

Bill No. 370
2023

By-law No. A.- _____ - _____

A by-law to authorize and approve a Memorandum of Understanding between the Smart Commute Association and The Corporation of the City of London and to authorize the Mayor and the City Clerk to execute the Memorandum of Understanding.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed appropriate for The Corporation of the City of London (the "City") to enter into a Memorandum of Understanding with the Smart Commute Association ("SCA") to develop, implement, and influence sustainable travel behaviour change through an array of strategies;

AND WHEREAS it is deemed appropriate to authorize the Mayor and the City Clerk to execute the Memorandum of Understanding on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Memorandum of Understanding between The Corporation of the City of London and the Smart Commute Association, is hereby authorized and approved, substantially in the form attached as Schedule A to this by-law,
2. The Mayor and the City Clerk are hereby authorized to execute any document to give effect to the authorization in section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

PASSED in Open Council October 17, 2023 subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First Reading – October 17, 2023
Second Reading – October 17, 2023
Third Reading – October 17, 2023

SCHEDULE A

SMART COMMUTE PROGRAM MEMORANDUM OF UNDERSTANDING (the “MOU”)

DATED this 21st day of January, 2021.

BETWEEN:

The Regional Municipality of Durham (“Durham Region”)

-and-

The Regional Municipality of York (“York Region”)

-and-

City of Toronto (“Toronto”)

-and-

City of Hamilton (“Hamilton”)

Each a “Party” and collectively called the “Parties”

BACKGROUND

- A. On March 29, 2019 Metrolinx announced that it was ending its financial support of the Smart Commute Program as of June 29, 2019. The Participating Municipalities have been delivering, and have agreed to continue to deliver, the Smart Commute Program without the support and funding from Metrolinx.
- B. The primary objective of the Smart Commute Program is to develop, implement, and influence sustainable travel behaviour change through an array of strategies across the Greater Toronto and Hamilton Area and within Ontario.
- C. The Participating Municipalities are entering into this binding Memorandum of Understanding to set out the arrangements agreed upon between them for the delivery of the Smart Commute Program.

THEREFORE, in accordance with the principles set out above, the Parties hereby agree as follows:

1. DEFINITIONS AND SCHEDULES

1.1. Definitions

In this Memorandum of Understanding, unless the context requires otherwise,

- (a) “**Advisory Committee**” means the committee established by [Section 6.1](#);
- (b) “**Effective Date**” means the date written at the top of this MOU;
- (c) “**GHG**” means greenhouse gases;
- (d) “**GTHA**” means the geographic area comprised of the City of Toronto, the Regions of Durham, Peel, York and Halton, and the City of Hamilton;
- (e) “**Integrated Mobility Tool**” has the meaning given to it in [Section 12.2](#).
- (f) “**Intellectual Property**” means all trademarks, trade names, copyrights and other forms of industrial and intellectual property protected by law;
- (g) “**MOU**” means this memorandum of understanding, including its schedules, as may be amended from time to time;
- (h) “**Municipalities of Halton**” means collectively the local municipalities of the City of Burlington, the Town of Oakville, the Town of Milton and the Town of Halton

Hills. Oakville will act as the representative for the Municipalities of Halton under this MOU;

- (i) **“Participating Municipalities”** means the Parties to this MOU from time to time;
- (j) **“Personal Information”** means personal information as defined under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56;
- (k) **“Program”** means the undertaking described in [Section 2.1](#);
- (l) **“Program Assets”** means the Smart Commute Program's intellectual property as further described in [Schedule 8](#);
- (m) **“Regions”** means collectively Durham Region and York Region, in addition to Hamilton and Toronto where not otherwise identified, along with any other Ontario upper or single tier municipality who joins the SCA as outlined in [Section 15.2](#);
- (n) **“Smart Commute Association”** and **“SCA”** means the Participating Municipalities working together as an association to undertake the Program;
- (o) **“Service Delivery Agent”** is any organization or firm that delivers TDM programming, tools, and tactics for a Participating Municipality, and includes a Transportation Management Association (“TMA”);
- (p) **“Steering Committee”** means the committee established by [Section 5.1](#);
- (q) **“Steward”** means the Region or other entity who manages the Program Assets, as described in [Section 9.1](#), and who may be replaced from time to time as set out under Sections [9.3](#) or [9.9](#). As of the Effective Date, the Steward for the Program is Hamilton.
- (r) **“Transportation Demand Management”** and **“TDM”** has the meaning given to it in [Section 3.1](#);
- (s) **“Transportation Management Association”** and **“TMA”** means a non-profit, public/private partnership that serves as a transportation consultant for businesses wishing to implement transportation demand management programs such as carpooling, vanpooling, telework, transit discount programs, biking, walking, and parking management;
- (t) **“Term”** means the term of this MOU described in [subsection 17.6](#).

1.2. Schedules

The following schedules are attached to and form part of this MOU:

[Schedule 1](#) - Description of Smart Commute Program

[Schedule 2](#) - Description of Transportation Demand Management [Schedule 3](#) -

Diagram of Governance Structure

[Schedule 4](#) - The Role of the Steering Committee [Schedule 5](#) -

The Procedures of the Steering Committee

[Schedule 6](#) - The Role and Procedures of the Advisory Committee [Schedule 7](#) -

The Role of Service Delivery Agents

[Schedule 8](#) - Program Assets

[Schedule 9](#) - Key Features of the Integrated Mobility Tool [Schedule](#)

[10](#) – Personal Information

[Schedule 11](#) - Participating Municipalities’ Addresses and Contact Information [Schedule 12](#) –

Counterpart Execution Page for Subscription

2. THE SMART COMMUTE PROGRAM

- 2.1. The Smart Commute Program (“**Program**”) is a joint program of the Participating Municipalities, whereby they work with workplaces, communities and schools to reduce traffic congestion through increased transportation efficiency, as further outlined in [Schedule 1](#).

3. TRANSPORTATION DEMAND MANAGEMENT

- 3.1. Transportation Demand Management (“**TDM**”) is a strategy or an array of strategies that aim to reduce single-occupant vehicle trips (vehicles carrying only one person) and the proportion of automobile trips made during peak periods by encouraging more sustainable forms of transportation, as further outlined in [Schedule 2](#).

