CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Transportation, Energy & Facilities Division

| TO: | Chair and Members  
Public Works Committee | WARD(S) AFFECTED: CITY WIDE |
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<td>COMMITTEE DATE:</td>
<td>March 7, 2011</td>
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<tr>
<td>SUBJECT/REPORT NO:</td>
<td>Metrolinx Transit Inventory Management Services (PW11011) - (City Wide)</td>
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| SUBMITTED BY: | Gerry Davis, CMA  
General Manager  
Public Works Department |
| PREPARED BY: | Douglas H. Murray  
Manager, Transit Fleet Maintenance  
(905) 546-2424, Extension 2804 |

RECOMMENDATION

(a) That the Mayor and General Manager of Finance and Corporate Services (City Treasurer) be authorized and directed to enter into a Governance Agreement, attached as Appendix “A” to Report PW11011, for the Joint Procurement of Bus Parts for the years 2010 - 2013, with an additional two option years concluding in 2015;

(b) That a certified copy of this Governance Agreement and accompanying By-law in a form satisfactory to Corporate Legal Services, Corporate Purchasing and Corporate Finance be forwarded to Metrolinx upon Council approval.

EXECUTIVE SUMMARY

At its meeting of January 26, 2011 to consider report PW11010, Vendor Approval Requests, Council gave direction to staff to switch from the currently approved single source vendors if it is determined that involvement in this process would result in net savings for the City Of Hamilton. This report seeks Council approval to enter into a Governance Agreement with Metrolinx through a Council by-law that would legally authorize staff to execute an agreement with Metrolinx.

The City Of Hamilton has been offered the opportunity to participate in a joint procurement for bus parts for the years 2010 - 2013, with an additional two option years concluding in 2015, with Metrolinx and nine other Ontario municipalities and GO Transit. The benefits of the joint procurement include; improved overall parts cost by volume buying and eliminating middle layers in supply chain. Using one Vendor will ensure lower transaction costs with only one purchase order a month and fewer invoices which
will reduce the number of Accounts Payables. Also, there will be a reduction of inventory investment, inventory carrying costs, and overall transaction costs. Further benefits are the elimination of costs of owning inventory, as parts will only be billed once the part crosses the counter and the part is physically used.

The Governance Agreement referred to in recommendation (a) of this report, is a required prerequisite to join the Provincial Procurement of Bus Parts. Under the conditions of the agreement, a By-Law is required to authorize the Mayor and City Treasurer to sign the “Governance Agreement between Her Majesty the Queen in Right of the Province of Ontario” (attached as Appendix A), represented by the Minister of Transportation for the Province of Ontario and the City of Hamilton related to the opportunity of becoming part of the Provincial Joint Procurement of Bus Parts.

The Province first offered a similar program in 2007 for the purchase of conventional transit buses. Council granted staff the authority to join this program in 2008 and then again for 2009-2010. This program provided the opportunity for small and medium size transit systems to gain efficiencies and economies in the purchase of conventional transit fleet at the best price through effective use of shared resources. This objective translates to benefits for the transit system, the related municipality, and the Province. Staff is of the opinion that Provincial Procurement for buses has been a success and feel confident entering into a similar procurement for Bus Parts will result in a similar outcome.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: Ratification of the Governance Agreement and related by-law implementation results in the City of Hamilton becoming eligible to participate in the Provincial Joint Procurement of Bus Parts for 2010 - 2013 with an additional two option years concluding in 2015. Metrolinx completed a Request For Information (RFI) in late 2009. It received two responses. The information was presented to all participants with favourable reaction. It is anticipated that there is the potential for a parts cost reduction of $100,000 to $150,000 based on information received through the RFI.

Staffing: There are no staffing implications.

Legal: There are no legal implications.

HISTORICAL BACKGROUND

The procurement initiative, facilitated by Metrolinx, now involves nine other Transit Systems; Durham, York, London, Mississauga, Brampton, Oakville, Grand River, GO Transit and Burlington. This initiative calls for the joint purchase of Bus Parts for 2010–2013 with an additional two option years concluding in 2015. Other transit systems can participate in the program subject to the terms and conditions of the governance agreement. The terms and conditions of those participating are set out in a governance agreement which is predicated on the following key principals:

- Metrolinx, as facilitator, shall use open and competitive procurement and be in compliance with Ontario Procurement Policies when issuing the Request
For Proposal, whereby proposals will be evaluated and the master agreement will be awarded to the bidder with the highest overall score.

- Participation by transit systems in the joint procurement initiative is voluntary, and participants can withdraw up to and including seven calendar days before award of the master agreement by the Steering Committee. After which, the City is bound to purchase from this agreement for 2010–2013.
- The procurement will be overseen/managed by the Steering Committee comprised of one member from each of the participating municipalities including a Vehicle Maintenance Supervisor from the Transit Division.
- Avoid costs by standardizing the RFP documents including terms and conditions.
- Obtaining more favourable pricing, given order size and standardization of specifications.
- Providing the opportunity to share resources in dealing with bus parts issues, particularly for medium to smaller transit systems.
- Avoid costs and reduce time associated with the bus parts procurement allowing transit systems to focus on our core competency.

**POLICY IMPLICATIONS**

With the City Of Hamilton entering into a procurement agreement with Metrolinx, this agreement would be consistent with Section 4.12, Purchasing Policy 12 “Policy for Cooperative Purchasing”. This agreement would also reduce the need for the majority of sole source and single source Policy 11’s and provide a more competitive procurement process for transit inventory.

The Public Works Strategic Plan was developed and implemented in 2007. It is used to define the vision for the Public Works Department through to 2017. The plan contains seventeen priorities that are categorized into four drivers: Communities, People, Processes and Finances. Hamilton’s partnership with Metrolinx and other Ontario Municipalities demonstrates two of our four commitments:

- “Smart Processes to Match our needs”. Partnering with Metrolinx and neighbouring municipalities saves valuable human resource time and money.
- “Sound Financial Management for the long haul”. Purchasing of bus parts within the capacity of the current operating budget for Transit complies with the Public Works Strategic plan that work is undertaken at approved service levels with budgets that match.

This initiative could result in some current local vendors experiencing a loss of business as a consequence of a larger more competitive regional market, however current Council approved Purchasing Policies do not allow for any preference to local vendors.

**RELEVANT CONSULTATION**

Staff has had consultation with Angela Mastandrea, Purchasing and Don Fisher from Legal Services.

Staff has ongoing consultation with the other nine municipalities involved in this initiative which has been facilitated by Metrolinx.
ANALYSIS / RATIONALE FOR RECOMMENDATION

Staff is recommending entering into this Parts Procurement initiative based on: Potential operating savings of 10 - 15% for OEM Parts and 15 - 30% on non-OEM Parts. This would further mitigate the need to hire extra resources to manage contracts for the 8,000 parts currently stocked at Transit. Entering into this agreement would ensure compliance with Purchasing Policies. Parts purchased under this initiative would be on a consignment basis; therefore parts on hand would not be expensed until the part was installed on a bus. The City would totally eliminate the expense of obsolete parts write-off as the vendor maintains ownership of all parts until used. Group buying ensures the best pricing available as group discounts would be realized.

ALTERNATIVES FOR CONSIDERATION

Transit works with Purchasing and Legal to develop contracts for all of the 8,000 parts currently stocked at the Mountain Transit Centre. This is not being recommended as additional resources would have to be hired to manage all of these contracts, and it is felt this would not be an effective use of non-value added staff time and resources.

CORPORATE STRATEGIC PLAN


Skilled, Innovative & Respectful Organization
- More innovation, greater teamwork, better client focus

Financial Sustainability
- Financially Sustainable City by 2020
- Effective and sustainable Growth Management
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner
- Full life-cycle costing for capital
- Address infrastructure deficiencies and unfunded liabilities
- Generate assessment growth/non-tax revenues
- Sustainable Tri-parti Government Agreement

Intergovernmental Relationships
- Influence federal and provincial policy development to benefit Hamilton
- Acquire greater share of Provincial and Federal grants (including those that meet specific needs)
- Maintain effective relationships with other public agencies

Growing Our Economy
- Competitive business environment

APPENDICES / SCHEDULES

Appendix “A” - Governance Agreement
GOVERNANCE AGREEMENT
FOR THE
JOINT PROCUREMENT OF TRANSIT INVENTORY MANAGEMENT SERVICES
(2010 - 2015)

January 2011
GOVERNANCE AGREEMENT
FOR THE

JOINT PROCUREMENT OF TRANSIT INVENTORY MANAGEMENT SERVICES

(2011 - 2015)

THIS AGREEMENT made as of the 3rd day of January 2011.

