

COST SHARING AGREEMENT

(the "Agreement")

BETWEEN:

THE REGIONAL MUNICIPALITY OF PEEL
(hereinafter called the "Region")

- and -

THE CORPORATION OF THE CITY OF BRAMPTON
(hereinafter called "City")

(hereinafter together referred to as the "Parties" and individually as a "Party")

WHEREAS the City is the owner of the lands and premises municipally known as 917 and 927 Bovaird Drive West, Brampton, Ontario as further described in Schedule "A" attached hereto (hereinafter referred to as the "Lands");

AND WHEREAS the City will be constructing a fire station (the "Fire Station") on the Lands;

AND WHEREAS the Region desires to locate a Paramedic Satellite Station (hereinafter referred to as the "Satellite Station") on the Lands;

AND WHEREAS the Fire Station and the Satellite Station together shall be referred to as the "Co-locate Facility";

AND WHEREAS the City has engaged a consultant to assist with the design, the tendering process and contract administration services for the Co-locate Facility;

AND WHEREAS this Agreement provides for the pre-construction work, construction contract procurement and administration, inspections, commissioning and cost sharing (but excludes provisions relating to the design of the Co-locate Facility) and is pursuant to a Memorandum of Understanding executed between both parties on April 4, 2019 (the "MOU");

AND WHEREAS reference to a Joint Project Agreement under the MOU is a reference to this Cost Sharing Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of good and valuable consideration, and the sum of \$2.00, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. ARTICLE 1 – DEFINITIONS

1.1 Definitions: For all purposes of this Agreement and any amendments thereto, the terms defined in this section shall have the following meanings, unless the context expressly or by implication otherwise requires:

"This Agreement", the **"Agreement"**, **"hereto"**, **"hereof"**, **"herein"**, **"hereby"**, **"hereunder"** and similar expressions mean and refer to this Agreement as amended from time to time.

"Approved" or **"Approval"** means, in respect of any matter, approval of such matter by City Council and Regional Council or as Council has delegated.

"Architect" means the firm of architects Approved and retained by the City, from time to time to design and supervise the development and construction of the Project (as defined below) and provide project management services.

"Architect's Agreement" means the agreement between the City and the Architect for the design, development, and construction management of the Project.

"Architect's Certificate" means a certificate of the Architect issued by the Architect pursuant to the General Construction Contract, the Architect's Agreement or this Agreement.

"Budget" means, collectively, the City's Budget and the Region's Budget.

“Building” means the building to be constructed on the Lands, which will comprise FS 214 and the PSS.

“Certificate of Revised Project Cost Share” is defined in Section 6.4.

“City” means The Corporation of the City of Brampton, its successors and permitted assigns.

“Contractor” means the person acting as the contractor under any Construction Contract.

“Construction Contracts” means the contracts and agreements entered into by the Parties with other persons for the provision of work, services and/or materials to the Project, other than the General Construction Contract and any agreements with the Architect or other professionals and consultants.

“Cost Estimate” means the estimate of construction costs prepared by the Architect, in accordance with Section 6.2 and in accordance with the Architect’s Agreement, itemizing the Project Costs in reasonable detail, and which cost estimate shall not exceed the Budget.

“Excess Costs” is defined in Section 6.6.

“FS 214” means the Fire station, ancillary parking, landscaping and other exterior improvements relating to the Fire Station on the Lands.

“Funding Agent” is defined in Section 6.9.

“General Contractor” means the person acting as the general contractor under the General Construction Contract.

“General Contractor’s Certificate” means an application for Progress Payments made by the General Contractor pursuant to the General Construction Contract.

“General Construction Contract” means the stipulated fixed price general construction contract (CCDC 2 with The City of Brampton Supplemental Conditions) entered into by the City with the General Contractor for the construction of all or substantially all of the Project, as approved by the City.

“Lands” is defined in the first recital.

“Optional Change” means any change to the Plans and Specifications requested by either the City or the Region which change is not necessary or reasonably required to complete the construction of the Project.

“Party Mandatory Change” means any change to the Plans and Specifications substantially affecting or arising in relation to:

- (a) in the case of the Region, the PSS; or,
- (b) in the case of the City, FS 214;

which is either necessary or reasonably required to complete the development and construction of the Project in accordance with applicable local laws and/or the requirements of municipal authorities exercising regulatory approval powers and which is neither a Project Mandatory Change nor an Optional Change.

“Plans and Specifications” means all graphic and pictorial portions of the Construction Contract documents showing the design, as approved pursuant to the MOU, the location and dimension of the work, and all written requirements and standards for products, systems, workmanship, quality and the services necessary for the performance of the project.

“Progress Payments” means the payments to be made under the General Construction Contract to the General Contractor or under a Construction Contract to the Contractor, if any.

“Project” for the purposes of this Agreement means the design and construction of a joint facility that includes a new Brampton Fire and Emergency Services Station and a new Peel Regional Paramedic Services Satellite Station on the Lands.