4. JOINT UNDERTAKING and GOVERNANCE STRUCTURE

- 4.1. The Participating Municipalities have agreed to undertake the Program as a joint undertaking pursuant to section 20 of *Municipal Act, 2001* and section 16 of the *City of Toronto Act, 2006*. The Parties anticipate that other municipalities may join the Program in the future.
- 4.2. The Participating Municipalities acknowledge that the SCA is the name given to the Participating Municipalities and, at least in its present form, is not a separate legal entity and has no authority to enter into contracts. It is for this reason that the City of Hamilton has agreed to be the Steward as outlined in [Section 9](#).
- 4.3. The governance structure of the SCA is shown in the diagram attached as [Schedule 3](#).

5. STEERING COMMITTEE

- 5.1. The Steering Committee is hereby established for the purpose of overseeing the Program, supervising the delivery of the Program, and exercising its functions and responsibilities as set out in [Schedule 4](#) and in accordance with the procedures set out in [Schedule 5](#). The Steering Committee will be composed of one (1) senior staff person per Participating Municipality, as further outlined in [Schedule 5](#).
- 5.2. The Regions comprise the core members of the Steering Committee and receive one vote each. The Steering Committee will be responsible for evaluating the ability of additional municipalities to subscribe as a member and for adding new members to the SCA through an application process and in accordance with [Section 15](#) of this MOU. The Steering Committee will determine the voting rights of each new member added.
- 5.3. The Steering Committee will continue to exist for as long as the SCA exists, unless the Participating Municipalities collectively in writing decide to restructure it. The Participating Municipalities acknowledge that individual members selected for the Steering Committee may change over time.

6. ADVISORY COMMITTEE

- 6.1. The Advisory Committee is hereby established for the purpose of exercising the functions and responsibilities set out in [Schedule 6](#). The Advisory Committee’s membership will be determined by the Steering Committee, as further outlined in [Schedule 6](#).
- 6.2. The Advisory Committee will continue to exist for as long as the SCA exists, unless the Participating Municipalities collectively in writing decide to restructure it, in accordance with the decision-making process outlined in [Schedule 5](#). The Participating Municipalities acknowledge that individual members selected for the Advisory Committee may change over time.

7. PARTICIPATING MUNICIPALITIES’ ROLES AND RESPONSIBILITIES

- 7.1. In the case of the Steering Committee, each Participating Municipality agrees to use all reasonable efforts to put its member in the position of being able to make prompt and informed decisions on matters within the Steering Committee’s mandate.
- 7.2. Participating Municipalities acknowledge that some members may be required to obtain the appropriate authority from their respective Councils prior to making a decision or voting on a matter that comes before the Steering Committee. Each Participating Municipality should determine the scope of authority delegated to its member on the Steering Committee, and it is the responsibility of each designated representative to seek authority and direction from their Council as required.

- 7.3. The Parties that share Service Delivery Agents shall work together to ensure clear communication with their shared Service Delivery Agent to avoid service impacts by the Service Delivery Agent.
- 7.4. The Parties acknowledge the importance of good communication and cooperation to ensure the smooth running of the Program.
- 7.5. The Parties acknowledge, notwithstanding that the Chair of the Steering Committee is the designated contact on behalf of the Smart Commute Association, that all communications, public dealings and public relations shall indicate that the Program is a joint undertaking by the Participating Municipalities.

8. SERVICE DELIVERY AGENTS

- 8.1. Each Participating Municipality agrees that the role of Service Delivery Agents will vary in order to ensure that they can be responsive to the needs of the communities they serve. However, the expectation is for the Service Delivery Agents to carry out activities such as those outlined in [Schedule 7](#).

9. STEWARDS OF SMART COMMUTE PROGRAM ASSETS

- 9.1. Subject to [Section 9.10](#), the Steward will retain ownership, manage and care for the shared Program Assets, as described in [Schedule 8](#), which were previously held by Metrolinx on behalf of the SCA.
- 9.2. Hamilton has assumed the role of Steward of all shared Program Assets.
- 9.3. Notwithstanding [Section 9.2](#), in the event the Steward decides it no longer wants to be the Steward or withdraws from the MOU, the Steward agrees to transfer the Program Assets, at no cost to the SCA, to another Participating Municipality who has been chosen by the Steering Committee to become the Steward.
- 9.4. The Steward shall ensure that all Program Assets are accessible to and shared freely amongst all Participating Municipalities. Procedures for ensuring the equitable and efficient sharing of Program Assets will be determined by the Steering Committee.
- 9.5. Notwithstanding [Section 9.4](#), the Steward grants to the other Participating Municipalities a perpetual, worldwide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence to: (a) use, modify, reproduce and distribute, in any form, the Program Assets, in connection with the Program; and (b) authorize other persons, including agents, contractors, or sub-contractors, to do any of the former on behalf of a Participating Municipality. This license will continue regardless of which Participating Municipality is acting as Steward from time to time.
- 9.6. The Steward agrees to enter into any necessary agreements with third party providers for the administration of the shared Program Assets received from Metrolinx.
- 9.7. The Steward shall pay any initial costs relating to the Program Assets received from Metrolinx and shall invoice the Participating Municipalities their equal share of any Program Asset costs. The Participating Municipalities agree to equally share any such initial costs and any of the costs incurred to maintain the Program Assets received from Metrolinx. For greater certainty, the initial costs relating to the Program Assets shall be paid equally by Durham Region, York Region, Toronto, Hamilton, and Peel Region and shall be payable within 30 days of receipt of an invoice from the Steward. Any costs incurred to maintain the Program Assets received from Metrolinx shall be paid equally by Durham Region, York Region, Toronto, Hamilton, and every other municipality that is a Participating Municipality at the time such maintenance costs are incurred.
- 9.8. Any costs related to future Program Assets, outside of those initially received from Metrolinx, will only be incurred after unanimous agreement by the Participating Municipalities through the Steering Committee, in accordance with [Schedule 5](#) and such costs shall be paid equally by every municipality that is a Participating Municipality at the time such unanimous agreement is reached. The Steward shall be entitled to rely on Steering Committee Meeting Minutes or any other form of written confirmation obtained from each Participating Municipality as evidence of unanimous agreement for the purpose of this Section. For greater certainty, any municipality subscribing to this MOU pursuant to [Section 15](#) who was not a Participating Municipality at the time of such unanimous agreement shall contribute equally to any costs relating to future Program Assets or costs incurred to maintain future Program Assets that become due on and after the date of subscription.
- 9.9. In the event the SCA is to be replaced by a municipal corporation or another separate legal entity the Steward agrees to transfer the Program Assets, at no cost, to the new legal entity pursuant to an

agreement in form and content satisfactory to the Participating Municipalities at their respective absolute discretions.