BETWEEN: METROLINX

- AND -

METROLINX
operating as GO Transit
- AND -

THE CORPORATION OF THE CITY OF BRAMPTON
- AND –

THE CORPORATION OF THE CITY OF BURLINGTON
- AND –

THE CITY OF HAMILTON
- AND -

LONDON TRANSIT COMMISSION
- AND -

THE CORPORATION OF THE CITY OF MISSISSAUGA
- AND -

THE CORPORATION OF THE TOWN OF OAKVILLE
- AND -

THE REGIONAL MUNICIPALITY OF WATERLOO
- AND –

THE REGIONAL MUNICIPALITY OF YORK
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WHEREAS Metrolinx has been working with Ontario municipal transit managers to develop detailed requirements for a joint procurement to implement Transit Inventory Management Services (TIMS);

AND WHEREAS the parties wish to:

- Reduce overall costs in procurement economies of scale for Inventory and materials management by achieving and improving operational efficiencies (e.g., less time spent searching for and pricing of Inventory);
- Improve management and control of Inventory;
- Increase availability of Inventory to yield improved productivity of maintenance staff and less downtime for revenue vehicles;
- Reduce Inventory risks (i.e. obsolete Inventory and Inventory shrinkage) and repetitive operational costs;
- Increase availability of Inventory to cover demand fluctuation through the pooling of Inventory; and
- Lower purchase order costs through, for example, consolidated monthly billing.

Terms capitalized herein (for other than grammatical reasons) have the meanings set out in Schedule “A” (Definitions).

ARTICLE I:
PRINCIPLES OF TRANSIT INVENTORY MANAGEMENT SERVICES

1. **Key principles**

   This Agreement shall be guided by the following key principles:

   a. Metrolinx shall comply with any Procurement Policies which it is required to follow in any RFP issued whereby proposals will be evaluated.

   b. Subject to the terms of this Agreement, participation by Purchasers in the joint Procurement is voluntary up to fifteen (15) Business Days before Metrolinx enters into a Master Agreement with the successful Proponent(s) pursuant to section 24 (Award of a Master Agreement).

   c. Subject to section 15 (The Request for Proposal (RFP) process), the decision on whether or not to exercise the right to extend for the Option Term rests exclusively with each of the respective Purchasers.

   d. Subject to Section 20, Metrolinx shall work with the Steering Committee in undertaking the Procurement with a view to facilitating the Purchasers’ Procurement of the services of a third party to be responsible for Transit Inventory Management Services.

   e. For the first year of the Term, each Purchaser will pay a participation fee equal to 1% of the value of Inventory purchased by the Purchaser during that year, plus applicable taxes, the specific terms of which payment shall be set out in the Master Agreement (the “Participation Fee”). Following the completion of the first
year of the Term, the Participation Fee percentage amount shall be reviewed and set annually by the Steering Committee taking into consideration the workload and sales volumes experienced during the preceding year and set at a value greater than 0.5% and less than or equal to 1%;
f. Upon execution of the Master Agreement legal obligations related to Transit Inventory Management Services subject to a TIA shall rest with the respective Purchasers.

**ARTICLE II:**
**STEERING COMMITTEES**

2. **Steering Committee Membership**

There shall be a Steering Committee comprising one representative from each of Metrolinx, GO Transit, and each municipal Purchaser under the RFP. For the Steering Committee, Metrolinx, GO Transit and each Purchaser may also appoint one Alternate Member, who can act on the Member’s behalf in their absence at Steering Committee meetings.

3. **Council By-law, Resolution**

The appointment of a Member and the Alternate Member for a Purchaser shall be confirmed by a by-law or resolution of the municipality, commission or board (as applicable) in a form consistent with Schedule F. The appointment shall refer to a position rather than a specific individual.

4. **Votes**

Save and except for the Metrolinx Member, each municipal Purchaser, and GO Transit shall, through its Member, have one vote on the Steering Committee. For greater certainty and consistent with its role as facilitator, the Metrolinx Member shall have no vote on the Steering Committee.

5. **Quorum**

Unless otherwise provided in this Agreement, a quorum for the transaction of business at any meeting of the Steering Committee shall consist of at least two-thirds of the total number of the Steering Committee Members. Members may be present either in person or by means of such telephone, electronic and other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.
6. **Decisions of the Steering Committee**

   The following decisions require the concurrence of at least two-thirds of the Members present at a meeting:

   a. recommending to Metrolinx the release of any RFP;
   b. recommending to Metrolinx the selection of a successful Proponent under any RFP;
   c. recommending to Metrolinx any amendments to a Master Agreement; and
   d. determining whether any Party is in default for the purposes of sections 31 (Metrolinx remedies for Event of Default by Purchaser) and 32 (Termination for Event of Default by Metrolinx).

   Where a Steering Committee exercises its authority under section 6(d) (Decisions of a Steering Committee), the Party whose Default status is being determined may participate in the discussion but may not vote in the decision.

   All other decisions of a Steering Committee require the concurrence of a majority (51%) of the Steering Committee Members present.

   Subject to its rights or other obligations as set out in this Agreement and any other agreement, law, policy, rule, directive or other requirement or Provincial direction to which it may be bound or subject, Metrolinx shall act in accordance with the decisions of the Steering Committee or not at all.

7. **Sub-committees**

   The Steering Committee will establish sub-committees, as needed, which will include one representative from each of the participating Purchasers wishing to participate on such sub-committees and one representative from Metrolinx. When establishing sub-committees, the Steering Committee will establish the procedures, including quorum requirements and voting rights for the sub-committee. The Steering Committee will establish an evaluation committee to evaluate Proposals and make recommendations to the Steering Committee. Notwithstanding the above, Metrolinx’s representation on any evaluation committee shall be restricted to observer status as intended to facilitate the evaluation process.

8. **Binding decisions**

   Steering Committee decisions must comply with the terms of the RFP and/or Master Agreement and are final and binding on all Purchasers.
9. **Regular Meetings**

The Steering Committee shall meet at least quarterly and may meet more often where the Chair notifies the Parties in writing of special meetings required in accordance with section 10 (Special Meetings).

10. **Special Meetings**

Metrolinx alone or any two (2) Steering Committee Members can, with at least five (5) Business Days prior written notice to the Chair and to the other Steering Committee Members, require a special meeting of the Steering Committee. The written notice shall specify the issue to be considered at the special meeting and shall include an agenda.

11. **Location of meetings**

Unless the Steering Committee decides otherwise, all meetings of the Steering Committee shall be held at the Project Office.

12. **Responsibilities of Steering Committee**

The Steering Committee will be responsible for:

a. approving the appointment of a Chair;

b. recommending the terms and conditions of the RFP including the proposed Supplier agreements forming a part of RFP;

c. recommending the issuance of an RFP pursuant to subsection 6(a) (Decisions of a Steering Committee);

d. establishing an evaluation committee for the purposes of evaluating Proposals in accordance with section 23 (Evaluation of Proposals);

e. consideration of recommendations by the evaluation committee related to the evaluation of RFP Proposals received;

f. subject to Section 24 (Award of a Master Agreement), recommending that Metrolinx enter into a Master Agreement with the overall highest-rated Proponent of the RFP, as well as any amendments to that particular Master Agreement;

g. subject to this Agreement, establishing rules and procedures regarding its own meetings;

h. approval of the Procurement implementation schedule;

i. establishing a Communication Plan in co-operation with Metrolinx; and

j. any other matter required by Metrolinx to be approved by the Steering Committee in order to more effectively carry out the intent and purpose of this Governance Agreement.
13. Responsibilities of Chair

The responsibilities of the Chair include:

a. except for special meetings called in accordance with section 10 (Special Meetings), establishing and distributing the agenda at least five (5) Business Days prior to each meeting;

b. presiding over each meeting including special meetings; and

c. arranging for the recording, distribution and storing of the minutes of such meetings.

ARTICLE III:
PROCUREMENT APPROACH

14. The Deliverables

Subject to the Steering Committee’s approval of the RFP which will contain a description of the goods and services required, it is expected that the Transit Inventory Management Services will entail, but may not be limited to: acquisition of Inventory, management software, reporting (standard and ad hoc), Inventory management and control, achieving high on-demand rates for Inventory ordered, coordinating Inventory pooling, and making recommendations for cost savings and process efficiency. The successful Proponent shall be responsible for the acquisition, inventorying, distribution, record keeping, and the management thereof of the repair Inventory, supplies, commodities, and equipment needed to sustain the Purchasers revenue vehicle fleet, non-revenue vehicle fleet, and general transit operation.

15. Term of Contract

Subject to this Agreement and the specific terms of the RFP and Master Agreement, the Procurement is intended to identify a Supplier as the exclusive Supplier for Transit Inventory Management Services over the Term for Purchasers who do not elect to terminate their participation pursuant to section 35 (Termination without cause by a Purchaser). The option to extend for the Option Term will be at the discretion of each Purchaser. Upon exercise of a right of extension by any Purchaser under section 54 (Right of Extension), the successful Proponent will be the exclusive Supplier for Transit Inventory Management Services to such Purchaser(s) during the Option Term in accordance with the terms of the Master Agreement.

16. Supplier

A Supplier procured pursuant to an RFP:
a. will be given an exclusive contract for the Term; therefore, Purchasers that plan to procure Transit Inventory Management Services during the Term and that have not withdrawn in accordance with section 35 (Termination without cause by a Purchaser) must purchase the Deliverables from the successful Supplier on an exclusive basis (with limited exceptions to be set out in the Master Agreement for the purchase of certain goods alone);
b. will not be contractually guaranteed the purchase of any particular number of Deliverables under the Master Agreement; and
c. will work with each Purchaser to determine the Service Level and the Inventory required.

