

MEMORANDUM OF UNDERSTANDING ("MOU")

Between:

The Corporation of the City of Brampton
(hereinafter called the "City")

and

The Regional Municipality of Peel
(hereinafter called the "Region")

(the City and the Region collectively referred to herein as the "Parties")

WHEREAS the City has entered into an Agreement of Purchase and Sale (the "APS") to acquire certain lands and premises located at 917 and 927 Bovaird Drive West in the City of Brampton and legally described as Parts of Lot 10, Concession 2, West of Hurontario Street (Chinguacousy), City of Brampton, Regional Municipality of Peel and identified as PIN #'s 14095-0005 and 14095-0006 (the "Lands") and the APS remains conditional upon the City completing and being satisfied with its due diligence investigations (the "Condition");

AND WHEREAS the City is responsible for operating Brampton Fire and Emergency Services and the Region is responsible for operating Peel Regional Paramedic Services;

AND WHEREAS subject to the satisfaction of the Condition and completion of the APS, it is the City's intention to construct a new Fire Station on the Lands (hereinafter called the "Fire Station");

AND WHEREAS the Region wishes to co-locate a paramedic satellite station on the Lands (the "Paramedic Station");

AND WHEREAS the Parties recognize that such co-location of the Paramedic Station and Fire Station would reduce the overall cost of providing essential emergency services;

AND WHEREAS, notwithstanding that the APS remains subject to the Condition and has yet to be completed, the Parties wish to agree upon certain binding terms pursuant to which the City shall proceed with the design work on behalf of the Parties for co-locating the Fire Station and Paramedic Station on the Lands including associated landscaping, access/egress driveways and vehicle routes, parking and site services (the "Design Project");

AND WHEREAS the Parties wish to confirm certain other non-binding mutual understandings, principles and assumptions with respect to the construction, operations, maintenance and lease of a Paramedic Station co-located with the Fire Station on the Lands (the "Project") and the definitive agreements required to be negotiated for sharing costs related to construction, maintenance and operations and for the Region's leasing of the Paramedic Station;

AND WHEREAS the City and the Region have obtained approval from their respective Councils for the Design Project, a budget to pay their respective share of the Design Project costs and delegated authority to enter into this MOU;

NOW THEREFORE in consideration of the exchange of two (\$2.00) dollars between the Parties, it is hereby agreed as follows:

1. The Parties have both obtained budget approval from their respective Councils sufficient to fund their respective financial obligations for the Design Project as set out herein.
2. The Parties hereby acknowledge that the recitals above are true and together with the attached Schedules form part of this MOU. The Parties further acknowledge the following:
 - a) Region has advised that Regional Council approval has been obtained for the Design Project and all phases of the Project including budget approvals for the Region's potential share of all design, construction and leasing costs, and delegated authority to execute this MOU;
 - b) City has advised that City Council approval has been obtained for only the Design Project including a design budget based on a potential co-location of the Paramedic Station and that there is delegated authority to execute this MOU;
 - c) City has advised that City Council approval has yet to be obtained for all phases of the Project including a construction budget, construction tender and co-location arrangements; and
 - d) Agreements must be negotiated and presented for approval to both Councils, if and as required, dealing with arrangements for the City's construction tender, construction and administration costs sharing (approvals, billing and documentation), commissioning and acceptance, lease, operational issues,

maintenance and capital cost sharing and operating based on occupancy and usage (collectively the "Project Agreements") on business terms satisfactory to the Commissioner of Corporate Services and on legal terms satisfactory to the Regional Solicitor.

DESIGN PROJECT

3. The City shall be responsible for preparing the documentation to procure architectural consulting services for design of a co-located Fire Station and Paramedic Station on the Lands (the "Joint Facility") on behalf of the Parties and generally in accordance with the parameters outlined in the attached Schedule "A". The procurement document (Request for Proposal) shall include provision for contract administration services at the option of the City.

4. The Region shall provide the City with the Region's functional program, design standards and performance requirements for the Paramedic Station within two (2) weeks after the Region's execution of this MOU, following which the City may issue its Request for Proposal and subsequently proceed to award the contract for the Design Project work (the "Design Contract") notwithstanding that the Condition remains to be satisfied and/or the APS remains to be completed.

5. The City shall not be obligated to issue any Request for Proposal for the Design Work or having issued same shall not be obligated to award any Design Contract. In the event the City does award the Design Contract, Sections 6 to 19 below shall apply with respect to the completion of and payment for the Design Project.