- 9.10. The Registrar of Trademarks has given public notice of York Region's adoption and use of SMART COMMUTE as an official mark. York Region hereby consents under subsection 9.2(a) of the *Trademarks Act* (Canada) to each of the Participating Municipalities adopting and using SMART COMMUTE in association with the Program. This consent will continue even if York Region withdraws from this MOU.

10. RECIPIENT OF FUNDING

- 10.1. Participating Municipalities may apply independently for funding related to the Smart Commute Program at their own discretion. Any funding received by a Participating Municipality

with respect to the Smart Commute Program shall be used for that Participating Municipalities' sole benefit.

- 10.2. Participating Municipalities may elect to discuss funding applications they intend to pursue with the SCA in advance of making any submission for funding but are not required to do so.
- 10.3. Should they so desire, Participating Municipalities may pursue joint funding ("Joint Project Funding"), upon a unanimous decision from the Steering Committee in accordance with [Schedule 5](#). In order for the SCA to approve Joint Project Funding from additional sources, the funding must meet the following requirements:

- (a) it must be linked to the Program;
- (b) it must not negatively impact the SCA or Participating Municipalities as an organization or its brand image/reputation;
- (c) it must equitably apply to and benefit all Participating Municipalities; and
- (d) it must be completed prior to the end of the Term.

Satisfaction of these requirements is mandatory but not necessarily sufficient for obtaining approval of Joint Project Funding. The Participating Municipalities reserve the right to add additional requirements for Joint Project Funding, which additional requirements would also be mandatory but not necessarily sufficient for obtaining the approval of Joint Project Funding.

- 10.4. In circumstances where the SCA pursues Joint Project Funding, an agreement will be made in writing between the Participating Municipalities with respect to which of them will be the lead applicant, and the terms and conditions of that arrangement shall be agreed upon by the SCA unanimously prior to the application being made.

11. CONTRIBUTIONS BY PARTICIPATING MUNICIPALITIES

- 11.1. Subject to [Section 9.7](#) and [9.8](#), the Participating Municipalities agree that there are no financial responsibilities to be shared, and no financial contributions required, as a result of entering into this MOU. Each Participating Municipality agrees to pay for its own Smart Commute program.

11.2. Participating Municipalities may share costs for shared services required to operate the Program. The Steering Committee shall determine how such shared costs are to be distributed amongst the Participating Municipalities, subject to their approval; all decisions made with respect to the distribution of shared costs will be recorded in the minutes of the Steering Committee.

12. PROJECT IMPLEMENTATION

12.1. Carrying Out Responsibilities

Each of the Participating Municipalities shall use all reasonable efforts to complete all activities that the Participating Municipalities are responsible to carry out under this MOU and under any agreements or other documents relating to the Program.

12.2. Integrated Mobility Tool

Each Participating Municipality shall use reasonable efforts to procure an Integrated Mobility Tool that is the same or substantially the same in order to provide ride-matching across the GTHA. All Participating Municipalities will work towards using the same or substantially the same Integrated Mobility Tool. Each Participating Municipality shall enter into its own agreement with the Integrated Mobility Tool vendor and shall pay its own costs. The Participating Municipalities agree that the Integrated Mobility Tool should possess, at a minimum, the features set out in [Schedule 9](#).

12.3. Policies and Procedures

The Steering Committee shall consider any policy or procedural issues, including procurement issues that may be raised by a Participating Municipality.

13. REPORTING AND INSPECTIONS

13.1. Accounts and Records

- (a) Should the SCA enter into any Joint Project Funding the Steering Committee shall maintain detailed records of funding received and expenses incurred in connection with the Program. The Steering Committee, upon reasonable notice, shall ensure that such accounts and records are made available to authorized representatives of any Participating Municipality for inspection and/or copying.
- (b) Accounts and records shall be maintained by the Steward on behalf of the SCA for a period of at least three years after the final settlement of accounts with respect to any undertaking.
- (c) Where the Steward receives a Freedom of Information (“FOI”) request with respect to any accounts and records maintained in accordance with Section [13.1\(a\)](#) and [\(b\)](#) and where the Steward intends to disclose such accounts and/or records, the Steward agrees to bring the issue to the Steering Committee members for consideration and input. Each Participating Municipality will be given five (5) business days to review and provide comments to the Steward who has the responsibility to respond to the request. The Steward shall make the final decision about how to respond, after considering all input provided by the other Participating Municipalities.

13.2. Audits

Participating Municipalities may, at their own discretion and cost and during regular business hours, inspect and audit any accounts, documents and records of the SCA held by the Steward at their own cost.

13.3. Project Reporting

The Steering Committee shall, with such assistance from the Advisory Committee as the Steering Committee may reasonably require, provide all Participating Municipalities with annual reports

and/or project reports, or both, indicating Program results, achievements, and evidence of travel behaviour change, and including any other information reasonably requested by the Participating Municipalities. Annual and project reports shall exclude Personal Information.

14. LIABILITY AND INSURANCE

14.1. Insurance

Each Participating Municipality will, at its own expense, carry such insurance as it considers appropriate for the Program.

14.2. Several Obligations

Each Participating Municipality shall be responsible for its own obligations, costs and payments under this MOU and for its share of general obligations, costs and payments under this MOU. For greater certainty, the liability of each Participating Municipality is several, not joint and several.