17. Master Agreement

On the recommendation of the Steering Committee, and in compliance with any Procurement Policies required to be followed by it, Metrolinx may sign a Master Agreement with the successful Proponent of the RFP that will establish the Supplier for the Deliverables. As the issuer of the RFP and signatory to the Master Agreement, Metrolinx retains final discretion on whether or not to execute any Master Agreement. The Master Agreement will specify the terms and conditions including without limitation, costing for Transit Inventory Management Services. General terms and conditions that apply to all Purchasers will be contained in the Master Agreement. It is expected that the Term of the Master Agreement will be for three (3) years, with a right to extend the Master Agreement for two (2) additional consecutive periods of one (1) year each to be exercised at the option and in the discretion of each Purchaser under a TIA. In the event that Metrolinx elects not to enter into a Master Agreement under this section, it may, at its option, elect to terminate this Agreement by notice in writing to the Purchasers.

18. Transit Inventory Agreement (TIA) with Supplier

Subject to the Master Agreement, each Purchaser will enter into a Transit Inventory Agreement directly with the Supplier that will provide details of the Purchaser’s specific Deliverables, pricing and other terms and conditions for the Term. The TIA will also include terms requiring payment of the Participation Fee by the Purchaser to the Supplier, which the Supplier will in turn be required to remit to Metrolinx under the Master Agreement on account of the services provided by Metrolinx for the Procurement. In the event that the Supplier fails or refuses to pay this amount to Metrolinx Purchaser(s) will be authorized to set off this amount from any payments otherwise due to the Supplier under the TIA, and required to remit this amount to Metrolinx directly.

Each TIA is subject to review by Metrolinx prior to execution. Metrolinx, through its contract administration services, will review each TIA to ensure it is consistent with the respective Master Agreement. Should it be found to be inconsistent, Metrolinx will report the inconsistency to the Steering Committee. Purchasers are required to
enter into a TIA with the Supplier for each year of the Option Term if they choose to
exercise the right of extension contained in the Master Agreement.

19. **Timing**

Subject to the terms of this Agreement, the RFP is anticipated to be issued by
Metrolinx no later than April 2011 to accommodate the commencement of
Deliverables in 2011. The Supplier will be selected for a term ending December 31,
2013 with an option under the Master Agreement to each individual Purchaser for an
additional two (2) further periods of one (1) year each. These timelines are
estimates only and are subject to change by Metrolinx, acting reasonably.

20. **Issuance of RFP**

Metrolinx shall conduct the Procurement in accordance with this Agreement. The
Procurement shall include:

a. open advertisement through MERX™;
b. Proponent information session;
c. posting of Proponent questions and answers through addenda on MERX™; and
d. an evaluation committee to review and evaluate all RFP proposals, consisting of
   one representative from each Purchaser who chooses to participate in the
   committee.

Metrolinx shall pay for the cost of the RFP process provided Metrolinx shall not be
responsible for any costs incurred by Purchasers relating to such process including
those of Purchasers which elect not to participate under section 35 (Termination
without cause by a Purchaser) of this Agreement.

21. **Contract Administration Services**

Metrolinx shall provide contract administration services to assist the Steering
Committee and its respective Purchasers from the time the Master Agreement is
executed until the end of the term of the Master Agreement. All contractual and
other issues that impact Purchasers will flow through the contract administration
services as the main point of contact for all involved parties, namely Purchasers, the
Supplier and Metrolinx.

Contract administration services offered by Metrolinx shall include:

a. Monitoring initial start up and implementation of the Supplier’s service(s) for each
   Purchaser to ensure that the Supplier’s implementation schedule/plan is met;
b. Monitoring issues that arise during implementation with special emphasis on
   information technology integration issues and proactively work to coordinate
   solutions with the Supplier and all Purchasers;
c. Monitoring negotiations for the purchase of Inventory to ensure that all
   Purchasers are treated equally by the Supplier;
d. Coordinating any required training with the Supplier and Purchasers;
e. Working with the Supplier and Purchasers to develop and complete a comprehensive Inventory price monitoring system to quantify the potential and ongoing Inventory cost savings to Purchasers. This will include the collection of baseline cost and inventory data from Purchasers;
f. Monitoring other cost and opportunity cost savings for each Purchaser as predicted by the Metrolinx model to fully quantify the potential savings and efficiencies. This will include issues such as shrinkage, obsolescence, staffing, procurement related savings or efficiencies, mechanic efficiencies etc.;
g. Monitoring the contractual performance requirements and Indicators for each Purchaser with the objective of improving the quality of service throughout the Contract;
h. Identifying opportunities for increased standardization of Inventory and other procured goods to maximize economies of scales and lower prices;
i. Subject to the RFP, monitoring the extent to which Purchasers are sourcing Inventory from other Inventory suppliers;
j. Identifying opportunities for service improvements and efficiencies; under the Master Agreement and each TIA;
k. Monitoring the Supplier to ensure that Inventory that are pooled for all Purchasers are sufficient. Identify opportunities for increased Inventory pooling if feasible;
l. Meeting regularly with individual Purchasers to discuss Supplier performance, areas of concern and opportunities for improvement;
m. Managing all aspects of the introduction of new Purchasers in subsequent years;
n. Reporting on a regular basis to the Steering Committee on the Supplier’s performance and the degree to which the objectives are being met. This includes providing support to the Committee Chair including drafting and distribution of the agenda, minutes and other documentation;
o. Monitoring the contractual obligations contained in the Master Agreement and the Transit Inventory Agreement and work to resolve issues as they arise;
p. Undertaking marketing of the Transit Inventory Management Services procured through the RFP in other Ontario municipalities to attract new participants in order to maximize economies of scale without adversely impacting current Purchasers;
q. Managing all requests from other jurisdictions for information on the program and developing and delivering presentations for conferences, as required;
r. Liaising with other jurisdictions using Vendor Managed Inventories to identify opportunities for improvement and best practices; and,
s. Assisting Purchasers with reports to Council as required.

22. Fairness Commissioner

Notwithstanding anything in this Agreement to the contrary, Metrolinx shall alone and in its sole and absolute discretion, procure, retain and provide funding for the services of an independent fairness commissioner. The fairness commissioner will be a third party observer who provides independent confirmation that the
Procurement is open, fair and transparent and complies with the terms and conditions of the RFP and any Procurement Policies required to be followed by Metrolinx.

23. **Evaluation of Proposals**

The Parties agree that:

a. An evaluated award approach will be used in awarding the Master Agreement.

b. An evaluation committee, consisting of representatives from each Purchaser who chooses to participate in the committee, will conduct the evaluation of Proposals in compliance with any Procurement Policies required to be followed by Metrolinx and will include the following:

   i. Stage I will consist of a review to ensure all of the mandatory submission requirements have been met.
   
   ii. Stage II will consist of a review to ensure all of the mandatory technical requirements have been met.
   
   iii. In stage III, the evaluation committee will score the rated items in each qualified Proposal.
   
   iv. Stage IV will occur after the completion of stage III, when the sealed pricing envelope for each qualified Proponent will be opened, evaluated and scored.
   
   v. At the conclusion of stage IV, all scores from stage III and stage IV will be added to determine the overall highest scoring Proponent.

Metrolinx shall be entitled to attend all meetings of the evaluation committee, but shall not evaluate the Proposals.

Proponents must successfully complete each stage prior to proceeding to the next stage of the evaluation as listed above. If mandatory requirements are not met, Proposals may be rejected and not evaluated further.

24. **Award of A Master Agreement**

a. The Steering Committee may recommend, by sending written notification, that Metrolinx award the Master Agreement to the overall highest-rated Proponent.

b. Notwithstanding paragraph 24 (a), the Steering Committee reserves the right not to proceed with an award to any of the qualified Proponents if, in the view of two-thirds or more of Steering Committee Members, no Proposal is acceptable based on the terms and conditions of the RFP. If at least two-thirds of the Members of a Steering Committee agree that no Proposal is acceptable, they may agree to recommend to Metrolinx that the RFP be cancelled and each Purchaser shall thereafter be free to obtain such Deliverables which were the subject of the RFP on its own subject to the survival of specific terms of this Agreement, including without limitation confidentiality and conflict of interest.
c. Following the Steering Committee’s recommendation to Metrolinx of the Award of Master Agreement and in accordance with section 35 (Termination without cause by a Purchaser), Purchasers have up to fifteen (15) Business Days following the Steering Committee’s recommendation issued pursuant to section 24(a) to decide whether they will participate or terminate their participation under this Agreement without cause. Following these fifteen (15) Business Days, Metrolinx shall wait no less than five (5) Business Days prior to executing the Master Agreement and notifying the successful Supplier. Metrolinx’s execution of a Master Agreement is subject to Metrolinx’s rights under section 17 (Master Agreement) of this Agreement.