“Project Costs” means all costs and expenses incurred by the City for the design, development, construction, contract administration, commissioning and closeout and warranty phases of the Project in accordance with the Plans and Specifications, including, but not limited to:

- (a) all reasonable amounts, fees and disbursements incurred for the Architect, engineers, surveyors, external lawyers and all other professionals and consultants, incurred by the City relating to the negotiation and implementation of the agreements relating to the Project, including without limitation the General Construction Contract, Construction Contracts, if any, this Agreement and the Lease Agreement (as defined below);
- (b) all costs and expenses incurred in connection with obtaining all permits and approvals from authorities having jurisdiction including but not limited to: municipal, regional and provincial. Required permits and approvals may include rezoning approvals, site plan approvals as required, and Building Permit fees;
- (c) all hard and soft construction costs, budgeted or unforeseen, including without limitation, excavation, site preparation and landscaping costs, environmental site remediation and all payments to contractors for labour, material, supplies and services pursuant to the General Construction Contract and the Construction Contracts, if any;
- (d) all costs relating to the negotiation and registration of access easements with adjoining landowners and the design and construction of roadway connections in accordance with such easements;
- (e) all costs for utility services, including but not limited to Region of Peel water and sewer connection, Alectra Utilities Corporation primary and secondary services including transformers, Enbridge natural gas services to site, Bell/Rogers and all necessary metering;
- (f) all costs of insurance maintained with respect to the Project;
- (g) City staff recoveries related to the Project; and
- (h) all costs related to negotiation and registration of the access easements.

provided that such Project Costs shall not include the costs of Optional Changes and Party Mandatory Changes, equipment costs, or any costs incurred by either the Region or the City for its own financing of the development and construction of the Project or in negotiating and settling the Project Agreements.

“Project Cost Share” means the relative percentage of the Project Costs

- (a) when used in relation to the City, 75%; and
- (b) when used in relation to the Region, 25%;

“Project Mandatory Change” means any change to the Plans and Specifications affecting the Project, which is either necessary or reasonably required to complete the development and construction of the Project in accordance with the requirements of municipal authorities exercising their regulatory approval powers and which is neither a Party Mandatory Change nor an Optional Change.

“Project Manager” means the City assigned staff or his/her designate who will be responsible for overseeing the Project.

“PSS” means the Peel Regional Paramedic Services Satellite Station, ancillary parking, landscaping and other exterior improvements relating to the Satellite Station on the Lands.

“Substantial Completion” means the occurrence of substantial performance of the General Construction Contract, with the meaning of the *Construction Act* R.S.O. 1990, c. C.30 of Ontario (the “*Construction Act*”), as certified by an Architect’s Certificate.

“Total Completion” means completion of the General Construction Contract, within the meaning of Section 2(3) of the *Construction Act*, in material compliance with the Plans and Specifications, as such event is certified by an Architect’s Certificate.

2. CONSTRUCTION OF THE CO-LOCATE FACILITY

- 2.1 The City's covenants set out in Section 2 herein are conditional upon the award of the General Construction Contract for the Project being made and upon the execution of the General Construction Contract.
- 2.2 The Satellite Station shall be constructed to have a gross floor area (as measured according to BOMA standards) of approximately 250 square meters (2,691 square feet) with up to 2 non-dedicated parking spaces, in accordance with the design approved pursuant to the MOU.
- 2.3 The Fire Station shall be constructed to have a gross floor area (as measured according to BOMA standards) of approximately 750 square meters (8,073 square feet) with sufficient parking in accordance with the design approved pursuant to the MOU.
- 2.4 The City shall be solely responsible for all aspects of the construction of the Co-locate Facility and associated parking facilities, landscaping and other exterior improvements.
- 2.5 The City agrees to diligently take all such action as may be necessary to begin construction of the Co-locate Facility by Q1 2021 and complete the construction of the Co-locate Facility in accordance with the design, drawings, Plans and Specifications approved pursuant to the MOU and this Agreement, to open in Q2 of 2022. The City shall provide to the Region a development and construction schedule (hereinafter the "Schedule") containing milestones within two (2) business days of the City receiving same from the Contractor upon the commencement of construction. The Region shall provide comment to the Schedule in accordance with Schedule "C". If the City is, in good faith, prevented from carrying out any duties or obligations required under this Agreement because of a force majeure, including, but not limited to, an act of God, a strike, civil insurrection, riot, war, or rebellion, pandemic and government orders and public health restrictions and recommendations then despite anything to the contrary, the City will do and complete what was prevented after the force majeure, as expeditiously as possible, and shall not be liable to the Region for any costs, or in any way, related to any such delay.
- 2.6 The Region acknowledges that the City must comply with zoning requirements, minor variances as required, building permits, site plan approvals and other permit requirements and any other authority having jurisdiction, as imposed by The Corporation of the City of Brampton as issuer of approvals, building permits, and the City shall diligently pursue obtaining the necessary permits and approvals without delay. If the City is delayed from carrying out duties or obligations required under this Agreement because of delays beyond the City's control in issuance of said permits, the City will do and complete as expeditiously as reasonably possible what was so delayed, and shall not be liable to the Region for any costs, or in any way, related to any such delay, so long as the City is not responsible in the delay.
- 2.7 The City shall own all elements of the Co-locate Facility, including the Satellite Station, but excluding all contents and leasehold improvements installed by or on behalf of Region within the Satellite Station, at all times, in accordance with this Agreement, subject to the provisions of the Lease Agreement to be entered into by the Parties. The Region shall have exclusive use of the Satellite Station as provided for in the Lease Agreement as defined in this Agreement.
- 2.8 The City agrees to hold and enforce all warranties, guarantees and bonds and other rights it obtains in connection with the construction of the Satellite Station and the supply and installation of equipment and fixtures in the Satellite Station.
- 2.9 The City shall designate the Director of Building Design and Construction and the Region shall designate the Manager, Capital Planning & Project Management, Real Property Asset Management as primary contacts during the construction of the Co-locate Facility in order to exchange information relating thereto.
- 2.10 The Co-locate Facility will be constructed to achieve a high standard of energy efficiency by using the best principles of LEED, Passive House and Net Zero high performance building standards. The Parties agree that it is not a requirement of the Co-locate Facility design to achieve certification in any specific voluntary building energy rating system or standard.