15. ADDITIONAL PARTICIPANTS AND ABILITY TO WITHDRAW

15.1. Membership

Any municipality in Ontario may apply for membership in the Smart Commute Association in partnership with the Regions.

15.2. Single-Tier, Upper-Tier, or Lower-Tier Municipalities Joining the Program

If a single-tier, an upper-tier, or a lower-tier municipality wishes to join the SCA in the future, and the Steering Committee agrees that this would be appropriate, that municipality (“**Joining Municipality**”) must subscribe in accordance with [Section 15.5](#) (Method of Subscription).

15.3. Additional Requirements for Lower-Tier Municipalities Joining the Program

- (a) If a lower-tier or multiple lower-tier municipalities from the same geographical area want to join the SCA and their upper-tier municipality is not a Participating Municipality, then prior to subscribing under [Section 15.5](#) (Method of Subscription), those interested lower-tier municipalities shall execute an agreement between them setting out their respective roles and responsibilities as they relate to the SCA, including who will represent them on the Steering Committee, prior to being able to join the SCA as a Participating Municipality. Each regional geographical area in Ontario shall only have one representative on the Steering Committee no matter how many lower-tier municipalities are participating in the Program.
- (b) If a lower-tier municipality wishes to join the SCA and the upper-tier municipality from the same regional geographical area is a Participating Municipality, that lower-tier shall make suitable arrangements with the upper-tier Participating Municipality with respect to its participation in the Program.

15.4. Agreement by Subscription

Each Participating Municipality agrees that this MOU is not only an agreement between it and each other Participating Municipality as at the Effective Date but is also an offer to each future Joining Municipality who subscribes to be bound in accordance with the terms of this MOU. This MOU shall be a continuing agreement binding each Participating Municipality to its terms on and after the date of that Participating Municipality’s original execution or subsequent subscription, as the case may be.

15.5. Method of Subscription

To subscribe to this MOU after the Effective Date, a Joining Municipality shall deliver to the Steward one (1) executed counterpart execution page showing the Joining Municipality’s address for service, in the form set out in [Schedule 12](#) (Counterpart Execution Page for Subscription). The executed counterpart execution page must be delivered to the Steward in accordance with [Section 17.2](#) (Notices). Upon the date of deemed delivery of the executed counterpart execution page to the Steward in accordance with [Section 17.2](#) (Notices), the Joining Municipality shall be deemed to be a Participating Municipality and a party to this MOU to the same extent as if it had been an original signatory to this MOU. The Steward will provide copies of executed counterpart execution pages to all Participating Municipalities together with an updated [Schedule 11](#) (Participating Municipalities’ Addresses and Contact Information).

15.6. Ability to Withdraw

Each Participating Municipality agrees that it is making a commitment to the Program and to the other Participating Municipalities to participate in the Program. However, if a Participating Municipality no longer wants to participate in the Program for the next calendar year, it may withdraw effective as of the last day of a calendar year, provided it has given the other Participating Municipalities not less than three months’ prior written notice of its intention to withdraw.

16. PRIVACY AND CONFIDENTIALITY

- 16.1. The Participating Municipalities acknowledge that they are each subject to the *Municipal Freedom of Information and Protection of Privacy Act* (“*MFIPPA*”).
- 16.2. Each Participating Municipality further acknowledges that through their procurement of the Integrated Mobility Tool, each of them will have access to the information, including Personal Information, of those users of the Integrated Mobility Tool that have identified a primary “end

destination” as being within their Region. The Parties agree that Personal Information collected by each Participating Municipality may only be shared in aggregate form, or published by the SCA as aggregate program data. The Participating Municipalities agree that Personal Information collected under the Smart Commute Program includes that information identified under [Schedule 10](#).

- 16.3. The Participating Municipalities agree to protect the Personal Information in accordance with their obligations under MFIPPA.
- 16.4. Where a Participating Municipality receives a Freedom of Information (“FOI”) request with respect to any Personal Information obtained as part of the Program, and where that

Participating Municipality intends to disclose Personal Information, the Participating Municipality agrees to bring the issue to the Steering Committee members for consideration and input. Each Participating Municipality will be given five (5) business days to review and provide comments to the Participating Municipality who has the responsibility to respond to the request.

- 16.5. The Participating Municipality that has the obligation to respond to the FOI request shall make the final decision about how to respond, after considering all input provided by the other Participating Municipalities.

17. GENERAL

17.1. Different Governance Structure

The Parties may decide that in the long term it would be appropriate to establish a corporation, municipal service board or other governance structure to carry on the Program. In that case, the Parties agree to work together to obtain any regulation or other legal authority that may be required to establish a different governance structure and to establish and organize that structure.

17.2. Notices

Any demand or notice made or given under this MOU shall be given in writing by email or mail to the Party or Parties, at the address set out in [Schedule 11](#), or at such other addresses as the Parties may designate from time to time in writing. The demand or notice, if mailed, will be deemed to have been received on the third full business day after the day of mailing in the absence of any strike or other interruption in postal service. For the purposes of this MOU, “business day” means Monday to Friday, 8:30 am to 4:30 pm local time in the GTHA, excluding statutory holidays in the Province of Ontario.

17.3. Interpretation

- (a) Words in the singular include the plural, and words in the plural include the singular, as the context requires.
- (b) This MOU sets out the entire agreement and understanding between the Parties concerning the subject matter of this MOU.

17.4. Binding MOU

This MOU is binding on the Parties.

17.5. Applicable Laws

Each Participating Municipality shall comply with all applicable laws in carrying out their activities relating to the Program.

17.6. Term

The term of this MOU commences on the Effective Date and ends on December 31, 2025, subject to extension or earlier termination by further written agreement of the Participating Municipalities, with the option of making amendments on an annual basis through a written addendum.

17.7. No Agency

Nothing in this MOU is to be construed as authorizing any one of the Participating Municipalities, nor the Steering Committee, to contract for or incur any obligation on behalf of or to act as agent for one or more of the other Participating Municipalities.