ARTICLE IV: LIABILITY

25. No Metrolinx liability

Where Metrolinx has entered into a Master Agreement upon the recommendation of the Steering Committee, each Purchaser acknowledges and agrees that Metrolinx shall not be liable or responsible to any other Party to this Agreement, any Purchaser, the Supplier, and/or any third party for any matter arising under such Master Agreement, the Procurement process or the provision of the Deliverables, except to the extent to which such matter relates to the negligence or wilful misconduct of Metrolinx in the performance of its duties, and without limiting the generality of the foregoing, each Purchaser acknowledges and agrees that:

a. Metrolinx will not be liable or responsible for any act or omission of the Purchaser or the Supplier in relation to Deliverables under the Master Agreement and/or any Transit Inventory Agreement (TIA). In no case whatsoever will Metrolinx be responsible or liable for the cost of any Deliverables under a TIA.

b. Metrolinx shall not be liable or responsible in any way whatsoever and the Purchasers agree that they shall satisfy themselves as to the suitability of the Deliverables for their purposes, including without limitation the Deliverables compliance with applicable laws, policies, safety, licensing, and other requirements as may apply.

c. Metrolinx has not endorsed, recommended or approved the suitability of the Supplier or its Deliverables for a Purchaser.

d. Each Purchaser shall be responsible for obtaining its own professional advice, including its own independent legal advice in respect of its execution of this Agreement, its participation hereunder, and its completion of a Transit Inventory Agreement, if any. Each Purchaser may include such additional business and legal terms and conditions to the Transit Inventory Agreement as it sees fit in
the circumstances provided that the required terms of the Transit Inventory Agreement approved by the Steering Committee (the “Required Terms”) are wholly retained and provided further that such additional terms and conditions are not inconsistent with the terms and conditions of the relevant Master Agreement and Required Terms.

e. Unless otherwise provided in this Agreement, each Purchaser shall be responsible for its own costs of any nature whatsoever arising as a result of, through or in any way related to its execution of this Agreement and its participation hereunder.

f. Each Purchaser shall be responsible for the oversight and administration of its own Transit Inventory Agreement and shall not direct any Supplier service issues that may arise to Metrolinx but shall inform Metrolinx of such issues.

g. Metrolinx shall not be liable for any loss or damages suffered by any of the Purchasers, or any other person as a result of any act or inaction of Metrolinx.

h. Metrolinx will not be liable for any losses, costs or damages sustained or incurred by any Purchaser, including losses, costs or damages relating to third party lawsuits arising out of any Procurement process or Master Agreement.

ARTICLE V:
ROLES AND RESPONSIBILITIES

26. Roles and responsibilities of Metrolinx

Metrolinx shall have the following roles and responsibilities in addition to those referred to elsewhere in this Agreement:

a. Metrolinx shall facilitate all aspects of the RFP including without limitation, issuance, evaluation and award and shall, through the contract administration services, administer the provisions contained in the Master Agreement on behalf of the Parties.

b. Consistent with and subject to section 21 (Contract Administration Services), Metrolinx shall provide contract administration services.

c. The Project Manager may attend and participate in any of the activities carried out in relation to the Procurement, including any meetings of the Steering Committee and/or sub-committee(s) established by the Steering Committee.

d. Metrolinx will:
   i. work with the Steering Committee to coordinate the:
      I. development of common RFP terms and conditions;
II. development of the Master Agreement and Transit Inventory Agreement; and

ii. be responsible for notifying the Supplier and the Steering Committee if other municipalities wish to participate in the Procurement by becoming Purchasers. At such time, Metrolinx shall contact the Supplier to determine if there is sufficient capacity to accommodate the additional Purchasers on the basis of the existing terms and conditions of the Master Agreement.

e. Except through GO Transit’s participation in the Procurement, Metrolinx shall not otherwise:
   i. evaluate Proposals
   ii. mediate disputes between the Purchaser and the Supplier following the execution by a Purchaser of a Transit Inventory Agreement; or
   iii. pay or otherwise be responsible for any amounts for Deliverables as may be set out in any Purchaser’s Transit Inventory Agreement.

f. Notwithstanding provision of contract administration services pursuant to section 21 (Contract Administration Services), Metrolinx does not guarantee, warranty or otherwise provide any assurance as to suitability of any of the Deliverables to the Purchasers, or anyone.

ARTICLE VI: PURCHASERS

27. Steps required to become a Purchaser

Subject to section 29 (Addition of Purchasers to this Agreement), an Eligible Purchaser becomes a Purchaser when:

a. the person or persons authorized to execute this Agreement on behalf of the Eligible Purchaser has or have duly executed the Confirmation Agreement attached as Schedule “H” confirming inter alia that entity’s agreement to be bound by the terms and conditions of this Agreement; and

b. the Eligible Purchaser has provided to the Project Manager the following documents:
   1. an information sheet on the Eligible Purchaser (attached as Schedule “E” (Purchaser information sheet); and
   2. a certified copy from an Eligible Purchaser’s clerk or other authorized officer, confirming passage and enforceability of a by-law or resolution, as applicable, which includes, at a minimum, the information in the sample by-law/resolution attached as Schedule “F” (Sample council/board/commission by-law/resolution), including the designation of persons authorized to provide instructions and any necessary approval for the Procurement as Steering Committee Member, Alternate Member, and confirming that all necessary actions have
been taken by the Eligible Purchaser to authorize such persons to give instructions and any necessary approval for the Procurement. The individual designations shall refer to positions rather than to specific individuals.

28. **Representations and warranties of Purchaser**

a. Each Purchaser covenants, represents and warrants to Metrolinx that:

   i. it is a validly existing legal entity under the laws of its relevant jurisdiction;

   ii. it has the requisite legislative and other authority and any necessary approval to enter into this Agreement and to carry out its terms, including the entering into joint Procurement arrangements and has passed any necessary by-law or resolution and has complied with its own procurement requirements;

   iii. it will take all necessary steps to ensure that it has all approvals (including budget approvals) which are required in order to carry out the Procurement before the issuance of any RFP or its execution of a TIA, as may be the case;

   iv. its entry into this Agreement and performance of the terms hereof will not result in a breach of its constituting documents, by-laws, or any other agreements, ordinances or laws to which it is a party or subject to;

   v. it has not entered into any agreement or arrangement that would restrict the ability of Metrolinx to perform its obligations under this Agreement, and

   vi. unless it has withdrawn from the Governance Agreement under section 35 (Termination without cause by a Purchaser) it will not enter into any new contract or contract extension with any supplier other than the Supplier for the Deliverables specified in the Master Agreement without the prior written approval of Metrolinx determined in accordance with this Agreement and the Master Agreement.

b. The Purchaser shall be deemed to have repeated the representations and warranties each time it provides instructions for the Procurement. Metrolinx shall have no obligation to make any further inquiry to confirm the truth or accuracy of any representation or warranty, or the validity of any action taken by a Purchaser hereunder.
29. **Addition of Purchasers to this Agreement**

Metrolinx may from time to time after the Effective Date of this Agreement, add Eligible Purchasers as Parties to this Agreement following written notice to each Purchaser. Each proposed additional Eligible Purchaser must first:

i. receive confirmation from Metrolinx that the Supplier has sufficient capacity to accept additional Purchasers without impacting on the provision of Deliverables to existing Purchasers;

ii. confirm in writing to Metrolinx that it has not issued an RFP or a tender or subsequently cancelled an order for delivery or terminated a contract during the Term for Transit Inventory Management Services as described herein in order to participate in this Procurement; and

iii. complete section 27 (Steps required to become a Purchaser) in full.

Upon its completion of the foregoing and its delivery of an executed Confirmation Agreement to the other Parties, an Eligible Purchaser shall become a Purchaser and shall enjoy all of the rights and obligations thereunder. The Purchaser may then enter into a Transit Inventory Agreement in accordance with the Master Agreement. Each Purchaser agrees that this Agreement is binding on it regardless of the addition of Purchasers by Metrolinx as Parties to this Agreement.

**ARTICLE VII: DEFAULT, ENFORCEMENT AND TERMINATION**

30. **Event of Default**

Each of the following events is an Event of Default in respect of either a Purchaser or Metrolinx (“Event of Default”), as applicable:

i. if any representation or warranty made by the Purchaser in this Agreement or any documentation delivered to Metrolinx by the Purchaser pursuant hereto shall be materially false or misleading in any respect;

ii. if the Purchaser is in default in carrying out any of the material terms, covenants, or obligations of this Agreement to be carried by the Purchaser;

iii. if Metrolinx is in default in carrying out any of the material terms, covenants, or obligations of this Agreement to be carried by Metrolinx; or

iv. if Metrolinx, the Purchaser or any of their respective advisors, partners, directors, commissioners, officers, Personnel, agents, representatives, or contractors has breached the requirements of Article XI (Conflict of interest) and Article XII (Confidential Information).