3. DESIGN

- 3.1 The Parties acknowledge and agree that the design of the Co-locate Facility shall be completed in accordance with the terms set out in the MOU and attached hereto as Schedule "D".

4. CONSTRUCTION MANAGEMENT

- 4.1 Construction Management: The City shall be responsible for the control, supervision and management of the construction of the Project. Without limiting the foregoing, the City's Project Manager will communicate all decisions of the City and the Region to the Architect and the General Contractor. The Region will direct any and all communications about construction of the Project solely to the City's Project Manager in charge of constructing the Project.
- 4.2 Notwithstanding the provisions of Article 4.1, the City, in carrying out its function and duties under Article 4.1, shall act in good faith respecting the best interests of both the City and the Region and shall use its reasonable best efforts to protect the best interests of both the City and the Region.
- 4.3 In carrying out its duties pursuant to Section 4.1, the City shall immediately notify the Region respecting any and all matter(s) and/or issue(s) (including any Project Mandatory Change), of which the City becomes aware or is aware, that may affect the Region.

5 CONSTRUCTION OF THE PROJECT

- 5.1 Agreement to Construct: Subject to Sections 5.2 and 6.2, the City shall only contract to construct the Co-Locate Facility within the Budget, in accordance with the approved Plans and Specifications, and otherwise in accordance with the provisions of this Agreement.
- 5.2 Award of the General Construction Contract: Unless otherwise agreed by the Parties, the tender and award of the General Construction Contract for the Project and construction thereof shall not occur until each of the following events has occurred:
- (a) The Region has provided written approval of the completed design of the Co-locate Facility in accordance with the MOU;
 - (b) The Plans and Specifications, Schedule and Cost Estimate have been reviewed by the City and the Region and approved by the City Council and the Regional Council;
 - (c) The Budget has been Approved and City Approval has been given for commencement of procurement of the General Construction Contract;
 - (d) The award of the General Construction Contract has been approved by the City;
 - (e) Any rezoning, if required, and all site plan approvals have been obtained;
 - (f) All pre-construction matters have been completed including without limitation, , obtaining all applicable regulatory approvals and resolving any utility conflicts, save and except completing the transactions for access easements with adjoining landowners; and
 - (g) Any necessary increase in the Budget has been Approved.
- 5.3 Substantial Completion Date: The City shall use its reasonable best efforts to cause the Architect to manage, control and supervise the construction of the Project in accordance with the Schedule and to obtain Substantial Completion in accordance with the Schedule. Until commencement of the Lease Agreement (as defined herein), the City hereby grants to the Region a licence to enter upon the Lands for purposes of reviewing the construction of the improvements thereon as are contemplated by this Agreement, subject to compliance with the General Construction Contract such licence to automatically terminate upon commencement of the Lease Agreement (as defined herein).
- 5.4 Furnishing and Equipping Premises: Upon Substantial Completion and receipt of the Co-Locate Facility, the Region shall furnish and equip the PSS; the City shall furnish and equip FS214; and, each of the Region and the City shall be responsible for and shall pay its own Equipment Costs and such work shall be coordinated with the Project Manager to ensure same does not conflict with Total Completion work.

5.5 Entry and Occupation: The City shall use their reasonable best efforts to develop and construct the Project in a manner that allows each of the Parties to enter upon and occupy its premises on or as soon as possible after the Substantial Completion Date in order to permit each Party to furnish and equip its premises and to do such other work as may be necessary or desirable to permit each Party to use its premises for its intended purposes.

5.6 Lease Agreement: Notwithstanding anything set out herein, the Region taking possession and occupying a portion of the Co-locate Facility is conditional on the Parties executing an Approved lease agreement for the Region's occupation of a portion of the Co-locate Facility for the Satellite Station (the "**Lease Agreement**").

6. CONTRIBUTION BY THE REGION

6.1 The City shall have sole responsibility for administering the General Construction Contract, Architect's Agreement, Construction Contracts, if any, and will advance payments, certified by the payment certifier in accordance with the payment terms contained in the contract documents.

6.2 Project Costs shall be within both the Cost Estimate and the Budget: The Region and the City agree that no Project Costs are to be incurred unless such Project Costs are contemplated by and within the limits of both the Cost Estimate and the Budget, except for:

- (a) any costs and expenses incurred in connection with a direct and immediate response to an emergency respecting the design and construction of the Co-Locate Facility;
- (b) costs and expenses in excess of the Budget as are Approved; or
- (c) costs and expenses incurred in connection with a Party Mandatory Change, a Project Mandatory Change or an Optional Change.

6.3 Parties' Project Cost Shares: Subject to readjustment pursuant to Sections 6.4 and 6.13 herein, all Project Costs incurred by the City in accordance with this Agreement shall be paid for by the Parties in accordance with their respective Project Cost Share as set forth in the definition of Project Cost Share in Section 1.1 herein.