17.8. Conflict of Interest

The Program shall not grant preferential treatment in aid of any manufacturing business or other industrial or commercial enterprise. Any potential or perceived conflict of interest shall be declared by the SCA and any of the representatives of the Participating Municipalities.

17.9. Survival

The liabilities of a Party under this MOU that accrued on or before the date of withdrawal, termination, or expiration shall survive that date, and shall continue in full force and effect for the benefit of each of the other Parties.

17.10. Further Assurances

The Participating Municipalities agree to execute and deliver such further documents and assurances or do such other things as reasonably may be required from time to time by one or more of the Participating Municipalities to give effect to this MOU. The Participating Municipalities agree to work together in a spirit of co-operation to make the Program work.

17.11. Amendments

Any changes to the MOU shall be by written amendment signed by the Parties. No changes shall be effective in absence of such an amendment.

17.12. Force Majeure

None of the Parties will be held responsible for any damage caused by delay or failure to perform its obligations under the MOU where such delay or failure is a result of war, invasions, insurrection, demonstrations, or as a result of decisions by civilian or military authorities, fire, flood, human health emergency, strikes, and generally as a result of any event that is beyond the reasonable control of a Party.

17.13. Governing Law

This Agreement shall be governed by the applicable laws of the Province of Ontario and the laws of Canada.

17.14. Counterparts & Electronic Signature

This MOU may be executed and delivered in counterparts and may be executed by electronic signature, including with an electronic signature that a person creates or adopts in order to sign the Agreement and that is in, attached to or associated with the Agreement. Such electronic signature shall be deemed to be an original signature for the purpose of this MOU with the same legal effect as an original signature.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by officers duly authorized on their behalf.

REGIONAL MUNICIPALITY OF DURHAM

By: DocuSigned by:
Brian Bridgeman
07F7F33A2B4748A...

Name: Brian Bridgeman

Title: Commissioner, Planning and Economic Development

I/We have authority to bind the corporation

THE REGIONAL MUNICIPALITY OF YORK

By: DocuSigned by:
Paul Jankowski
07F7F33A2B4748A... Authorized by Bylaw No. 2018-50

Name: Paul Jankowski

Title: Commissioner, Transportation Services I/We have authority to bind the corporation

CITY OF TORONTO

By: DocuSigned by:
Jim Baxter
13FC978064554F8... Name: Jim Baxter

Title: Director, Environment & Energy Division I have authority to bind the corporation

Approved as to form and content

Solicitor

APPROVED AS TO FORM
..... For
Wendy Walberg
City Solicitor
File # 3000-303-8588-2019

Authorized by Infrastructure and Environment Committee Item IE11.16 as adopted by City of Toronto Council on January 29, 2020.

CITY OF HAMILTON

By: DocuSigned by:
Jason Thorne
74748805919345E...

Name: Jason Thorne

Title: General Manager, Planning and Economic Development

I have authority to bind the corporation

Approval Authority granted by Hamilton City Council on July 12, 2019, Public Works Committee Report 19-010, dated July 10, 2019, Item 8, Smart Commute Workplace Mobility Program Transition (PED19124)(City Wide)(Item 10.6)

Approved as to content
BT
Brian Hollingworth

Approved as to content
PT
Peter Topalovic

Approved as to form
SA
Stacey Applebee, Legal Services

SCHEDULE 1

DESCRIPTION OF THE SMART COMMUTE PROGRAM

General Description of the Program

- 1.1. The Program involves the support of the Participating Municipalities, who work, directly or with third party contractors known as Service Delivery Agents, with municipal partners, employers, and post-secondary institutions in their respective geographic areas to improve commuting options for the public, employees or students, as well as transit users, as applicable. The Participating Municipalities provide Program support for on-going services, funding and programming resources. The Smart Commute Program is a joint undertaking by the Participating Municipalities to manage the demand for automobile trips in the GTHA in an effort to alleviate the growing problems of traffic congestion, GHG, and deteriorating air quality that result from increased automobile traffic. The Program involves the Smart Commute Association (SCA) and a network of Service Delivery Agents.

Main Objectives of the Program

- 1.2 The main objectives of the Program are to:
 - (a) Increase the average vehicle occupancy rate;
 - (b) Promote greater use of sustainable travel modes, including walking, cycling, public transit and ridesharing trips;
 - (c) Encourage off-peak travel to reduce congestion; and
 - (d) Reduce average trip frequencies and distances, and eliminate some trips altogether in order to:
 - (i) reduce GHG and other emissions;
 - (ii) reduce the severity and duration of traffic congestion;
 - (iii) enhance accessibility and mobility options; and
 - (iv) improve physical activity and public health outcomes
 - (e) Expand the reach of TDM programming aligned with goals and objectives of Participating Municipalities, including but not limited to:
 - (i) school travel planning;
 - (ii) community-based TDM;
 - (iii) station access and transit integration;
 - (iv) construction mitigation; and

- (v) development applications.
- (f) Identify evaluation criteria and measurements to gauge program effectiveness.

Benefits of the Program

- 1.3 The Program helps workplaces, communities and schools explore and try out smart travel options such as walking, cycling, transit, carpooling and teleworking through:
 - (a) Raising awareness of available commuting options through events and campaigns;
 - (b) Providing tools to facilitate behaviour change; and
 - (c) Providing guidance on programs and services that may be undertaken to support alternatives to the use of single occupancy vehicles, including:
 - (i) Carpools/Vanpools/Shuttle services;
 - (ii) Public Transit;
 - (iii) Active Transportation;
 - (iv) Telework and flexible work arrangements;
 - (v) Measures to collect travel data to assess program effectiveness; and
 - (vi) Tracking of GHG emissions and related climate change measures.