31. **Metrolinx remedies for Event of Default by Purchaser**

Notwithstanding any other rights which Metrolinx may have under this Agreement, if an Event of Default by a Purchaser has occurred as determined by the Steering
Committee under section 6(d)(Decisions of the Steering Committee), Metrolinx shall have the following remedies provided that, in the case of an Event of Default which is curable, as determined by Metrolinx, Metrolinx has first given written notice of the Event of Default to the defaulting Purchaser and the defaulting Purchaser has failed to correct the Event of Default within thirty (30) calendar days or such longer period of time as Metrolinx may consent in writing, Metrolinx, may, at its option, terminate the defaulting Purchaser’s right to participate in the Procurement by giving the defaulting Purchaser at least thirty (30) calendar days prior written notice of the termination date. As of the termination date:

(a) the defaulting Purchaser shall no longer participate in the Procurement;

(b) subject only to its obligations to comply with terms surviving the expiry or termination of this Agreement, the defaulting Purchaser shall no longer be a Purchaser for the purpose of this Agreement; and

(c) subject to Article IX (Dispute Resolution), Metrolinx may avail itself of any other legal remedies that may be available to it under law or in equity.

32. **Termination for Event of Default by Metrolinx**

If an Event of Default by Metrolinx has occurred, as determined by the Steering Committee in accordance with section 6(d)(Decisions of the Steering Committee), a Purchaser shall have the following remedies provided that, in the case of an Event of Default which is curable, as determined by the Steering Committee, the Steering Committee shall have first given written notice of the Event of Default to Metrolinx and Metrolinx has failed to correct the Event of Default within thirty (30) calendar days or such longer period of time as the Steering Committee may approve in writing:

(a) The Purchaser may, subject to section 36 (Obligations survive), terminate this Agreement by giving Metrolinx at least thirty (30) calendar days prior written notice of the termination date, and

(b) Subject to Article IX (Dispute resolution), each Purchaser may avail itself of any other legal remedies that may be available to it at law or in equity.

33. **Termination without cause by Metrolinx**

Metrolinx may terminate this Agreement at any time without cause provided that such Termination does not result in breach of its obligations under an RFP issued under this Agreement, by delivering written notice in accordance with Article VIII (Notice) to that effect to each Purchaser, which notice shall be effective sixty (60) calendar days following delivery of the notice by Metrolinx. Any outstanding payment obligations of the Purchasers remaining as of the date of termination shall remain in effect.
34. **Effect of Termination without cause by Metrolinx**

Where Metrolinx has provided notice pursuant to section 33 (Termination without cause by Metrolinx), the remaining Parties may request that Metrolinx assign any or all of its rights and obligations under this Agreement and/or the Master Agreement to them or any one of them. Such request shall be made before the expiry of the notice period referred to in section 33 (Termination without cause by Metrolinx).

35. **Termination without cause by a Purchaser**

A Purchaser may terminate its participation under this Agreement without cause up to fifteen (15) Business Days before Metrolinx enters into the Master Agreement pursuant to section 24 (Award of Master Agreement), by delivering written notice to that effect to the other Parties which notice shall be effective immediately. Where a Purchaser gives such notice, it shall no longer have any rights under this Agreement and shall not thereafter be permitted to become a Purchaser hereunder. No notice by an individual Purchaser shall affect the rights and obligations of the other Parties.

36. **Obligations survive**

Despite a termination under this Article VII (Default, Enforcement and Termination) each Party agrees that certain Party rights and obligations (whether contingent or matured, absolute or not), as set out in section 58 (Survival), existing immediately before the termination shall survive any such termination.

Where Metrolinx terminates this Agreement pursuant to section 34 (Termination without cause by Metrolinx), it shall remain responsible for all costs to which it is obligated to pay under this Agreement up to the point of termination.

**ARTICLE VIII: NOTICE**

37. **Address for notices**

Any notice or other communication required or permitted to be given under this Agreement shall be delivered or sent by registered mail, postage prepaid or facsimile (with follow-up mailed copy unless otherwise specified in this Agreement) in the case of Purchasers to the addresses or facsimile numbers set out in Schedule “E” (Purchaser information sheet) and, in the case of Metrolinx to:

Attn.: Project Manager
Transit Partnerships Innovation
Metrolinx
20 Bay Street, 9th Floor
Toronto, ON M5J 2N8
Fax: (416) 874-5956
Any Party may change the address to which notices or other communications required or permitted to be given under this Agreement shall be sent, by sending notice in writing to every other Party which shall become effective immediately upon receipt of such notice.

**ARTICLE IX: DISPUTE RESOLUTION**

38. **Legal Remedies for Disputes**

Any dispute, question, claim, or other matter arising out of or relating to this Agreement (collectively, a “Dispute”) shall be resolved by the following escalation procedure. However, 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 are not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders.

39. **Disputes with Supplier**

Each Purchaser shall be solely responsible for dealing with any disputes that may arise between it and the Supplier. Purchasers shall share equally the costs related to any disputes with the Supplier arising out of a dispute related to the Master Agreement.

40. **Three-tiered Dispute Resolution**

The Parties agree that any Dispute shall be referred for dispute resolution by high-level negotiation, mediation or arbitration in the manner described in Schedule “B” (Dispute Resolution). For greater certainty, a Party may refer a Dispute to dispute resolution under the provision of this Article IX (Dispute resolution) by the delivery of a notice requesting dispute resolution to the other Parties, which notice shall set out the Dispute in reasonably sufficient detail (a “Dispute Notice”).

41. **Performance to Continue**

Notwithstanding that a matter has been referred to dispute resolution under the provisions of this Article IX (Dispute resolution), the Parties shall throughout the period of dispute resolution endeavour to perform their respective obligations under the terms of this Agreement to the best of their abilities.
42. **Dispute Cost**

The Parties shall be responsible for their own costs for any Dispute arising out of this Agreement.

**ARTICLE X:**

**Interpretation of Agreement**

43. **Governing Laws and Agreement**

This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

44. **Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, which shall be severed from this Agreement, and the remaining provisions of this Agreement shall continue in full force and effect. Provided that the context allows, the remaining provisions shall be interpreted in the same way as they would have been had the severance not taken place.

45. **Entire Agreement**

a. This Agreement shall constitute the entire Agreement and understanding between the Parties relating to the matters described herein and supersedes all prior understandings, discussions, negotiations, commitments, representations, warranties and agreements, written or oral, express or implied, existing between the Parties at the date of execution with respect to the subject of this Agreement. None of the Parties shall be bound by any definition, condition, warranty or representation other than as expressly stated in this Agreement or as mandated by federal or provincial law.

b. The following Schedules and Attachments are attached to and form a part of this Agreement:
   
   Schedule “A” – Definitions and Interpretation;
   Schedule “B” – Dispute Resolution;
   Schedule “C” – Communication Plan;
   Schedule “D” – Confidentiality Provisions;
   Schedule “E” – Purchaser Information Sheet;
   Schedule “F” – Sample Council/Board/Commission By-Law/Resolution;
   Schedule “G” – Confidentiality Agreement;
   Schedule “H” – Confirmation Agreement
c. In the event of a conflict, the part that precedes the signatures of the Parties will take precedence over any of the Schedules and Attachments.

46. No Partnership, Joint Venture or Corporation

The execution of this Agreement and the other arrangements with respect to the Procurement are not intended to create, and shall not be treated as having created, a general or limited partnership, joint venture, or corporation.

47. Members of Council, Officers, Agents, etc.

Each Purchaser and its members of commissions, council, directors, officers, agents, contractors and employees are not, nor are they deemed to be, officers, agents, employees or officials of Metrolinx.

48. No Fiduciary Duties

Metrolinx shall not by reason of this Agreement or any of the discussions leading to or in connection with this Agreement have a fiduciary or trust relationship with the Purchasers or any other person or entity, or any other obligation other than as specifically stated in this Agreement.

49. Conflict

In the event of any conflict between the provisions of this Agreement and its Schedules, the provisions of this Agreement shall take precedence over the Schedules to this Agreement.

50. Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

ARTICLE XI:
CONFLICT OF INTEREST

51. No conflict of interest

(a) No Purchaser nor any of its respective advisors, partners, directors, commissioners, officers, Personnel, agents, or contractors shall engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially) with the terms and conditions set out in this Agreement and/or the Procurement, RFP, Master Agreement and Transit Inventory Agreement contemplated or completed under this Agreement. Each Purchaser acknowledges and agrees that it shall be a conflict of interest for it to use Confidential
Information relevant to the Procurement or otherwise where Metrolinx has not specifically authorized such use unless the Confidential Information relates solely to that Purchaser and has been provided by that Purchaser.

(b) Subject to paragraph (c) below, where a Purchaser exercises its right to terminate its participation in the Procurement in accordance with section 35 (Termination without cause by a Purchaser), it shall not be entitled to contract with the Supplier for the purchase of the Deliverables contemplated by the RFP, during the Term of the Master Agreement, including any extensions thereof.

(c) The restriction noted in paragraph (b) above shall not apply to that Purchaser’s right to purchase goods alone, such as vehicle inventory items, from the Supplier in the manner typically procured by the Purchaser, provided that the Procurement Confidential Information is not used by the Purchaser in the context of that acquisition.

ARTICLE XII: CONFIDENTIAL INFORMATION

52. Confidential Information

During and following the Term of this Agreement, each Purchaser in accordance with the terms and conditions set out in Schedule “D” (Confidentiality Provisions), shall ensure that its advisors, agents, directors, commissioners, officers, partners, Personnel, representatives and contractors keep all Confidential Information confidential in accordance with the terms and conditions set out in Schedule “G” (Confidentiality Agreement) with respect to each Purchaser.