6.4 Certificate: Upon Total Completion of the design and construction of the Co-Locate Facility, without limiting any other obligations of the Architect under the Architect's Agreement, the Parties shall cause the Architect to prepare and issue to the Region and the City a certificate verifying the following:

- (a) the total gross floor area of the Building;
- (b) the total gross floor area of the FS 214;
- (c) the total gross floor area of the PSS; and
- (d) the Project Costs. The City, in consultation with the Region, shall instruct the Architect as to the method for valuing different types of work and materials supplied to the Co-Locate Facility in order to arrive at the Project Costs.

6.5 Payment: Each Party shall promptly pay forthwith its respective Project Cost Share incurred in accordance with this Agreement from time to time as such amounts become due and payable. With respect to Project Costs which become due and payable under the Architect's Agreement, the General Construction Contract or under any Construction Contract, the parties shall pay their respective Project Cost Share of such Project Costs in accordance with Sections 6.6 to 6.15 below.

6.6 Funding Project Mandatory Changes: If a Project Mandatory Change is required, then, the additional costs resulting from such Project Mandatory Change, if any (referred to as "Excess Costs"), will be shared by the Region and the City in accordance with Section 6.3.

6.7 Funding Party Mandatory Changes: If a Party Mandatory Change is required, then, the additional costs resulting from such Party Mandatory Change shall be paid by the City if relating to FS 214 and by the Region if relating to PSS and to extent such Party Mandatory Change or any portion thereof does not relate exclusively to the FS 214 or PSS, responsibility for payment thereof shall be allocated by the City acting reasonably between the Parties and failing such allocation in accordance with Section 6.3.

- 6.8 Funding Optional Changes: The full cost of an Optional Change shall be paid by the Party requiring the Optional Change.
- 6.9 Funding Agent: The City shall act as agent (the "Funding Agent") for purposes of administering payment to the Architect, the Contractors, if any, and the General Contractor of Progress Payments or any other invoices it receives for Project Costs. The Funding Agent, upon receiving an invoice from a Consultant, Contractor, General Contractor, Architect or other vendor including but not limited to utilities, municipal departments, or authorities having jurisdiction, the City shall pay the invoice in accordance with the *Construction Act*. The City shall prepare and submit to the Region the City's invoice, together with any other supporting documentation that the Region may reasonably require, the Region's share being determined in accordance with the Region's Project Cost Share as set out in Section 1.1 and as provided in Section 6.3 which may be delivered to the Region either electronically or by facsimile transmission. The City's invoice will include a break down of all costs being charged to the Region, including the non-recoverable 1.76% HST (if applicable). The Region will pay to the City within thirty (30) Calendar Days following the date of receipt of the City's invoice, the amount required to be paid by the Region on account of the Region's Project Cost Share, and where applicable, any Party Mandatory Changes or Optional Changes for which the Region is responsible, as determined in accordance with this Agreement, unless the Region gives written notice that it disputes the City's invoice together with the reasons for the Region's dispute within five (5) business days of receipt, in which latter event the disputed invoice shall be referred to the dispute resolution process described in Section 8 herein. The Funding Agent shall use reasonable commercial diligence in releasing Progress Payments to the General Contractor or Contractors, if any, including without limitation ensuring that the Funding Agent has in hand for each of the Progress Payments the following:
- (a) an Architect's Certificate with supporting documents as required under the General Construction Contract;
 - (b) a General Contractor's Certificate or Contractor's Certificate with supporting documents as required under the General Construction Contract or Construction Contract; and
 - (c) confirmation that there are no claims for a lien at the time the Progress Payments are made.
- 6.10 Architect: The Architect, as payment certifier under the General Construction Contract and Construction Contracts, if any, shall be required to issue Architect's Certificates for Progress Payments and for such other purposes as may be required under the General Construction Contract or otherwise by the City, and to deliver all such Architect's Certificates to the City.
- 6.11 Delays in Payments: The City may decide, in its sole discretion, to withhold or delay any of the Progress Payments, in accordance with the *Construction Act*, if the City, acting reasonably, has a dispute with the General Contractor or Contractor in respect of construction of the Project, provided that in such case any costs, penalties, interest and other claims resulting from the withholding or delay of any of the Progress Payments will be shared by the Parties in accordance with their respective Project Cost Share as set forth in the definition of Project Cost Share in Section 1.1 herein.
- 6.12 All monies paid by the Region to the City pursuant to this Agreement shall be used solely for the development and construction of the PSS and any associated works and the City's costs associated with administering said contracts.
- 6.13 In the event that interim provisions for services and utilities including but not limited to sanitary, storm, gas, hydro and water supply are required to serve the Building pending hook up to municipal services and utilities, each Party shall pay its Project Cost Share of the cost of said interim provisions, as well as applicable taxes in accordance with Section 6.9 herein.
- 6.14 The City shall record all amounts received from the Region hereunder and deposit same into a separate account and shall ensure that all such amounts are used only for the purpose of paying for cost items identified in the monthly invoices.
- 6.15 Notwithstanding section 2.3, the Parties agree that they have entered into this Agreement on the understanding that the Region's contribution to the total construction cost (hard and soft costs) of the Satellite Station, subject to section 6.13 is estimated to be \$1,530,000 +

20% contingency + any cost increase solely due to COVID-19 (the "Estimated Construction Costs for the PSS"). The City shall make all reasonable efforts to maintain the construction costs at or below the "Estimated Construction Costs for the PSS". In the event that the Region requests a change from the approved detailed design (which must be requested in writing) that is accepted by the City and results in costs over and above the Estimated Construction Cost for the PSS, the Region shall be responsible for said over and above costs (whether such costs are hard or soft costs), as are determined by the City and as are described by the City in writing.