6. Upon awarding the Design Contract, the City shall cause the design of the Joint Facility to be developed and completed. The Region, if and as requested by the City, shall participate in both formal and informal consultations with the City and/or the City's design consultant during the development of such design.

7. The City shall submit or cause to be submitted to the Region the 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 design of the Joint Facility for comment by the Region at the following intervals:

- (i) at 30% completion,
- (iii) at 60% completion,
- (iii) at 90% completion, and
- (iv) at 100% completion

(collectively, the "Design Development Submittals")

provided however that the Parties may agree, acting reasonably to revise the number of reviews and completion percentages required. The Parties acknowledge and agree that the Design Development Submittals shall be in accordance with the City of Brampton's Building Design and Construction Capital Projects Procedures.

8. The Region shall provide its written approval or written notice of amendments and/or comments on each of the Design Development Submittals to the City's representative named in Section 24 herein, within ten (10) 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. Any Design Development Submittal that is amended in response to the Region's notice shall be resubmitted to the Region in which event the Region's obligations pursuant to this Section shall apply to such resubmission.

9. For the purposes of facilitating and expediting review and, where applicable, correction or amendment of any Design Development Submittal, the Parties shall meet as may be mutually agreed to discuss and review any outstanding submittals and any comments thereon.

10. In the event the Region does not provide any amendments or comments on any Design Development Submittal in accordance with and within the time stipulated by Section 8 above, the Region shall be deemed to have approved such Design Development Submittal.

11. The Region shall reimburse the City for the Region's proportionate share of all invoices issued to the City for Design Project work. The Region's proportionate share for such invoices shall be based upon the gross floor area of the proposed Paramedic Station relative to that of the proposed Joint Facility as designed and certified by the City's design consultant after 100% completion of the Design Project (the "Region's Proportionate Share"). Until such certification, the Region's Proportionate Share shall be deemed to be 25% which the Parties acknowledge and agree is their best current estimate of what the Region's Proportionate Share will be.

12. The City shall provide the Region a copy of each original invoice issued to the City for Design Project work together with the City's invoice for the Region's Proportionate Share thereof. The Region shall pay each invoice issued by the City net within thirty (30) calendar days of receipt unless the Region gives written notice that it disputes the City's invoice together with the reasons for the Region's dispute within two (2) business days of receipt, in which latter event the disputed invoice shall be referred to the

dispute resolution process described in Section 19 herein.

13. Upon completion of the Design Project and the City's receipt from the City's design consultant of the certification determining the Region's Proportionate Share, all previous invoices issued by the City to the Region shall be amended according to such certification and sent to the Region and all necessary reconciliations, credits or payments shall be made within thirty (30) calendar days of receipt.

14. Following the City's receipt of all payments due pursuant to all invoices and amended invoices for the Design Project as rendered by the City in accordance with the foregoing, the City shall give written notice to the Region once City Council has approved or refused to approve the Project including a construction budget, construction tender and co-location arrangements or any of the Project Agreements.

15. In any of the following events:

- (a) City Council does not approve the Project;
- (b) the Region elects not to proceed with the Project prior to executing the Project Agreements;
or
- (c) the Parties have not negotiated, obtained all required Council approvals and authority to execute and executed all of the Project Agreements on or before the later of December 31, 2020 or the date which is the first anniversary of the 100% Design Development Submittal being given to the Region;

the City shall request its design consultant to revise the Design Project to delete the Paramedic Station, the Region, unless the City has not made reasonable efforts to negotiate the Project Agreements, shall reimburse the City for all additional design costs the City incurs in connection with such revisions within thirty (30) calendar days of receiving the City's invoice and a copy of the invoice from the design consultant and the City shall be released from any further obligation or liability under this MOU.

16. In the event the Region requests alterations to the Paramedic Station component after the Region's approval or deemed approval of the 100% Design Development Submittal and prior to the execution of the Project Agreements by the Parties and the City agrees to such request, the Region shall reimburse the City

for all additional design costs the City incurs in connection with such revisions within thirty (30) calendar days of receiving the City's invoice and a copy of the invoice from the design consultant.

17. Notwithstanding any other provision in this MOU, the Region's liability to the City for invoices relating to the completion and revision of the Design Project, excluding alterations requested by the Region pursuant to section 16, is not anticipated to exceed \$250,000.00 exclusive of HST.

18. In no event shall the City be obligated to complete the Design Project or be liable to the Region should the Condition not be satisfied or the APS not be completed or be completed other than in accordance with its terms. The City shall also not be liable to the Region in the event of any delay in the completion of the Design Project or revisions thereof.