Program Elements

- 1.4 The Program may include, without limitation, any combination of the following elements:
 - Measures to raise awareness of sustainable commuter options
 - Measures to support commuter carpooling
 - Measures to support carpooling for business purposes
 - Measures to support commuter vanpooling
 - Measures to support telework
 - Measures to support the use of alternative work arrangements including flexible time and compressed work weeks
 - Measures to support commuter cycling
 - Measures to support cycling for business purposes
 - Measures to support walking for business purposes
 - Measures to support the use of GTHA public transit services
 - Measures to support travel behaviour change
 - Provision of commuter shuttles linking workplace destinations with GTHA public transit services or other destinations
 - Administration of Emergency Ride Home program

- Assistance with management of parking facilities
- Measures to provide commuter travel intelligence and provide evidence of program effectiveness
- Measures to reduce the impact of travel such as alternative fuel vehicles and eco-driving

Services Offered Under the Program

1.5 As part of the Program, Participating Municipalities provide the following services:

- (a) Smart Commute Management Platform:
 - (i) Commuter and program information website
 - (ii) Integrated Mobility Tool
 - (iii) Client / Champion communication tools (e.g. email)
 - (iv) Service Delivery Agent Dropbox / Intranet
 - (v) Emergency Ride Home administration
 - (vi) Online Trip Diary/Calendar
 - (vii) Dedicated program email addresses when pre-approved

Special Events and Campaigns

1.6 Special events, theme weeks, and campaigns offered through the Program may include, subject to the determination of the Steering Committee and without limitation:

- (a) Carpool Week (February)
- (b) Bike to Work Day (May) and Bike Month (June)
- (c) Smart Commute Month (September/October)
- (d) Smart Commute Awards (November)
- (e) Commuter Challenge

SCHEDULE 2

DESCRIPTION OF TRANSPORTATION DEMAND MANAGEMENT

TDM is a potentially valuable tool in addressing both travel requirements associated with population and employment growth in the GTHA, and specific objectives such as improving air quality.

Components of TDM

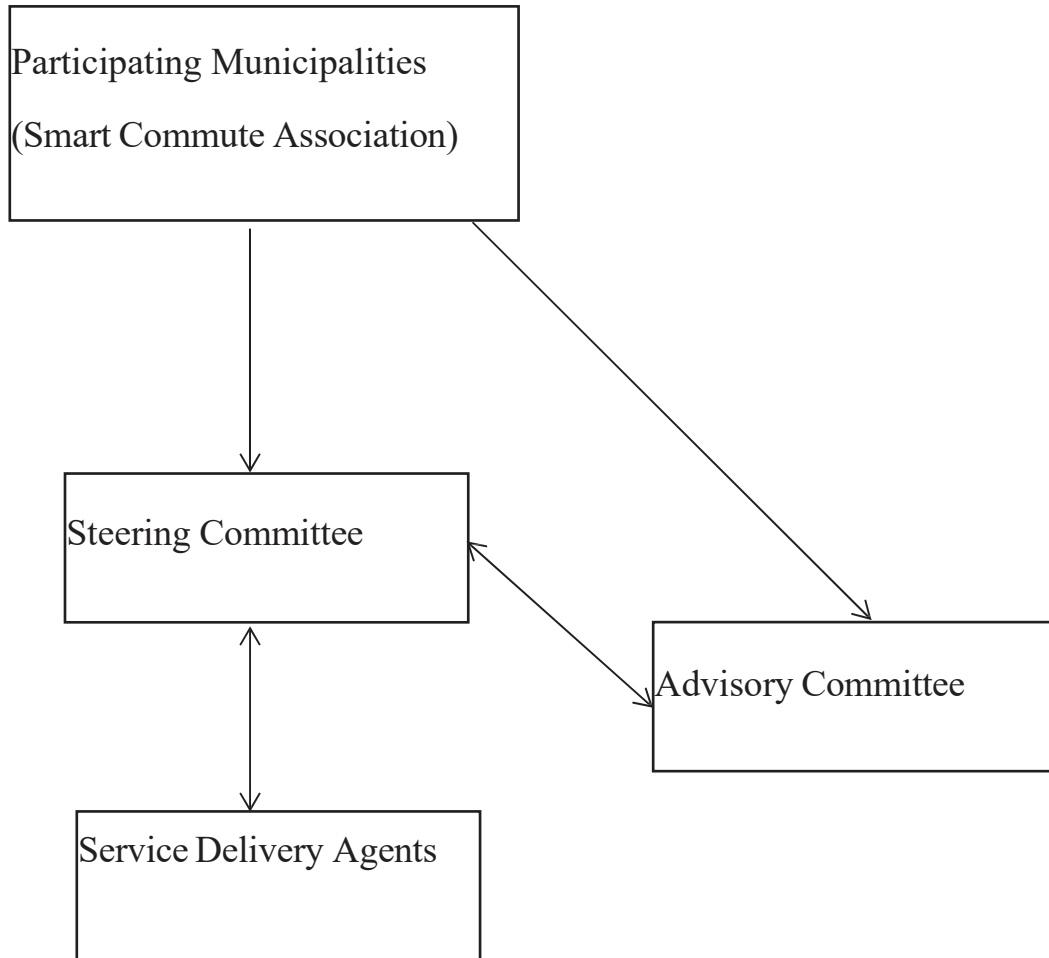
- (a) The core components include carpooling, employer vanpools, ridesharing, shuttles, transit use, cycling, walking and telecommuting.
- (b) The support components may include:
 - (i) Regional and city marketing and education campaigns to encourage development and implementation of innovative strategies to maximize efficient use of transportation systems, and participation in TDM programs;
 - (ii) Car sharing;
 - (iii) Emergency ride home programs;
 - (iv) Incentives;
 - (v) Subsidies;
 - (vi) Parking management;
 - (vii) An integrated mobility tool; and
 - (viii) Being mindful of the need to manage the demand on transportation systems when planning new development or redevelopment.

Multi-Level Involvement

- (a) To be effective, TDM must involve regional and local governments, educational institutions, businesses, business organizations and others, and must include a variety of TDM strategies delivered at varying scales. The goal is to develop and deliver a co-ordinated upper and lower-tier TDM program.
- (b) The Program contemplates, but is not limited to, an integrated two-tier organizational structure and an integrated two-tier approach to service delivery. The SCA is the upper tier; Service Delivery Agents are the lower tier.