7. INDEMNITY

7.1 Each of the Region and the City will indemnify and save harmless the other from and in respect of all manner of action, or actions, cause and causes of action, suits, debts, duties, dues, accounts, covenants, contracts, claims, charges, demands or other proceedings of any nature whatsoever at law or equity and any costs, expenses or damages arising out of the breach by such Party of its covenants and obligations hereunder. The indemnities in this provision shall survive the expiration or other termination of this Agreement.

8. DISPUTE RESOLUTION

Differences between the Parties as to the interpretation, application or administration of this Agreement or any failure to agree where agreement between the Parties is called for pursuant to this Agreement (a "Dispute"), which are not resolved by the Parties administering this Agreement, shall be resolved in accordance with this clause.

- (a) If the Parties have not been able to resolve the Dispute in a prompt and expeditious manner and in any event within five (5) business days after delivery of a written request from one Party to the other to resolve the Dispute, either Party may deliver a further request by written notice to the other that the Dispute be escalated to Senior Management;
- (b) In the event such a request by written notice is made, each Party shall make available the senior management person specified below ("Senior Management") who shall meet within five (5) business days after such request is made at the offices of the Party making the request to attempt to resolve the Dispute. The Senior Management appointee for each Party is as follows:

Brampton: Commissioner, Public Works and Engineering or designate

Peel: Commissioner of Health or designate;
- (c) If the Dispute is not settled by the Senior Management subject to any required Council approval(s) within five (5) business days after such escalation, either Party may during the following five (5) business days request by written notice to the other that the Dispute be escalated to the a committee composed of the respective CAO's, Solicitor and Senior Management appointee for each Party (the "Dispute Resolution Committee");
- (d) In the event such a request by written notice is made, each Party shall make available its members of the Dispute Resolution Committee who shall meet within five (5) business days after such request is made at the offices of the Party making the request to attempt to resolve the Dispute;
- (e) If the Dispute is not settled by the Dispute Resolution Committee subject to any required Council approval(s) within five (5) business days after such escalation, either Party shall be entitled to provide notice to the other that it wishes the Dispute to be settled by arbitration, in which case the Dispute shall be arbitrated in Brampton, Ontario pursuant to the *Arbitration Act*, S.O. 1991, c.17, as amended, before one (1) arbitrator who shall be a lawyer in good standing with Law Society of Ontario with substantial and verifiable experience in the law relating to construction, such arbitrator to be mutually agreed upon by the Parties;
- (f) The arbitration hearing shall commence within thirty (30) days after appointment of the arbitrator and shall be completed and a binding award rendered in writing within thirty (30) days after commencement of the hearing unless exceptional circumstances warrant delay. The decision of the arbitrator may be entered in any court of competent jurisdiction and execution entered thereupon forthwith;

- (g) Each Party shall bear the cost of preparing its own case. The arbitrator shall have the right to include in the award the prevailing Party's costs of arbitration and reasonable fees of attorneys, accountants, engineers and other professionals in connection with the arbitration.

9. EVENTS OF DEFAULT AND TERMINATION

- 9.1 Any of the following circumstances is a default under this Agreement (hereinafter called an "Event of Default"):
 - (a) if a Party shall fail to make any payment required hereunder and such failure shall continue for a period of thirty (30) days after written notice thereof has been given by another Party pursuant to the provisions of this Agreement; and/or
 - (b) other than a default under (a) above, if a Party shall be in default under any of the provisions of this Agreement and such default continues for a period of fourteen (14) days after written notice thereof has been given by the other Party or such longer period as is reasonable as long as the defaulting Party is acting with all due diligence to cure such default.
- 9.2 In the case of an Event of Default prior to the General Construction Contract being awarded, at the option of the non-defaulting Party, this Agreement shall cease, terminate, and become null and void.
- 9.3 In the case of an Event of Default after the General Construction Contract has been awarded, the non-defaulting Party shall be entitled to make any decisions and perform any obligations on behalf of the defaulting Party and at the sole cost and expense of the defaulting Party plus an administration fee of 20%, payment of which shall either be added to the Region's Project Cost Share (if the Region is the defaulting Party) or subtracted from the Region's Project Cost Share (if the City is the defaulting Party).

10. NOTICE

- 10.1 Any and all information, records, notices, approvals, waivers, agreements, extensions or other communications pursuant to this Agreement given by the City or the Region shall be in writing unless the Parties to this Agreement agree otherwise in writing.
- 10.2 Any notices required to be given pursuant to this Agreement hereunder in writing shall be deemed to be given if personally delivered, mailed by prepaid first class mail, postage prepaid at any time other than during a regular discontinuance of postal services due to a strike, walk out or otherwise, or email transmission followed by post, and addressed to the Party to whom it is given as follows:

Region:

The Regional Municipality of Peel
7120 Hurontario Street,
Mississauga, ON L5M 2C2

Attention: Jason Lum-Yip, Manager, Construction Project Management

City:

The Corporation of the City of Brampton
2 Wellington Street West
Brampton, Ontario L6Y 4R2

Attention: Ali Jourabloo, Manager, Building Design and Construction, Public Works and Engineering

- 10.3 Any notice shall be deemed to have been given to and received by the Party to whom it is addressed if:
 - (a) delivered on the date of delivery;
 - (b) received on the fifth day after mailing thereof; or
 - (c) emailed on the date of email transmission.