19. In the event a dispute or disagreement (hereinafter called "Dispute") arises between the Parties in connection with the interpretation of any of the above provisions of this MOU or the compliance or non-compliance therewith, or the validity or enforceability thereof, or the performance or non-performance of either party to the Agreement, the dispute resolution process set out in Schedule "B" shall be followed by the Parties.

PROJECT

20. Subject to the successful completion of the APS and receiving approvals from their respective Councils, the City intends to construct the Fire Station and the Region intends to co-locate the Paramedic Station on the Lands. To this end, the Parties contemplate negotiating and entering into Project Agreements including the following:

- a) a Joint Project Agreement similar to that which the Parties have negotiated as a template for all joint municipal projects providing for pre-construction work, construction contract procurement and administration, inspections, commissioning and cost sharing (but excluding any provisions relating to the Design Project);
- b) a Lease Agreement; and
- c) to the extent not included in a Lease Agreement, an agreement governing operational and maintenance issues and costs and such further and other agreements as may be required by the City;

all as may be necessary to give effect to the guiding principles as set out in Schedule "C" attached hereto. The Parties expect that each will seek all necessary approvals from their respective Council to ensure Project milestones are met including commissioning and operations.

21. The Parties acknowledge that if the Project proceeds, it is anticipated to achieve occupancy in 2021, subject to any delays in receiving approvals from regulating authorities or construction delays, and both Parties would use reasonable best efforts to obtain the earliest occupancy possible.

22. The Parties further acknowledge their mutual goal to create efficiencies in the City and the Region's mutual obligation to provide essential emergency services. The Parties shall recognize and respect each other's objectives in relation to obtaining these goals of efficiencies and cost savings.

23. It is the intention of the Parties that the City would manage the planning, design, site plan, permitting, construction and commissioning of the Project and would intend to deliver the Project by way of a stipulated sum contract (a modified form of CCDC2 as amended by the City of Brampton's supplementary conditions). The Region intends to have an active participation in decision making in relation to the Project and to be afforded the opportunity to review and comment and be consulted throughout the construction and inspection of the Project to determine that Regional needs are being met.

GENERAL

24. Any demand, notice or communication to be provided hereunder shall be in writing and may be given by personal delivery, by prepaid first class mail or by email or fax transmission, addressed to the Parties as follows:

If to City: **The Corporation of the City of Brampton**
2 Wellington Street West
Brampton, Ontario, L6Y 4R2
Telephone: (905) 874-3669
Facsimile: (905) 874-3370
Attention: Peter Gabor, Project Manager, Building Design and Construction,
 Community Services | City of Brampton
Email: peter.gabor@brampton.ca

If to Region: **The Regional Municipality of Peel**

10 Peel Centre Drive

Brampton, ON L6T 4B9

Telephone: (905) 791-7800 ext.2469

Facsimile: (905) 791-3645

Attention: Mark Centrone, Program Manager | Construction Project Management
Real Property Asset Management

Email: mark.centrone@peelregion.ca

or to such other address, email address or fax number as either party may from time to time notify the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof; or if given by email or fax transmission, on the first business day (excluding Saturdays, Sundays and Statutory Holidays) following the transmittal thereof. Any notice sent by prepaid first class mail as aforesaid shall be deemed to have been delivered on the fifth (5th) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery, email or fax transmission as aforesaid.

25. Neither party shall assign or transfer this MOU.

26. This MOU shall be governed, construed and enforced according to the laws of the Province of Ontario.

27. No waiver of any provision of this MOU 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.

28. The City and the Region each shall and will make its best and timely effort upon the reasonable request of the other to make, to execute, or cause to be made, done or executed, all such further and other lawful acts, deed, things, devices and assurance whatsoever necessary to give effect to the terms and conditions contained in this MOU and which are intended to be enforceable.

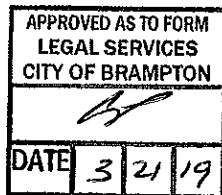
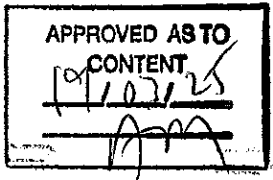
29. The Parties disclaim any intention to create a partnership or to constitute either of them the agent of the other. Nothing in this MOU shall bind the Parties or either of them, as partners or agents nor, except as expressly provided in this MOU, constitute either of them the agent of the other Party.

30. The Parties acknowledge and agree that with the exception of Sections 1 to 19 inclusive and Sections 24 to 32 inclusive, the provisions of and understandings contemplated by this MOU do not constitute an enforceable agreement at law, but rather a general statement, at this time, as to the basis on which the Parties intend to proceed. The Parties also acknowledge and agree that Project Agreements must be executed by the Parties if they wish to formalize such understandings and legally bind each other.