ARTICLE XIII: Term

53. Term

Subject to any extension or termination of this Agreement and the survival of any obligations, all as provided herein, this Agreement shall be in effect until the termination or expiration of the Master Agreement (the “Term”).

54. Right of Extension

The Master Agreement will contain a right to extend the initial Term for a further period of up to two (2) additional consecutive years. Each Purchaser may exercise this right of extension as contemplated by the Contract by providing to Metrolinx
notice in writing of its intention to do so no later than 45 days prior to the completion of the Term of the Contract. Such notice may be provided by that Party’s Member.

ARTICLE XIV:
GENERAL

55. No waiver

a. The benefit of any provision of this Agreement may be waived in whole or in part by the Party for whose benefit the provision operates and any Party may waive any or all of its rights in the event of a breach of any provision of this Agreement by another Party. A waiver is binding on the waiving Party only if it is in writing. A waiver may be absolute or may be limited in any way as to duration or scope.

b. The failure by one of the Parties to insist in one or more instances on the performance by another Party of any of the terms or conditions of this Agreement shall not be construed as a waiver by the Party of its right to require future performance of any such terms or conditions, and the obligations of the other Party with respect to such future performance shall continue to be in full force and effect.

56. Force Majeure

a. A Party shall not be responsible for failures in performance due to Force Majeure.

b. "Force Majeure" means any circumstance or act beyond the reasonable control of a Party claiming Force Majeure, including an intervening act of God or public enemy, war, blockade, civil commotions, labour stoppages, strikes or lockouts, fire, flood, earthquake, epidemic, quarantine restriction, a stop-work order or injunction issued by a court or public authority having jurisdiction, or governmental embargo, which delays the performance of any obligation created by this Agreement beyond its scheduled time, provided such circumstance or act is not expressly dealt with under this Agreement or does not arise by reason of:

   i. the negligence or wilful misconduct of the Party claiming Force Majeure or those for whom it is responsible at law;
   ii. any act or omission by the Party claiming Force Majeure (or those for whom it is responsible at law) in breach of the provisions of this Agreement; or
   iii. lack or insufficiency of funds or failure to make payment of monies;

c. Provided further that, in the case of an event of Force Majeure, the Party affected thereby shall notify the other Party and Metrolinx if Metrolinx is not the other Party, as soon as possible and in any event within five (5) Business Days following the date upon which the affected Party first becomes aware (or should
have been aware, using all reasonable due diligence) of such event so that the other Party may verify same.

d. If an event of a Force Majeure continues for a period of more than forty-five (45) calendar days, a Party shall have the right to terminate this Agreement upon five (5) Business Days written notice to the other Parties. This right shall not affect a Purchaser’s obligations to a Supplier under a Transit Inventory Agreement which shall be determined in accordance with the terms of that agreement.

57. Remedies cumulative

All remedies, rights, undertakings, obligations and agreements of the Parties under this Agreement shall be cumulative, and none thereof shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any Party. Each Party may follow any remedy to which it is entitled concurrently or successively, at its option.

58. Survival

Articles IV (Liability), VI (Purchasers), VII (Default, enforcement and termination), XI (Conflicts of interest), XII (Confidential Information), and section 28 (Representations and warranties of Purchaser), shall survive the expiration or termination of this Agreement.

59. Amendment

Except as expressly provided herein, this Agreement may be amended or modified only by an instrument in writing executed by each of the Parties, which will form part of the Agreement.

60. No Assignment

Except as otherwise provided in this Agreement, Metrolinx shall not assign the whole or any part of its rights or obligations under this Agreement without the express written consent of the Steering Committee, which consent shall not be reasonably withheld.

No Purchaser shall assign the whole or any part of its rights or obligations under this Agreement without the express written consent of Metrolinx, which consent shall not be unreasonably withheld. For greater certainty and without limitation, no assignment of a TIA shall operate as an assignment of that party’s obligations under this Agreement.
61. **Further Action**

   Each Party shall at all times promptly execute and deliver and cause to be executed and delivered such documents and take and cause to be taken such action as may be necessary or appropriate to give effect to the provisions of this Agreement.

62. **Enurement**

   This Agreement shall enure to the benefit of and be binding upon each Party and their respective successors and permitted assigns.

63. **Time of the Essence**

   In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.

64. **Counterparts**

   This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, and all such counterparts shall together constitute one and the same instrument. All signatures of the Parties to and pursuant to this Agreement may be transmitted by facsimile and such facsimile shall for all purposes be deemed to be the original signature of the person whose signature it produces and shall be binding upon that person and on the Party on whose behalf that person signed.
IN WITNESS WHEREOF, Metrolinx and each of the Purchasers have respectively executed and delivered this Agreement effective as of the date set out above.

Date:___________________  METROLINX

Per: _____________________________

Name:

Title:

Per: _____________________________

Name:

Title:

We/I have the authority to bind the corporation.

Date:___________________  METROLINX, operating as GO Transit

Per: _____________________________

Name:

Title:

We/I have the authority to bind the corporation.
Date: ____________________  THE CORPORATION OF THE CITY OF BRAMPTON
Per: ____________________

Name:
Title:

Per: ____________________

Name:
Title:

We have the authority to bind the corporation.
THE CORPORATION OF THE CITY OF BURLINGTON

Date: ____________________

Per: ______________________

Name: ____________________
Title: ____________________

Per: ______________________

Name: ____________________
Title: ____________________

We have the authority to bind the corporation.
We have the authority to bind the corporation.
Date: ____________________  LONDON TRANSIT COMMISSION

Per: ____________________  Name:

Title:

Per: ____________________  Name:

Title:

We have the authority to bind the corporation.
THE CORPORATION OF THE CITY OF MISSISSAUGA

Per: __________________________

Name:

Title:

Per: __________________________

Name:

Title:

We have the authority to bind the corporation.
THE CORPORATION OF THE TOWN OF OAKVILLE

Per: ____________________________

Name: __________________________

Title: __________________________

Per: ____________________________

Name: __________________________

Title: __________________________

We have the authority to bind the corporation.
Date: ____________________

THE REGIONAL MUNICIPALITY OF WATERLOO

Per: ____________________

Name: 
Title: 

Per: ____________________

Name: 
Title: 

We have the authority to bind the corporation.
We have the authority to bind the corporation.
SCHEDULE A:
DEFINITIONS AND INTERPRETATION

1. Definitions

In this Agreement,

“Agreement” means this agreement, including its Schedules and Attachments as may be amended from time to time;

“Alternate Member” means a person designated by a Party or its Member, as the case may be to act in the absence of its Member and has all the rights, responsibilities and obligations of the Member;


“Attachments” means the attachments listed in section 45 ( Entire Agreement ) and those documents attached to the Schedules to this Agreement, as applicable;

“Business Day” means any day which is not a Saturday or Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws applicable to the Province of Ontario, or a day observed as a holiday by the Government of Ontario;

“Chair” means the chair of the Steering Committee appointed under section 12 ( Responsibilities of Steering Committee );

“Communication Plan” means the communication plan for any major joint communication event developed by Metrolinx and approved by the Steering Committee consistent with Schedule “C” ( Communication Plan );

“Confidential Information” has the meaning set out in section 6 of Schedule “G” ( Confidentiality Agreement );

“Contract” means the aggregate of: (a) the Master Agreement; (b) the assignment-specific Transit Inventory Agreement; (c) the RFP, including any addenda; (c) the Supplier’s Proposal; and (d) any amendments executed in accordance with the terms of the Master Agreement;

Deliverables” means any goods or services, and everything developed for or provided to a Purchaser in the course of performing under the Contract or agreed to be provided to a Purchaser under the Contract, by the Supplier or its employees, volunteers, agents or subcontractors, as further described, but not limited by section 14 ( The Deliverables ), the RFP and any specific Transit Inventory Agreement;

“Dispute” means a dispute as described in section 38 ( Legal Remedies for Disputes );
“Dispute Notice” means a dispute notice as described in section 40 (Three-tiered dispute resolution);

“Effective Date” means the date this Agreement is made as set out on the first page of this Agreement;

“Eligible Purchaser” means a municipality, as defined under the Municipal Act, 2001, a transit authority, including a transit commission as may be authorized under the Municipal Act, 2001, with which a municipality is permitted to enter into an agreement for the Procurement, or GO Transit but for greater certainty does not include a Party who has previously terminated its participation under this Agreement, or a Purchaser who has terminated a TIA or failed to exercise an Option Year.;

“Event of Default” means an event of default as described in section 30 (Event of Default);

“Force Majeure” means any circumstance or act as described in section 56 (Force Majeure);

“FIPPA” means the Freedom of Information and Protection of Privacy Act, R.S.O 1990, c. F. 31;


“GO Transit” means the operating division of Metrolinx responsible for the provision of public transportation services;

“Inventory” means all items necessary and/or incidental to the operation, repair and/or maintenance of a Purchaser's public transportation vehicles and facilities, as further specified in the RFP;

“Master Agreement” means the contract, including its schedules, to be entered into between Metrolinx and the Supplier for the provision of the Deliverables;