11. INSURANCE

- 11.1 The City shall, at its own expense, during the construction of the Satellite Station, cause to be maintained Builder's Risk insurance in accordance with the City's General Construction Contract with the General Contractor. The City shall provide evidence that the General Contractor shows the Region as a named insured loss payee on the builder's risk insurance for 110% of the value of the construction of the Satellite Station and also as an additional insured on the General Contractor's general liability insurance policy with a policy limit of not less than five million dollars, the costs of which shall be solely payable by the Region accordance with Section 6.9 herein.
- 11.2 In the General Construction Contract between the City and General Contractor, the City shall cause the General Contractor to indemnify and save harmless the Region, its employees, agents, elected officials, volunteers from and against any and all claims, actions, demands, losses, damages, liabilities, costs and expenses (including legal fee on a solicitor and client basis) of any kind whatsoever (any or all of the foregoing hereinafter referred to as 'Losses'), including without limitation Losses for injury to or death of persons whomsoever and for damage to, loss of or destruction of property, insofar as such Losses (or actions in respect thereof) arise out of or are based upon breach of the General Contractor's obligations under the General Construction Contract, breach of regulatory obligations, negligence or willful act or omission of the contractor, sub-contractor, agents or employees or any person whom the General Contractor may at law responsible, except to the extent that liability is attributable to the negligent or willful acts or omission of the Region.

12. GOOD FAITH

Each Party hereto agrees to act, including its staff, and any other employees, officers, representatives and agents from time to time, and at all times, honestly and in good faith and with all due diligence and dispatch in taking all actions and in making all decisions pertaining to the development and construction of the Co-locate Facility.

13. REGISTRATION

Both Parties agree that this Agreement shall not be registered.

14. ASSIGNABILITY

- 14.1 Neither Party shall assign or transfer this Agreement, in whole or in part, without the consent of the other, which may be arbitrarily withheld.

15. AMENDMENTS

- 15.1 Any changes, alteration or amendment to this Agreement other than as herein specifically authorized shall be made in writing and signed by representatives of both the Region and the City who can bind the respective Parties.

16. GENERAL

- 16.1 **Interpretation** - Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the female gender and vice versa, and words importing persons shall include firms and corporations and vice versa. Unless the context otherwise requires, the word "Region" and the "City" wherever used herein shall be construed to include and shall mean the successors and/or assigns of the Region and the City respectively.
- 16.2 **Applicable Law** - This Agreement shall be governed, construed and enforced according to the laws of the Province of Ontario.
- 16.3 **Invalidity** - In the event that any of the terms, conditions, or provisions contained in this Agreement shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.
- 16.4 **Waiver** - No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No forbearance by any Party to seek a remedy for any breach by any other Party of any provision of this Agreement shall constitute a waiver of any rights or remedies with respect to any subsequent breach.

- 16.5 **Further Assurances** - The City and the Region each shall and will make its best and timely effort upon the reasonable request of the other to, make, do, execute, or cause to be made, done or executed, all such further and other lawful acts, deed, things, devices and assurances whatsoever necessary to give effect to this Agreement, and the terms and conditions contained herein.
- 16.6 **No Partnership** - The Parties disclaim any intention to create a partnership or to constitute either of them the agent of the other. Nothing in this Agreement shall bind the Parties or either of them, as partners or agents nor, except as may be expressly provided in this Agreement, constitute either of them the agent of the other Party.
- 16.7 **Municipal Authorities** - The Parties acknowledge and agree that nothing in this Agreement shall be deemed to fetter or interfere with either Party's responsibilities and rights as municipal bodies to grant regulatory approval such that "approval" or "request" as provided for in this Agreement is not meant to reflect the responsibilities of either Party as a municipality.
- 16.8 **Binding Effect and Entire Agreement** - This Agreement together with the MOU shall constitute the entire Agreement between the Parties related to the content of this agreement, and it shall ensure to the benefit of and be binding upon the City and the Region and their respective successors and permitted assigns.
- 16.9 **Currency** - Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful Canadian funds.
- 16.10 **Reasonableness** - Whenever, unless otherwise indicated in the Agreement, a Party (the "Deciding Party") is making a determination (including, without limitation, a determination of whether or not to provide its consent or approval where the Deciding Party's consent or approval is required), designation, calculation, estimate, conversion or allocation under this Agreement, the Deciding Party shall (unless this Agreement specifically provides to the contrary) act reasonably and in good faith. If the Deciding Party refuses to provide its consent or approval when requested to do so, it shall provide the Party requesting such consent or approval (the "Requesting Party") with the reasons for its refusal at the same time as it advises the Requesting Party that it refuses to provide its consent or approval.
- 16.11 The Parties acknowledge and agree that the recitals herein are true and accurate and together with Schedules "A", "B", "C", and "D" attached hereto shall form part of this Agreement.
- 16.12 If applicable, the Parties agree that the execution of this Agreement may be facilitated through facsimile or electronic means and/or this Agreement may be executed in several counterparts and any such facsimile or electronic copy and any such counterpart shall be deemed to be an original Agreement, and such facsimile or electronic copies or such counterparts together shall constitute one and the same Agreement and shall have the same force and effect as an executed original.
- 16.13 If applicable, the Parties agree that the execution of this Agreement by either Party may be facilitated through an electronic approvals process (the "Approval Process") whereby an e-mail confirmation is provided by the signing Party to the other Party to evidence the execution of the Agreement and binds the individual/corporation, which e-mail confirmation shall be attached to this Agreement and shall have the same force and effect as an executed original. Each of the parties shall maintain a record of such electronic documents pursuant to this Approval Process and shall provide an executed copy of the Agreement to the other Party with a wet signature, within a reasonable time following the termination of the latter of any municipal, provincial, or federal Declaration of Emergency in effect in Peel in relation to the COVID-19 pandemic (the "Declaration"). This Approval Process shall apply only to the extent that this Agreement is executed during the period in which the Declaration is in effect.