31. The Parties acknowledge and agree that nothing in this MOU shall be deemed to fetter or interfere with either Parties' responsibility and rights of municipal bodies to grant regulatory approval such that approval (request) as provided for in this MOU is not meant to reflect the responsibilities of either Party as a municipality.


32. This MOU may be executed and delivered in any number of counterparts with the same effects as if both Parties had signed the same document. Counterparts may be executed either in original or electronic form provided that any Party providing its signature in electronic form shall promptly forward to the other Party an original signed copy of this MOU which was so transmitted electronically.

IN WITNESS WHEREOF the City of Brampton has on this 27th day of MARCH, 2019 affixed its name and corporate seal under the hand of its signing officer on that behalf.



THE CORPORATION OF THE CITY OF BRAMPTON

Per


Name: Bill Boyes
Title: Fire Chief

I have authority to bind the Corporation

Authorized Through Brampton By-law No. 216-2017

IN WITNESS WHEREOF The Regional Municipality of Peel has on this _____ day of _____, 2019 affixed its name and corporate seal under the hand of its signing officer on that behalf.

THE REGIONAL MUNICIPALITY OF PEEL

Per

Name:

Title:

I have authority to bind the Corporation.

32. This MOU may be executed and delivered in any number of counterparts with the same effects as if both Parties had signed the same document. Counterparts may be executed either in original or electronic form provided that any Party providing its signature in electronic form shall promptly forward to the other Party an original signed copy of this MOU which was so transmitted electronically.

IN WITNESS WHEREOF the City of Brampton has on this _____ day of _____, 2019 affixed its name and corporate seal under the hand of its signing officer on that behalf.

THE CORPORATION OF THE CITY OF BRAMPTON

Per _____

Name:

Title:

I have authority to bind the Corporation

Authorized Through Brampton By-law No.

IN WITNESS WHEREOF The Regional Municipality of Peel has on this 4th day of April, 2019 affixed its name and corporate seal under the hand of its signing officer on that behalf.

THE REGIONAL MUNICIPALITY OF PEEL

Per _____

Name: Nancy Polsinelli

Title: Commissioner Health Services

I have authority to bind the Corporation.

Den # L03-2019-5226

SCHEDULE "A" – PARAMETERS FOR DESIGN OF JOINT FACILITY

- a) The Joint Facility will be designed to provide common site access and egress facilities (entry driveways / concrete aprons), garbage facilities;
- b) The Joint Facility will be designed with common site services including but not limited to gas, water, sanitary sewer, to service the Joint Facility;
- c) The Joint Facility will be designed to include separate metering wherever feasible for the Fire Station and Paramedic Station components and at a minimum will include separate metering for gas and electricity use;
- d) The Fire Station and Paramedic Station components of the Joint Facility will be designed to have separate mechanical and electrical building systems;
- e) The Joint Facility will be designed with a 100% emergency backup power to both the Fire Station and the Paramedic Station components. All costs associated with 100% emergency power generator, including fuel, periodic testing and inspection etc., will be shared between the City and the Region in accordance to the proportional share of the gross floor area of the Joint Facility;
- f) The Joint Facility will be designed to minimize the land area and Lot Frontage required for the joint facility and required facility operations. As such, the design of the Paramedic Station component will consider alternate apparatus bay configurations including side-by-side and tandem options during the Design Project;
- g) The Joint Facility design may consider a tandem apparatus bay configuration for the Paramedic Station component provided it can be demonstrated that the side by side design is more land consumptive or is detrimental to the overall facility design in the opinion of the City, in consultation with the Region and the Design Consultant;
- h) The Joint Facility design may utilize high speed bi-fold apparatus bay doors for the street facing building façade. High speed bi-fold apparatus bay doors or roll up over head doors may be used at the rear of the apparatus bay;
- i) The Joint Facility will be designed to achieve a high standard of energy efficiency by using the best principles of LEED, Passive House and Net Zero high performance building standards;
- j) The design of the Joint Facility will be required to meet a prescribed energy density target defined in the design RFP. It is not a requirement of the Joint Facility design to achieve certification in any specific voluntary building energy rating system or standard;
- k) The Joint Facility will be designed to maximize constructability and building durability, achieve increased quality control and minimize the construction schedule, and reduce reliance on skilled labour;
- l) The Region will provide suitable staff to participate in the selection of the design consultant through the Request for Proposal stage.