“Member” means the person designated and authorized by a Party under section 3 (Council By-Law, Resolution) to perform any action, and provide any required recommendations, instructions and approvals to complete the Procurement within the scope of this Agreement;

“MERX” means the electronic tendering system used to connect suppliers of goods and services to people who purchase on behalf of governments and public sector organizations;

“Moral Rights” has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42, and includes comparable rights in applicable jurisdictions;


“OEM” means original equipment manufacturer;

“Option Term” means any one of or all of the consecutive annual periods following the initial Term of the Master Agreement;

“Participation Fee” has the meaning set out in Article 1 of this Agreement;

“Party” means any one of the signatories to this Agreement, and “Parties” means more than one Party;

“Personnel” means collectively, in the case of each Party, individuals who provide services to such Party or any of its contractors in connection with this Agreement, whether as employees or independent contractors;

“Procurement” means the process of procuring the Deliverables in accordance with this Agreement;

“Procurement Documents” means the Request for Proposals for the Deliverables and any documents related thereto;

“Procurement Policies” means the procurement policies and applicable Government directives and agreements in effect from time to time respecting the procurement of equipment, services and supplies applicable to Metrolinx;

“Project Manager” means the Metrolinx representative responsible for Metrolinx’s overall facilitation and administration of the Procurement in accordance with this Agreement;

“Project Office” means the office designated by Metrolinx as such from time to time by notice in writing to the other Parties;

“Proponent” means the legal entity that submits a proposal in response to the RFP;

“Proposal” means a bidder’s submission received in accordance with a RFP;

“Purchaser” means each Party to this Agreement and any Eligible Purchaser that has subsequently complied with the requirements of section 27 (Steps required to become a Purchaser);

“Request for Proposals” or “RFP” means the request for proposals to be issued by Metrolinx for the Procurement in accordance with this Agreement;
“Schedules” means the schedules to this Agreement listed in section 45 (Entire Agreement) and attached to this Agreement;

“Service Level” means any one of the following: 1) the Supplier procures and delivers Inventory to the Purchaser upon issuance of a purchase order, and makes recommendations to the Purchaser regarding the Purchaser’s Inventory management based on the Supplier’s observations of the Purchaser’s Inventory usage; 2) the Supplier procures, delivers and manages Inventory on behalf of the Purchaser where the Supplier and Purchaser jointly establish Inventory min-max levels; or 3) the Supplier procures, delivers and manages Inventory on behalf of the Purchaser using its own staff; all as may be further specified in the RFP;

“Steering Committee” means the committee established by this Agreement as described in Article II (Steering Committees);

“Supplier” means the successful Proponent with whom Metrolinx may enter into a Master Agreement for the Deliverables in accordance with this Agreement; and,

“Term” means the term as described in section 53 (Term).

“Transit Inventory Agreement” or “TIA” means the contract to be entered into by a Purchaser and the Supplier to provide the Deliverables with any additional options as specified by the Purchaser;
SCHEDULE B:
DISPUTE RESOLUTION

1. **High-level negotiation**

Subject to section 40 (Three-tiered dispute resolution), in the event a Party issues a Dispute Notice to the other Parties, the Chief Administrative Officer or equivalent of each Purchaser and in the case of Metrolinx, the Project Manager, shall meet and make a good faith effort to resolve the Dispute as set out in the Dispute Notice in a prompt manner and for the purpose of same, each Party shall provide its negotiator with full and timely disclosure of all relevant facts, information and documents to facilitate such negotiation. Negotiations shall be commenced within thirty (30) calendar days of the delivery of a Dispute Notice and shall, unless all Parties agree otherwise, be concluded within thirty (30) calendar days of their commencement. In the event that a resolution satisfactory to all Parties is achieved through such negotiations, the Parties shall detail, in writing, the manner in which the Dispute has been resolved.

2. **Mediation**

If the Dispute has not been resolved through high-level negotiation as contemplated in section 1 (High-level negotiation) above, the Dispute will be referred to structured negotiation with the assistance of a mediator appointed by mutual agreement of the Parties within thirty (30) calendar days of any Party issuing a supplementary Dispute Notice requesting mediation. If a mutual agreement is not reached within the timelines set out above, then Metrolinx, acting in good faith, may appoint a mediator and provide the other Parties with written notice of such appointment. The mediator shall be an independent person who by training and experience has the professional qualifications and the mediation skills to mediate any Dispute that may arise among the Parties to this Agreement. The Parties shall agree on the procedure to be used in mediation. If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.

3. **Arbitration**

   a. Any Party may, within thirty (30) calendar days of the delivery of the mediator’s confirmation that the Parties were unable to resolve their Dispute pursuant to section 2 (Mediation) above, issue a supplementary Dispute Notice requesting arbitration. The Parties shall agree on the procedure to be used for arbitration unless the Parties are required by legislation to comply with a particular arbitration process.

   b. Any determination by arbitration shall be final and binding upon the Parties, and not subject to appeal or challenge.

   c. To the extent not specified in this Agreement, an arbitration shall be governed by the provisions of the *Arbitration Act, 1991*, as amended.
SCHEDULE C:  
COMMUNICATION PLAN

1. Communication Plan

a. The Parties agree that any communication with third parties in relation to the Procurement shall be carried out in accordance with the terms and conditions set out in the Communication Plan approved by the Steering Committee.

b. The purpose of the Communication Plan is for Metrolinx and Purchasers to communicate with the public about the joint Procurement initiative and to enhance opportunities for appropriate, continuous and consistent recognition of the co-operative efforts of the Parties.

c. Each Purchaser and Metrolinx agree to undertake joint communications activities and products that will promote opportunities to communicate with the public in an open, transparent, effective and proactive manner, using appropriate, ongoing, consistent public information material acknowledging the Parties’ participation as set out in this Agreement.

d. Unless agreed to in advance by all Parties, the Party shall give the other Parties reasonable notice of ten (10) Business Days prior to media releases, media conferences, public announcements and other events pertaining to the joint transit Procurement, and/or the printing, producing or publishing of:

1. public reports,

2. Internet pages providing information for transit agencies, municipalities, contractors and members of the public on this Agreement.
SCHEDULE D:
CONFIDENTIALITY PROVISIONS

1. Injunctive and other relief

Each Party acknowledges that breach of any provisions of this Schedule D (Confidentiality Provisions) may cause irreparable harm to any of the other Parties, or to third parties to whom any of the Parties owes a duty of confidence, and that the resulting injury to a Party, or to any third party may be difficult to calculate and adequately compensate in damages. Each Party agrees that any other Party, is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy available to it by law against any actual or potential breach of the provisions of this Schedule D (Confidentiality Provisions), subject to any applicable statutory exemptions and acknowledging that any request for equitable relief is within the discretion of a court.

2. Notice and protective order

If a Party or any of its advisors, agents, directors, commissioners, officers, partners, Personnel, representatives or contractors becomes legally compelled to disclose any Confidential Information, that Party shall provide each of the other Parties, with prompt notice to that effect to allow any of the Parties, to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the other Parties, and their respective legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Party will disclose only that portion of the Confidential Information which the Party is legally compelled to disclose, only to such person or persons to which the Party is legally compelled to disclose, and the Party shall provide notice to each such person or persons – in co-operation with legal counsel for the other Parties – that such Confidential Information is confidential and subject to non-disclosure on terms and conditions substantially similar to and not materially less protective than those in this Agreement and shall obtain the written agreement of each such person or persons to receive and use such Confidential Information subject to those terms and conditions.

3. Parties’ advisors, agents, Personnel and contractors

Each Party shall limit the disclosure of the Confidential Information to only those of its advisors, agents, directors, commissioners, officers, Personnel, representatives or contractors who need to know it in order to perform the Party’s obligations under this Agreement and who have been specifically authorized by the Party to have such disclosure. Each Party shall advise its advisors, agents, directors, commissioners, officers, Personnel, representatives and contractors of the requirements of this Schedule (Confidentiality Provisions) and take appropriate action to ensure their compliance with its terms. In addition to any other liabilities of a Party pursuant to this Agreement or otherwise at law or in equity, that Party shall be liable for any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and
consultant fees), causes of action, and proceeding arising from any non-compliance with this Schedule D (Confidentiality Provisions) by the Party’s advisors, agents, directors, commissioners, officers, Personnel, representatives or contractors. Each Party shall execute or require each of its advisors, agents, directors, commissioners, officers, Personnel and contractors involved in any way in fulfilling the Party’s obligations under this Agreement to execute Schedule “G” (Confidentiality Agreement) with respect to each Party, where applicable.
SCHEDULE E:
PURCHASER INFORMATION SHEET

1. Legal name of organization

______________________________________________

2. Contact information

Mailing address and fax number for notices:

______________________________________________

______________________________________________

______________________________________________

______________________________________________

______________________________________________

Fax: _______________________________________

Steering Committee Member  Alternate Member

Title: ________________________________  ________________________________

Address: ____________________________  ________________________________

Telephone #: _________________________  ________________________________

Fax #: ______________________________  ________________________________

E-mail: _____________________________  ________________________________
SCHEDULE F: SAMPLE COUNCIL/BOARD/COMMISSION BY-LAW/RESOLUTION

The Council/Board/Commission for ______________________________________ hereby authorizes the future signing by [Signing authority for the Governance Agreement] (position of authorized agent) of a “Governance Agreement for the Joint Procurement of Transit Inventory Management Services” (the “Agreement”) for the purpose of purchasing Inventory at the required Service Level on the terms and conditions set out in the following RFP. In addition, the Council/Board/Commission authorizes ____________________________________________ (Name and title of Steering Committee Member) to perform any action, and provide any required recommendations, instructions and approvals to complete the Procurement within the scope of the Agreement, to appoint Alternate Members to the Steering Committee to perform the above in their absence and to exercise the Council/Board/Commission’s rights of early termination in accordance with section 35 (Termination without cause by a Purchaser) of the Agreement.