[signature page follows]

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, The Region has, on the _____ day of _____, 2021 executed this Agreement.

THE REGIONAL MUNICIPALITY OF PEEL

Per:

Name:

Title:

I have authority to bind the Regional Corporation

IN WITNESS WHEREOF the City has, on the _____ day of _____, 2021 executed this Agreement.

Authorization By-Law No. _____	
Approved as to form - Legal _____ _ _ _ _	Approved as to content- BDC _____ _ _ _ _

THE CORPORATION OF THE CITY OF BRAMPTON

Per:

Name:

Title:

Per:

Name:

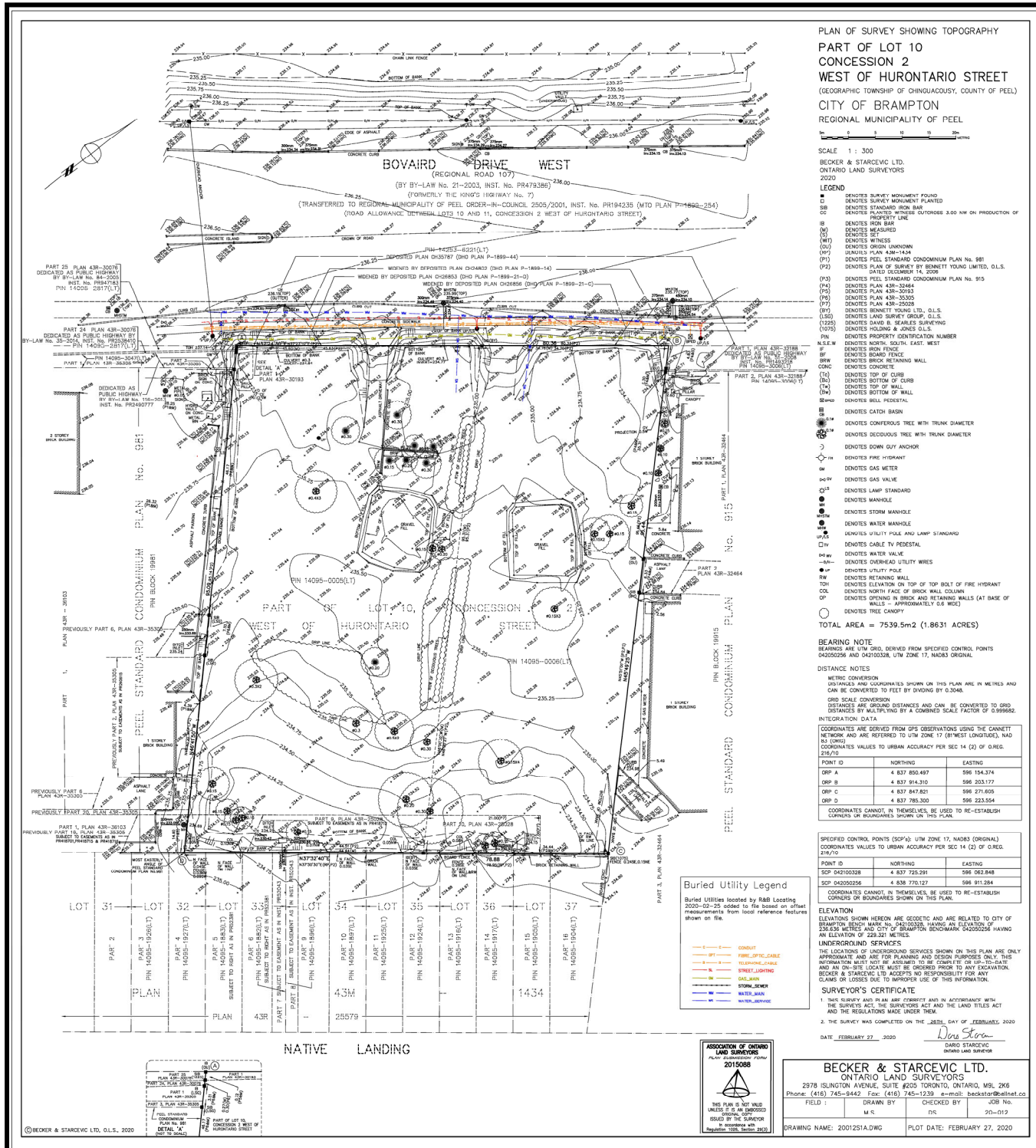
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"