SCHEDULE 3

DIAGRAM OF GOVERNANCE STRUCTURE



SCHEDULE 4

THE ROLE OF THE STEERING COMMITTEE

General Responsibilities

The Steering Committee of the SCA shall act as the central co-ordinating body to oversee the development and implementation of TDM programs and services in the GTHA. It will be responsible for regional marketing and educational campaigns and providing support for the delivery of these TDM measures at the upper and lower-tier levels. The Steering Committee will share the workload of creating and making available tools, resources and campaigns for all of the Participating Municipalities. These activities might include:

- (a) Centralizing service development, and ensuring coordination throughout the GTHA;
- (b) Helping to facilitate the forging of partnerships between public and private organizations at regional and local levels;
- (c) Arranging for or co-ordinating web-based application for the delivery of multimodal ride-matching programs, guaranteed ride-home programs and similar programs throughout the GTHA;
- (d) Undertaking or co-ordinating marketing and promotional activities such as creating a common branding for services, program tools, and developing incentive programs;
- (e) Holding or arranging for educational activities such as GTHA-wide forums and workshops, and commuter clinics for employers, planners, developers and residents;
- (f) Conducting research into TDM best practices and developing program modules;
- (g) Implementing a tracking and evaluation component at both the upper and lower-tier levels to measure and assess the effectiveness of TDM at both the upper and lower-tier levels including mode share, behaviour change, and GHG emission reductions; and
- (h) Enhancing the knowledge base of TDM measures in Canada, and working to constantly improve TDM in the GTHA.

Specific Responsibilities

Without limiting the generality of the foregoing activities, the Steering Committee's responsibilities shall include the following:

- (a) In conjunction with representatives of Service Delivery Agents, approach or designate individual members or others to approach major employers, educational institutions and others to seek participation in the Program;
- (b) Review and approve a proposed business plan for each year, subject to any approvals that may be required from the Participating Municipalities;

- (c) Provide expertise and broad direction on Smart Commute programming, and provide in-kind support as determined by the Participating Municipality for the formations of TMAs;
- (d) Appoint individuals to serve on the Advisory Committee; the procedure for selecting individuals to serve on the Advisory Committee is described in [Schedule 6](#);
- (e) Coordinate the efforts of the Participating Municipalities in organizing communication events involving all Participating Municipalities;
- (f) Exchange knowledge and agreed-upon aggregated and anonymous data with other Participating Municipalities;
- (g) Carry out any other duties, powers and functions that are specified as Steering Committee duties elsewhere in this MOU;
- (h) Coordinate staffing for joint activities; and
- (i) establish procedures for its meetings and meetings of its subcommittees, if any.

Right to Make Changes

The Steering Committee reserves the right to make changes to the Smart Commute Program as deemed necessary, subject to the approval of each Participating Municipality as applicable.

SCHEDULE 5

THE PROCEDURES OF THE STEERING COMMITTEE

Membership

The Steering Committee will be made up of senior staff from the Participating Municipalities. Each Participating Municipality shall appoint one senior staff person as its member on the Steering Committee, and one alternate staff person who may attend when the appointed senior staff person is unavailable. Each Participating Municipality may change its member or alternate on written notice to the other municipalities. Steering Committee members shall elect a chair and vice-chair of the Steering Committee on an annual basis.

Making Decisions

- (a) Generally, decisions of the Steering Committee will be made by consensus. However, if there are situations where a formal vote is required to reach a resolution, the following rules will apply:
 - (i) Two thirds (2/3) of the Steering Committee must be represented for a formal vote to take place;
 - (ii) The total number of votes cast is determined by the number of Steering Committee members. Each member will be entitled to one vote each;
 - (iii) In the event of a tied vote, the chair of the Steering Committee, or the vice-chair if the chair is absent, shall cast an additional vote.
 - (iv) A majority of votes in favour will be required, with the exception of votes relating to [Section 10](#) (Recipient of Funding), and [Section 9.8](#) (Future Program Assets) in which case a unanimous vote will be required.

Attendance at Meetings

- (a) Each Participating Municipality shall use reasonable efforts to see that its member attends, either in person or remotely, all Steering Committee meetings, but where attendance by a member is not possible, the designated alternate from that municipality may attend the meeting and participate in discussions and in the making of decisions.
- (b) A member is entitled, where they think it is appropriate, to bring other staff from their municipality to provide information to the Steering Committee, or to listen to the discussions, but the other staff will not be permitted to participate in the making of decisions.

SCHEDULE 6

THE ROLE AND PROCEDURES OF THE ADVISORY COMMITTEE

Role

The role of the Advisory Committee is to provide a broad range of expertise and guidance to the Steering Committee and the Participating Municipalities, and includes:

- (a) consulting with Steering Committee members, regional and municipal staff working on the Program, and others on various issues regarding the Program;
- (b) providing general feedback, information and input to the Steering Committee;
- (c) assisting with employer recruitment, transit service initiatives, and program module development, annual campaigns and shared programs; and
- (d) making recommendations regarding projects and programs for consideration by Steering Committee.

Membership

The Advisory Committee will be composed of persons drawn from the following categories:

- (a) the chairs of the boards of each of the TMAs;
- (b) Program Administrators/Service Delivery Agents from the Participating Municipalities;
- (c) representatives of organizations that are key stakeholders in sustainable transportation, such as:
 - (i) transit authorities or agencies of the Participating Municipalities, non-governmental organizations; and
 - (ii) employers participating in the Program.

The Steering Committee shall determine the appropriate method for recruiting and selecting Advisory Committee members. This might include advertising, inviting key stakeholders to recommend members, or extending invitations to experienced and interested individuals. The Steering Committee will select the members, make the appointments, and set the durations of the appointments. The Steering Committee may cancel or revoke the appointment of an Advisory Committee member at any time by delivering written notice of cancellation or revocation to the subject member and the cancellation or revocation will take effect on the date stated in the written notice.

Meeting Procedures

The Steering Committee shall establish rules and procedures for the Advisory Committee meetings and the Advisory Committee shall be bound by and comply with those rules and procedures. The Advisory Committee shall establish or co-ordinate the establishment of rules and procedures for meetings of any subcommittees the Advisory Committee may establish.

