

Memorandum of Understanding dated as of the 1st day of September, 2008

AMONG:

The Richmond Hill Chamber of Commerce
(“RHCOC”)

and

Markham Board of Trade
(“MBT”)

and

The Corporation of the Town of Richmond Hill
(“Town of Richmond Hill”)

and

The Corporation of the Town of Markham
(“Town of Markham”)

and

The Regional Municipality of York
(the “Region”)

WHEREAS the parties to this Memorandum of Understanding (the “MOU”) have a mutual interest in facilitating efficient transportation, relieving traffic congestion and planning for transportation demand management in Richmond Hill and Markham;

AND WHEREAS the parties wish to join together to perform the functions of a transportation management association;

AND WHEREAS the parties have recognized the need for cooperation with each other, with other transportation management associations in the Greater Toronto Area (“GTA”) and other transportation agencies, such as, The Greater Toronto Transportation Authority, operating as “Metrolinx”, as well as other organizations and stakeholders that have a mutual interest in facilitating efficient transportation, relieving traffic congestion and planning for transportation management in the GTA;

AND WHEREAS the appropriate model for delivery of effective transportation management services in Richmond Hill and Markham may change over time and the parties hereto shall review this MOU and the model described herein for delivering transportation management program services on an ongoing basis;

AND WHEREAS RHCOC and MBT are the appropriate organizations to lead the initiative to deliver transportation management programs on behalf of Richmond Hill, Markham and Region of York, at this time.

THE PARTIES HERETO AGREE AS FOLLOWS:

Purpose – Transportation Management

1. The purpose of this MOU is to deliver a program with a mandate to promote and support sustainable transportation solutions and to improve mobility and accessibility within the geographic area of Richmond Hill and Markham.
2. This program is herein referred to as “**Smart Commute 404-7**”. In implementing the Smart Commute 404-7 program, RHCOC and MBT shall develop transportation demand management solutions within the geographic area of Richmond Hill and Markham, with a particular focus on the corridors created by highways 404 and 7 and the physical location known as Markham Centre.
3. Such transportation demand management solutions may include programs involving transit incentives, carpooling, vanpooling and ridematching, bicycling and walking, flexible work hours or alternative work hours, telecommuting, parking demand management, and subsidies, marketing, education and promotions, and promotion of intelligent transportation systems, vehicle sharing, on-site amenities or other solutions to facilitate effective transportation management.
4. Smart Commute 404-7 shall operate cooperatively with other transportation demand management programs in the GTA such as, but not limited to partnerships with other Smart Commute transportation management associations and Metrolinx.
5. Smart Commute 404-7 will work with municipal governments and other agencies to explore opportunities to expand commuter options programs beyond the business-based services to include community and school-based programs where possible.

Roles and Responsibilities of the Parties

The Richmond Hill Chamber of Commerce and Markham Board of Trade

6. Smart Commute 404-7 shall be a joint program between RHCOC and MBT.
7. RHCOC shall promote and ensure the delivery of Smart Commute 404-7 programs within the geographic area of Richmond Hill. MBT shall promote and ensure the delivery of Smart Commute 404-7 programs within the geographic area of Markham. When appropriate RHCOC and MBT will

support each other in implementing the Smart Commute 404-7 program in both communities when needed.

8. Management of the Smart Commute 404-7 by RHCOC and MBT shall be undertaken jointly through the offices of the Chief Executive Officer ("CEO") of both RHCOC and MBT, as may be delegated to the Manager of Smart Commute 404-7, as provided in the Section of this MOU entitled "Staffing and Administration Support".
9. The CEOs of RHCOC and MBT shall ensure that the planning, financial and program reporting obligations to the other parties set out in this MOU are met.
10. The CEOs of RHCOC and MBT shall ensure that the Manager develops a business plan that will help move Smart Commute 404-7 towards self-sustainability within a reasonable time period.
11. The CEOs of RHCOC and MBT or as they may delegate such responsibility to the Manager of Smart Commute 404-7 from time to time, shall be the principal spokespersons for Smart Commute 404-7.
12. RHCOC shall indemnify and hold harmless MBT from any liability, claims, actions, applications or lawsuits arising from RHCOC's management of Smart Commute 404-7 programs in the geographic area in and around Richmond Hill. MBT shall indemnify and hold harmless RHCOC from any liability, claims, actions, applications or lawsuits arising from MBT's management of Smart Commute 404-7 programs in the geographic area in and around Markham.