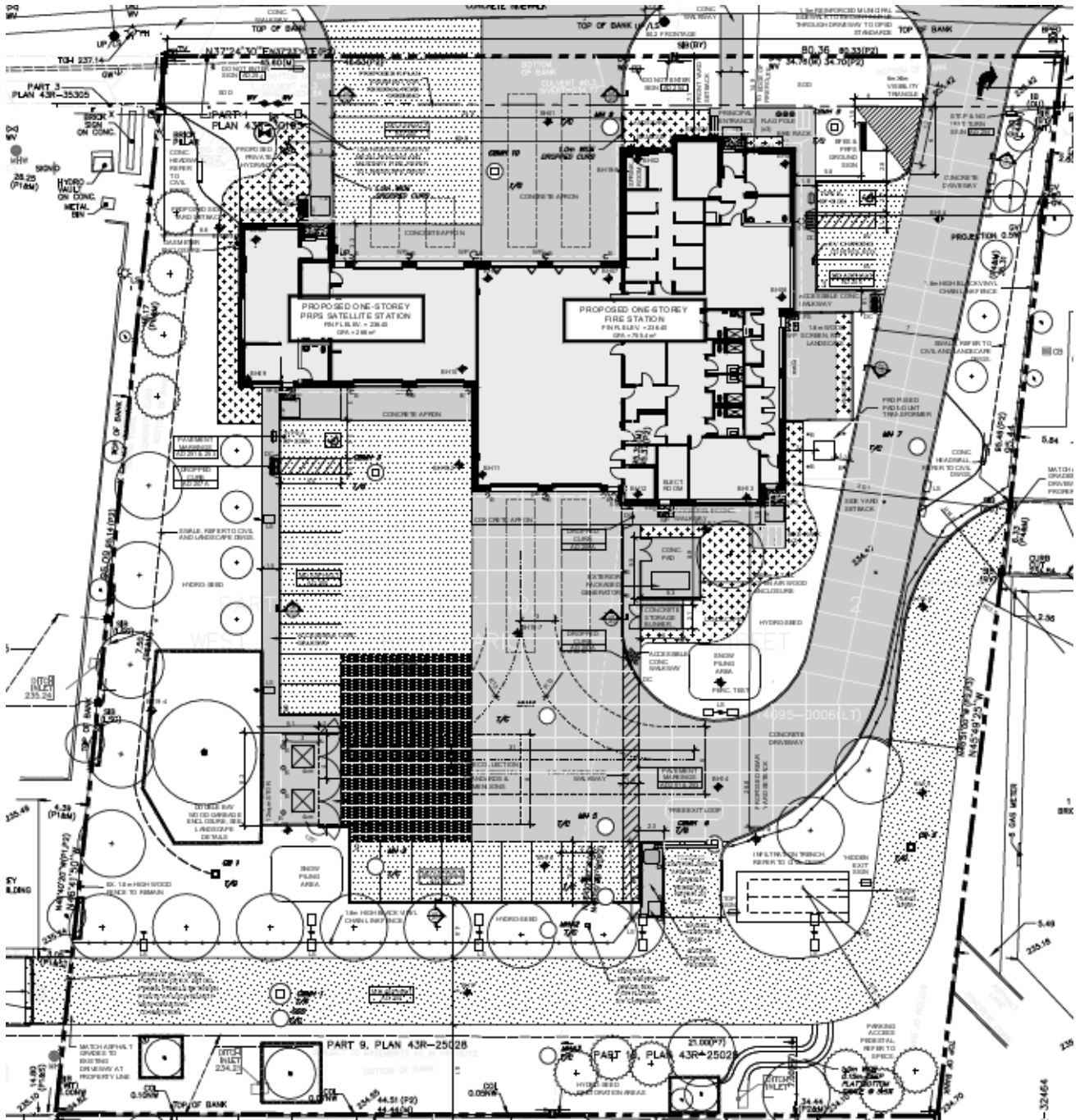
LEGAL DESCRIPTION

Part Lot 10 Concession 2, West of Hurontario Street, Parts 1 to 9 Plan 43R39811; Subject to an Easement over Part 5 Plan 43R39811 as in PR418712; City of Brampton, Regional Municipality of Peel and identified as PIN: 14095-3054



SCHEDULE "B"

PRELIMINARY CONCEPTUAL SITE PLAN



1-321664

SCHEDULE "C"

REVIEW AND COMMENT SCHEDULE

Review and Comment:

The City shall submit, or cause to be submitted to the Region, project submittals as and when deemed necessary by the City's Project Manager, including but not limited to; plans and other documents and materials (in sufficient detail and with all ancillary materials in order to enable the Region to make an informed assessment) pertaining to the Co-locate Facility for comment by the Region at each of the following stages or events:

- Development and Construction Schedule
- Design in accordance with the MOU
- Working drawings
- Construction Cost Estimate
- Project Costs Estimate including the City Management Fees, Consultant fees and all other soft costs the City will charge the Region as agreed
- Tendering stage
- Construction
- Commissioning
- Project Closeout

(collectively, the "Project Submittals")

Upon written request by the City, the Region shall provide its written comments on each of the Project Submittals to the City's Project Manager, within five (5) Business Days following Region's receipt thereof. The Region will also consider any reasonable request by the City to expedite the timelines. The City will also consider any reasonable request by the Region to extend the timelines, provided no such extension shall exceed five (5) Business Days.

For the purposes of facilitating and expediting review and, where applicable, correction or amendment of any Project Submittal, the Parties shall meet as may be mutually agreed to discuss and review any outstanding submittals and any comments thereon. Further, the Parties agree to a joint quarterly site visit to review the progress of the Project development, said site visits to be scheduled by the City's Project Manager.

In the event the Region does not provide any comments on any Project Submittal made by the City in accordance with and within the time stipulated above, the Region shall be deemed to have accepted such Project Submittal.

SCHEDULE D

MEMORANDUM OF UNDERSTANDING ("MOU")

Between The Corporation of the City of Brampton and The Regional Municipality of Peel dated April 4, 2019

(Attach PDF)