispose of, or essentially abandon the subway extension assets, or render them unavailable for public use, then Canada will require reimbursement of its contribution in a declining proportion. An exception is made if the assets are transferred between Toronto and York for nominal consideration within a pre-established time period

10. Indemnity
    - The Recipients indemnify Canada, etc.(its officers, servants, employees or agents) from and against any harm arising from the Project (including the design, construction, operation, maintenance and repair of any part of it), the performance of the Agreement, and any omission or wilful or negligent act of the Recipients or a third party, with the exception of any act or negligence of Canada, etc. in the performance of his or her duties.