This By-law/Resolution was adopted by the Council/Board/Commission of ______________________________

Name of legal entity

on __________________________, 2011

Member of Council/Governing Board/Commission

______________________________

Member of Council/Governing Board/Commission
SCHEDULE G:
CONFIDENTIALITY AGREEMENT

[Instructional note: To be signed by each Steering Committee Member and submitted to the Project Manager.]

For sufficient and valuable consideration received from Metrolinx and the Parties, including the disclosure to the undersigned of certain Confidential Information (as defined below), the undersigned agrees as follows:

1. The undersigned shall maintain the absolute confidentiality of all Confidential Information (as defined below), and, except as expressly permitted herein, shall not directly or indirectly copy, distribute, disclose, use or allow access to, the Confidential Information, or obtain any benefit from the Confidential Information or permit anyone to do any of these things. The undersigned agrees not to disclose any of the Confidential Information to any person for any reason whatsoever other than to those persons with whom the undersigned has an employment relationship who actually need to have knowledge of the Confidential Information for the purpose of facilitating participation in the Procurement. In this event, the undersigned shall disclose such part of the Confidential Information to those persons as is reasonably necessary. Prior to disclosure, however, the undersigned shall issue appropriate directions to those persons to whom it proposes to lawfully disclose the Confidential Information to satisfy the undersigned’s obligations herein.

2. The undersigned may disclose Confidential Information to his/her board or municipal council provided that (i) an in camera meeting of the board or municipal council is permitted under the Purchaser’s by-laws or Section 239 (2) of the Municipal Act, S.O. 2001, Chapter 25 where the Confidential Information will be disclosed, (ii) the undersigned first brings the confidential nature of the information to the board or council; and (iii) the undersigned discloses the Confidential Information only in the in camera meeting. The undersigned shall ensure, at the end of the in camera meeting, that copies of the Confidential Information that may have been distributed to members of the board or council are returned to the undersigned for destruction. The undersigned shall use all reasonable efforts to ensure the Confidential Information is not recorded in any minutes of the in camera meeting; however, if such information is recorded despite application of all reasonable efforts, the undersigned shall ensure the confidentiality of the information in such minutes is maintained.

3. The undersigned shall maintain the security and integrity of any Confidential Information in the possession or control of the undersigned, and shall keep such Confidential Information in a physically secure location to which access is restricted. The undersigned shall use measures to protect the Confidential Information, which are no less stringent than the measures used to protect information of a confidential nature in his/her place of employment. The undersigned shall not have, or acquire, any right, title or interest, including intellectual property rights, in such Confidential Information.
4. The undersigned acknowledges that all Parties have disclosed Confidential Information to the undersigned solely in connection with assisting, advising and/or providing feedback to the Procurement (the “Authorized Purpose”). The undersigned may use the Confidential Information solely in connection with the Authorized Purpose and for no other purpose. The undersigned acknowledges and agrees that unauthorized dealings with the Confidential Information would be detrimental to the interests, business and affairs of any of the Parties (or third parties with respect to third party information), including the integrity of the Procurement.

5. On expiration or termination of the undersigned’s engagement or participation in the Procurement, or anytime upon a Party’s request, the undersigned agrees to ensure all copies and partial copies of any Confidential Information (in any form or media) in the undersigned’s possession or control are returned to the requesting Party.

6. In this Confidentiality Agreement, “Confidential Information” means all information that is of a confidential nature, including all third-party confidential information in the custody or control of a Party, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the undersigned in connection with this agreement or any Procurement. For greater certainty, Confidential Information shall (a) include (i) the Procurement process and solicitation documents and any information relating to or arising from the Procurement process and the solicitation documents, including, without limitation, any Request for Proposals issued, or proposed to be issued, by Metrolinx relating to the Procurement, any proposals received, evaluation(s) completed, and pricing; (ii) any proprietary information of a Party; (iii) any personal information as contemplated in the Freedom of Information and Protection of Privacy Act (Ontario) or the Municipal Freedom of Information and Protection of Privacy Act; (iv) all information that a Party is obliged, or has the discretion, not to disclose under provincial or federal legislation (v) any other information specifically designated in writing by a Party as being of a confidential nature, (b) not include (i) information that is or becomes generally available to the public without fault or breach on the part of a Party of any duty of confidentiality owed by the Party to Metrolinx or to any third-party; (ii) a Party can demonstrate to have been rightfully obtained by the Party, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Party free of any obligation of confidence; (iii) a Party can demonstrate to have been rightfully known to or in the possession of the Party at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by a Party.

7. The undersigned declares that there is no actual or potential conflict of interest arising out of the receipt of the Confidential Information or the undersigned’s role on the Procurement. The undersigned declares that the undersigned will immediately disclose any actual or potential conflict of interest that may arise during the course of participating in the Procurement. Furthermore, the undersigned acknowledges and agrees that if the undersigned is participating in or involved with the Procurement and is at any time in receipt of Confidential Information, the undersigned is precluded from participating in any activity with any third party, including any third party responding to a
Procurement solicitation document in respect of the Procurement, whether as an employee, advisor or otherwise, which will constitute an actual or potential conflict of interest for a period of one year from (i) the execution of the agreement(s) with the successful Supplier resulting from the Request for Proposals process or (ii) the final abandonment or cancellation of the Request for Proposal by Metrolinx.

8. No delay or failure by a Party in exercising any rights, powers, remedies or privileges available to it hereunder shall operate as a waiver thereof. The single or partial exercise of a right, power, remedy or privilege shall not preclude its subsequent exercise or the exercise of any other right, power, remedy or privilege. If any provision of this Confidentiality Agreement is invalid, unenforceable or illegal, such provision shall be deemed to be severed without affecting any other provision.

9. Subject to any confidentiality obligations pertaining to third party materials, this Confidentiality Agreement shall survive for a period of the greater of ten (10) years from its execution and the term of any agreement with the successful Supplier resulting from the Request for Proposals process relating to the Procurement, including any renewal periods. For avoidance of doubt, if the confidentiality obligations pertaining to third party materials survive for a longer period of time as stipulated by the relevant third party, then that longer period of time will govern. In the event responsibility for the Procurement is transferred from Metrolinx to another person or entity, the provisions herein relating to Metrolinx shall enure to the benefit of such person or entity. The provisions herein enure to the benefit of any successors and assigns of the Parties.

10. This Confidentiality Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in that Province and is subject to the provisions of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 31, as amended, and the Municipal Freedom of Information and Protection of Privacy Act, R.S.O.1990, c. M. 56, as amended, as applicable.

11. Defined terms denoted by initial capital letters shall have the meaning ascribed to them in the “Governance Agreement for the Joint Procurement of Transit Inventory Management Services unless otherwise defined in this Confidentiality Agreement.

Signed: _____________________________________________

Name: _____________________________________________

Title: _____________________________________________

DATED: ___________________________________________
SCHEDULE H:
CONFIRMATION AGREEMENT

THIS INSTRUMENT of accession forms part of an agreement made as of the ____ day of______, 2011 between Metrolinx and the signatories thereto (the “Governance Agreement”), which agreement permits the addition of parties as Purchasers in accordance with its terms and the execution of the Governance Agreement by such Purchasers by way of counterpart;

AND WHEREAS the undersigned hereby acknowledges having received a copy of the Governance Agreement (which is annexed hereto as Schedule “A”) and having read the Governance Agreement in its entirety;

AND WHEREAS all of the capitalized terms used herein have the meanings ascribed to them in the Governance Agreement;

NOW THEREFORE in consideration of the mutual covenants of the parties set out in the Governance Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agrees that:

a) all of the provisions of the Governance Agreement shall be binding upon the undersigned and such provisions shall ensure to the benefit of and be binding upon the undersigned’s heirs, executors, administrators, successors and permitted assigns;

b) the undersigned covenants, represents and warrants that it has all necessary power and authority and has taken all necessary actions to enable it to enter into the Governance Agreement and to give the covenants, representations and warranties perform its obligations thereunder; and

c) capitalized terms not otherwise defined in this instrument shall bear the meanings set out in the Governance Agreement.

IN WITNESS WHEREOF the undersigned has executed this Instrument this ____ day of__________________, ________.

[Purchaser’s Legal Name]

Per: __________________________
Name: _________________________
Title: _________________________

Address of Party for Purposes of Notice:
[insert Address for Notice Purposes]