Not Acting on Behalf of Municipalities

Neither the Advisory Committee nor any of its members has authority to act on behalf of or bind the SCA or any of the Participating Municipalities. Neither the Advisory Committee nor any of its members shall hold itself out as acting on behalf of or having authority to bind the SCA or any of the Participating Municipalities.

SCHEDULE 7

THE ROLE OF SERVICE DELIVERY AGENTS

General

Service Delivery Agents may include, without limitation, consultants, TMAs, and municipal staff. Service Delivery Agents are expected to promote transportation choices and offer TDM services to the Participating Municipality that has engaged them.

Roles of Service Delivery Agents

Below is a non-exhaustive list of the anticipated responsibilities of Service Delivery Agents:

- (a) Developing and/or co-ordinating local initiatives;
- (b) Delivering and promoting branding and customer service at local or neighbourhood levels;
- (c) Doing private sector outreach, including site audits and workplace surveys;
- (d) Performing an educational function, which might include conducting local events in support of a GTHA wide menu of commuter options;
- (e) Delivering incentive programs within member businesses;
- (f) Developing parking management strategies;
- (g) Liaising with staff of the SCA;
- (h) Advocating for area service needs;
- (i) Communicating with local municipalities on transportation needs and TDM strategies;
- (j) Co-ordinating the sharing of information and ideas among local employers, property managers, commuters and others within their areas;
- (k) Sharing information with government agencies about transportation needs and concerns; and
- (l) Providing feedback on the effectiveness of measures implemented.

Funding of Service Delivery Agents

- (a) Participating Municipalities are responsible for funding or managing their own Service Delivery Agents.
- (b) The legal structure of Service Delivery Agents, where applicable, will vary (for example, some may be corporations and some may be informal associations).

SCHEDULE 8

PROGRAM ASSETS

The Program Assets include, but may not be limited to, the following:

- (a) Smartcommute.ca domain name and hosting account logins and passwords;
- (b) All Smartcommute.ca email addresses hosted by Google;
- (c) Smart Commute Resource Hub contents;
- (d) Smart Commute logo;
- (e) Smart Commute Resource Documents and “How To’s”;
- (f) Custom Project Template Forms;
- (g) All graphics, posters, campaigns, fonts, logos and materials relating to all Smart Commute events (e.g. Carpool Week, Bike to Work Day, Smart Commute month);
- (h) Smart Commute Awards certificate, logos, scoring sheets and other applicable resources;
- (i) Workplace Designation program, scoresheets, evaluation forms, certificates and other applicable resources;
- (j) Year end Program reporting documents and spreadsheets;
- (k) Program Surveys – Baseline Survey, Site Assessment, Annual check-in survey; including the survey data collected;
- (l) All promotional photographs of Smart Commute activities (digital copies); and,
- (m) Contact information of Integrated Mobility Tool users who signed up through a participating Smart Commute Program employer, as originally provided by Metrolinx.

SCHEDULE 9

KEY FEATURES OF THE INTEGRATED MOBILITY TOOL

The following is a non-exhaustive list of the key features that the integrated mobility tool used by each Participating Municipality should include:

- Ride planning and matching tool
- Single trip-matching for carpooling, walking, cycling and transit
- Commute tracking, including cycling, walking and transit
- Event-based matching
- Desktop, mobile web, iOS and Android apps
- Email network authentication
- Online web portal site
- Software maintenance and upgrades
- Incentives and Rewards
- Display of Routes and Points of Interest
- Carpool Parking Management
- Emergency Ride Home
- Events and Challenges administration
- Ability to track CO2 emissions and km(distance) travelled

SCHEDULE 10

PERSONAL INFORMATION

The following information types are personal information:

- a) Name;
- b) Email address;
- c) Home address;
- d) Telephone number; and
- e) Such other information as the Participating Municipalities may agree upon from time to time.

SCHEDULE 11

PARTICIPATING MUNICIPALITIES' ADDRESSES AND CONTACT INFORMATION

REGIONAL MUNICIPALITY OF DURHAM

The Regional Municipality of Durham
c/o Transportation Planning
605 Rossland Road East
Whitby, Ontario
L1N 6A3
905-668-7711

THE CITY OF GREATER SUDBURY

The City of Greater Sudbury
c/o Transportation & Innovation Support,
ICP
200 Brady Street
Sudbury, Ontario
P3A 4P1
705-671-2489

CITY OF TORONTO

City of Toronto
c/o Environment & Energy Division
Metro Hall, 2nd Floor
55 John Street
Toronto, Ontario
M5V 3C6
416-397-5746

TOWN OF OAKVILLE

Town of Oakville
c/o Transportation Planning
1225 Trafalgar Road
Oakville, Ontario
L6H 0H3
905-845-6601 ext. 3304

THE REGIONAL MUNICIPALITY OF YORK

The Regional Municipality of York
c/o Transportation Services
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1
1-877-464-9675

CITY OF HAMILTON

City of Hamilton
c/o Transportation Planning & Parking
900 – 100 King Street West
Hamilton Ontario
L8P 1A2
905-546-2424

SCHEDULE 12

COUNTERPART EXECUTION PAGE FOR SUBSCRIPTION

Re: Smart Commute Program Memorandum of Understanding (the “MOU”)

Pursuant to [Section 15.5](#) (Method of Subscription) of the MOU, by executing and delivering this counterpart execution page to the Steward, the undersigned Joining Municipality acknowledges and agrees that it will be a Party to and bound by the MOU as a Participating Municipality effective from and after the deemed date of delivery of this counterpart execution page to the Steward under the MOU.

In addition, if the undersigned Joining Municipality is a lower-tier municipality, it hereby affirms that it has met the requirements of [Section 15.3](#) (Additional Requirements for Lower-Tier Municipalities Joining the Program) of the MOU.

Municipality’s Address for Service

Attn: _____ Email: _ Tel: __

Date of Execution: _____

Name of Municipality: _____ By:

Name:

Title:

And By: _____

Name:

Title:

I/We have authority to bind the corporation