The Town of Richmond Hill, the Town of Markham and the Region

13. The Town of Richmond Hill has committed \$50,000 cash + (staff time which represents \$50,000) in-kind contribution (the latter being in respect of the Manager of Smart Commute 404-7) in its current operating budget to pay for transportation management services provided by Smart Commute 404-7. Future yearly financial commitments by the Town of Richmond Hill are subject to further approval by the Town of Richmond Hill.
14. The Town of Markham has committed \$75,000 in its current operating budget to pay for transportation management services provided by Smart Commute 404-7. Future yearly financial commitments by the Town of Markham are subject to further approval by the Town of Markham.
15. The Region has committed \$60,000 for 2008 to pay for transportation management services provided by Smart Commute 404-7. Future yearly financial commitments by the Region are subject to approval by the Regional Council of The Regional Municipality of York.

16. All monies provided pursuant to paragraphs 13, 14 and 15 of this MOU shall be deposited to the Smart Commute 404-7 bank account.
17. Contributions by the Town of Richmond Hill, the Town of Markham and the Region shall be paid after RHCOC or MBT issues an invoice for transportation demand management services provided by them in connection with the Smart Commute 404-7 program or upon any other financial arrangement satisfactory to the parties.
18. All funding provided hereunder by the Town of Richmond Hill, the Town of Markham, the Region and Metrolinx or any other funding partner shall be directed exclusively to Smart Commute 404-7 programs.
19. The Town of Richmond Hill, the Town of Markham and the Region shall make best efforts to facilitate the effective operation of Smart Commute 404-7 to the extent that these parties are able to do so and shall provide assistance to Smart Commute 404-7 accordingly. Such assistance may include the provision of professional advice related to transportation management, staff commitments, in-kind or other contributions as agreed to from time to time by the parties.

Advisory Committee

20. A Committee shall be established to advise the CEOs in regard to the operation of Smart Commute 404-7 (the "Committee").
21. The Committee shall include, at least, the following individuals:
 - 1 Councillor appointed by the Town of Richmond Hill;
 - 1 Councillor appointed by the Town of Markham;
 - 5 business representatives to a maximum of 10 appointed jointly by mutual agreement between RHCOC and MBT.
22. The members of the Committee are herein referred to as the "members".
23. The Committee members shall elect from among them a member to serve as Chair of the Committee and another member to serve as Vice-Chair. The Chair shall preside over all meetings of the Committee. In the absence of the Chair, the Vice-Chair shall preside over Committee meetings. In the absence of both the Chair and the Vice-Chair, the CEO from either RHCOC or MBT will preside over the meeting.
24. The Chair will serve for a period of a maximum of 2 years, at which time the Vice-Chair will become the Chair and a new Vice-Chair will be appointed by and from the existing Committee members.

25. Appointments to the Committee may be made for a time duration determined by the party or parties that made the appointment and may be rescinded by such party(ies) with notice in writing to the other parties.
26. Prior to appointing a business representative to the Committee RHCOC and MBT shall seek nominations from the business communities in the geographic areas of Richmond Hill and Markham with a goal of achieving equal representation on the Committee.
27. A Committee member shall cease to be a member if he or she provides written notice to the Chair of the Committee that he or she resigns as a member of the Committee, or he or she is absent for three consecutive meetings without giving notice.
28. The Committee members shall serve without remuneration and no member shall directly or indirectly receive any profit from his or her position as such, provided that a member may be paid reasonable expenses incurred by him or her in the performance of his or her duties as a member. A member is not precluded from serving Smart Commute 404-7 in any other capacity and receiving compensation therein as long as the receipt of such compensation is consistent with the conflict of interest policies of RHCOC and MBT.
29. Committee members shall act in the best interests of Smart Commute 404-7. Every Committee member who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract of proposed arrangement with Smart Commute 404-7 shall declare such interest in writing to the Chair. The Committee shall then address any conflict of interest in a manner consistent with the conflict of interest policies of RHCOC and MBT.
30. Meetings of the Committee shall take place at a frequency of no less than a maximum intervals of every four months and determined by RHCOC and MBT. The meeting shall take place at any location that is convenient for the Committee members. A Committee member may participate in a Committee meeting by telephone, email or other manner when attendance in person is not practical.
31. The Chair of the Committee shall provide advance notice of all Committee meetings to the CEO's at a minimum of one week's notice. The CEOs shall be entitled to attend all Committee meetings.
32. The Committee may create sub-committees as needed to further develop Smart Commute 404-7 programming initiatives. In this respect the parties agree to establish a Technical Committee of municipal staff comprising:
 - 1 representative from Town of Markham
 - 1 representative from the Region
 - 1 representative from Town of Richmond Hill