SCHEDULE "B" – DISPUTE RESOLUTION PROCESS

- 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:

<u>Brampton:</u>	Commissioner, Community Services or designate
<u>Peel:</u>	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, 1991* of Ontario, 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.

SCHEDULE "C" – GUIDING PRINCIPLES FOR PROJECT AGREEMENTS

(Construction, Lease and Maintenance and Operations)

- a) The City Project representative as assigned shall be the sole point of contact between the Region and the Consultant or the General Contractor;
- b) The Region will provide suitable staff to participate in the Tendering process to select a General Contractor;
- c) The Region may attend all construction review meetings. All Regional construction review comments are to be directed through the City representative;
- d) The City and the Region will enter into Project Agreements including a Joint Project Agreement, a Land Lease Agreement, an operational and maintenance agreement and such other agreements as the City may require, which agreements shall provide for the Region to share in all capital and operating costs of the Facility and any replacement thereof;
- e) The Land Lease Agreement shall obligate the Region to pay a base rental amount (the "Lease Rental Amount") calculated in accordance with the following:
 - i. The Lease Rental Amount shall be a lump sum payment which reflects the Region's proportionate share of the purchase price of the Lands;
 - ii. The Region's proportionate share of the purchase price of the Lands will be equal to the total gross floor area of the Joint Facility to be occupied by the Paramedic Station relative to that of the proposed Joint Facility as designed and certified by the City's design consultant after 100% completion of the Design Project (the "Region's Proportionate Share"). Until such certification, the Region's Proportionate Share shall be deemed to be 25% which the Parties acknowledge and agree is their best current estimate of what the Region's Proportionate Share will be;
 - iii. In the event that the Parties enter into a Land Lease Agreement prior to 100% completion of the Design Project the Lease Rental Amount will be \$706,875.00;
 - iv. Either the City or the Region may terminate the Land Lease Agreement at any time during a renewal term, after the expiry of the initial forty (40) year term.
 - v. In the event of termination of the Land Lease Agreement after the expiry of its initial forty (40) year term or during any renewal term, there will be no reimbursement of the Lease Rental Amount, any other pre-paid rents or any portion(s) thereof;
 - vi. In the event of termination of the Land Lease Agreement during the initial forty (40) year term, other than as a result of a default by the Region, or either Party exercising a right to terminate pursuant to the terms of Land Lease Agreement, or an agreement between both Parties to terminate, the City may reimburse the Region a pro rata portion of the Lease Rental Amount based on the unexpired portion of such initial forty (40) year term;
 - vii. After 100% completion of the Design Project and certification of the Region's Proportionate Share by the City's design consultant, a reconciliation of the Lease Rental Amount will be applied;
 - viii. The Lease Rental Amount shall be remitted to the City by the Region in full upon execution of the Land Lease Agreement;

- f) The Land Lease Agreement will have an initial term of forty (40) years, with options to renew for 2 additional terms of 20 years and shall provide that any such renewal terms shall be free of additional base rent but shall require the Region to pay as additional rent the operational and maintenance costs including those mentioned below and such other capital and operating costs as the parties agree to in any of the Project Agreements;
- g) The parties acknowledge that it is in the best interests of the City that the Joint Facility be designed and constructed such that the portion of the Lands required is minimized and that the balance of the Lands are commercially developable, desirable and/or maximized such that the City can declare surplus and sell such excess lands as the City may determine in its sole discretion and for the City's sole benefit.
- h) The Joint Facility will be designed to maximize constructability and building durability, and minimize the construction schedule, and reduce reliance on skilled labour;
- i) The Region will be fully responsible for all operational and maintenance costs associated with the Paramedic Station's mechanical and electrical systems and other building systems and components related to their tenancy including but not limited to:
 - 1. Control systems;
 - 2. Communications;
 - 3. Gas detection and extraction;
 - 4. Apparatus bay doors;
 - 5. Tenant Improvements and furniture, fixtures and equipment;
- j) The City will be responsible to maintain Common Elements including: the building envelope; roof and exterior wall components; site services; paved surfaces; and landscaping in a state of good repair (SOGR). The Region will be responsible for a proportional share of the SOGR costs equal to the proportional gross floor area of the Joint Facility occupied by the Paramedic Station;
- k) For all other site related operations and maintenance costs that cannot be separately metered or apportioned to the Paramedic Station, including but not limited to:
 - 1. Landscaping;
 - 2. Snow removal;
 - 3. Garbage removal;

the Region will be responsible for a proportional share of operational and maintenance costs equal to the proportional gross floor area of the Joint Facility occupied by the Paramedic Station.