Staffing and Administrative Support

33. RHCOC and MBT may appoint in consultation with the funding partners the services of a Manager to manage the delivery, implementation and daily operation of Smart Commute 404-7. The Town of Richmond Hill shall permit one of its staff to be seconded (generally at 50% of their time which may vary depending on the demand) to Smart Commute 404-7 for this Manager position.
34. The Manager shall report directly to the Chief Executive Officers of RHCOC and MBT.
35. The CEOs of both RHCOC and MBT may appoint the services of an Assistant Manager to support the Manager in the daily operation of Smart Commute 404-7 and to deliver the Smart Commute programs to the business community. The Assistant Manager shall be selected by the CEOs of both RHCOC and MBT in cooperation with the Manager of Smart Commute 404-7 and will report to the Manager of Smart Commute 404-7.
36. RHCOC and MBT may also retain the services of a Commuter Options Advisor. The Commuter Options Advisor shall focus his or her efforts on transportation management programs in both the Richmond Hill and Markham area.
37. The Commuter Options Advisor shall report to the Manager. The decision to retain the services of Commuter Options Advisor shall be made by the CEOs of both RHCOC and MBT in cooperation with the Manager of Smart Commute 404-7.
38. Administrative support may also be required for Smart Commute 404-7. The need for administrative support services shall be determined by the CEOs of both RHCOC and MBT in cooperation with the Manager of Smart Commute 404-7.
39. Notwithstanding the foregoing, no hiring or termination of employees shall be done except by the CEOs of both the MBT and RHCOC. For greater certainty, the Manager may not make any staffing changes whatsoever without the consent of the CEOs of both the MBT and RHCOC.

Financial Management and Program Reporting Structure

40. The parties hereto wish to have full transparency with respect to the operations, books and records associated with the operation of Smart Commute 404-7. RHCOC and MBT, through the Manager shall maintain books and records that report on the operation of Smart Commute 404-7 separately from other operations of RHCOC and MBT.

41. The CEOs of both RHCOC and MBT shall ensure that the Manager prepares monthly and annual financial statements for Smart Commute 404-7.
42. RHCOC and MBT shall cause an audit of the financial statements of Smart Commute 404-7 to be conducted annually by an independent chartered accountant within 6 months of December 31st, being the fiscal year end of Smart Commute 404-7. The audit and all financial activities are available for review by the funding partners within 30 days after a written request, and will include a statement from the Chartered Accountant.
43. RHCOC and MBT shall establish and maintain separate banking facilities through which banking and financial transactions related to Smart Commute 404-7 shall be conducted. Funding allocated to Smart Commute 404-7 shall not be co-mingled in any bank accounts not maintained exclusively for and by Smart Commute 404-7. RHCOC and MBT may each establish and maintain a separate banking facility for this purpose.
44. Two (2) signing officers as appointed by RHCOC and MBT shall be required on cheques and other financial instruments issued by RHCOC and MBT, with respect to Smart Commute 404-7 provided that at least one (1) signature shall be that of the CEO of RHCOC or the CEO of MBT. The CEO of RHCOC may not sign a cheque or financial instrument payable to RHCOC. The CEO of MBT may not sign a cheque or financial instrument payable to MBT.
45. The RHCOC and MBT parties hereto may charge staffing costs, administrative and office expenses, overhead allocation and other charges related to the operation of Smart Commute 404-7 on a frequency and at such amounts as the parties hereto agree and as identified in the yearly budget. The parties shall undertake best efforts to develop effective and reasonable cost sharing plans and agreements as needed.
46. RHCOC or MBT shall be authorized to enter into a contract with respect to Smart Commute 404-7 of up to \$1,500.00, and either CEO or his delegate is hereby authorized to execute the contract. Any contract with a financial commitment in excess of \$1,500 in respect of Smart Commute 404-7 shall not be entered into without prior approval of the CEOs of both RHCOC and MBT (which CEO or his delegate shall both execute same) unless so provided in the yearly approved budget.
47. Operating expenses do not require further approvals if identified in the yearly budget and purchased in accordance with the Smart Commute 404-7 Procedure for Request for Proposal/Quotation – RFP/RFQ and identified in the yearly budget.
48. The CEOs of both RHCOC and MBT shall cause the Manager of Smart Commute 404-7 in conjunction with the CEOs, to prepare an annual business plan and draft budget for Smart Commute 404-7. Input from the participating municipalities and the Advisory Committee shall be obtained, and the annual

business plan and budget will require the final endorsement from each participating local municipality's Council and each of RHCOC and MBT.

49. After approval by RHCOC and MBT, the annual business plan shall be presented to the Town of Richmond Hill and the Town of Markham by the CEOs.
50. A Strategic Plan in addition to an annual Business Plan will be undertaken (as needed) and will provide medium to long-term strategic directions. This Strategic Plan should be aligned with new terms of Council, when possible.
51. The annual business plan shall include the following elements:
 - An executive summary
 - Smart Commute 404-7 overview
 - Organization chart, showing Smart Commute 404-7 stakeholders, governance structure, staff and roles, responsibilities and relationships among them
 - Program plan, describing the programs to be undertaken by Smart Commute 404-7 and execution.
 - Key performance indicators consistent with other GTA Smart Commute programs will be identified.
 - Communications and marketing plans, describing information flows and program support to Smart Commute 404-7 stakeholders.
 - Financial plan, including budgets, financial statements and description of plans to achieve and manage budgets
 - Schedule, showing program, communications, financial and administrative milestones
 - Update status on current programs and effectiveness.

Reporting to Other Parties

52. The CEOs or their respective delegates shall participate and provide input and advice to Smart Commute 404-7 as required.
53. RHCOC and MBT shall provide, through the Manager of Smart Commute 404-7, information on the progress and performance of the Smart Commute 404-7 programs and services in accordance with the reporting process of Metrolinx or other funding partners, as requested.

Proprietary Information

54. Operation of Smart Commute 404-7 may require the sharing of proprietary information between the parties or stakeholders from time to time. Proprietary information is defined as information that an affected party or stakeholder claims to be confidential. Proprietary information disclosed by one party to the other in writing must be clearly defined and marked as such. The parties agree

to keep proprietary information confidential unless written permission to the contrary is obtained from the affected party or stakeholder.

Amendment and Termination of Memorandum of Understanding

55. This MOU shall be effective when signed by the parties hereto. This MOU may be amended or rescinded by mutual agreement between the parties. The parties shall review this MOU annually to determine whether it should be revised, continued or terminated.
56. Any party to this MOU may terminate its obligations under this MOU upon ninety (90) days' written notice to the other parties.
57. In the event that any party hereto terminates its obligations under this MOU, the remaining parties shall meet as soon as possible to determine whether to thereafter wind up the Smart Commute 404-7 program. Notwithstanding any termination, a party shall be committed to providing its funding contribution for that calendar year. Any winding up of the Smart Commute 404-7 program will be subject to outstanding contractual obligations and any liabilities for which RHCOC and MBT shall be jointly and severally liable.
58. Upon termination of this agreement any assets of the Smart Commute 404-7 program will remain with the local municipalities to be dispersed at their discretion.

Dispute Resolution

59. If any party hereto has a dispute related to this MOU or Smart Commute 404-7, the party shall give written notice to the other parties and to the CEOs of RHCOC and MBT specifying the nature of the dispute, the relief sought and the basis for the relief sought. Within fourteen (14) days of receipt of the notice of the dispute, the parties to the dispute, in conjunction with any other party that wishes to participate must attempt, in good faith, to resolve the dispute.
60. If the dispute is not resolved within fourteen (14) days, or within such further period as the parties mutually agree to, then the dispute shall be referred to an independent mediator who shall assist the parties in resolving the dispute. The mediation shall be conducted in accordance with the procedures as agreed to by the parties and the mediator. Failing consensus, the mediation shall be conducted in accordance with the procedures as set out by the mediator. All costs associated with the mediation are, unless otherwise agreed, to be shared equally between the parties to the dispute.

General

61. Nothing in this MOU shall be construed as authorizing any one of the parties to contract for or incur any obligation on behalf of or to act as agent for one or

more of the other parties. Nothing in this MOU shall be construed as establishing a joint venture, partnership or agency relationship between any of the parties.

62. The parties 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 parties to give effect to this MOU. The parties agree to work together in a spirit of co-operation to achieve the purpose of this MOU.

THIS MEMORANDUM OF UNDERSTANDING is entered into as of the 1st day of September, 2008.

The Richmond Hill Chamber of Commerce

Per: _____

Leslie Walker
Leslie Walker
Chief Executive Officer

Markham Board of Trade

Per: _____

Richard Cunningham
Richard Cunningham
President & Chief Executive Officer

The Corporation of the Town of Richmond Hill

Per: _____

Dave Barrow
Dave Barrow
Mayor

Per: _____

Donna McLarty
Donna McLarty
Town Clerk

RECOMMENDED FOR EXECUTION

IN ACCORDANCE WITH

BY-LAW NO. 50-09

[Signature]

| APPROVED TOWN OF MARKHAM | | | |
|--------------------------|-------------------------------------|--------------|-----------|
| COUNCIL | <input checked="" type="checkbox"/> | RESOLUTION # | 6 |
| CMTE | DSC | REPORT # | 7 |
| BYLAW # | | DATE | FEB 10/09 |

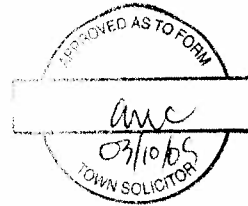
The Corporation of the Town of Markham

Per:

Frank Scarpitti
 Frank Scarpitti
 Mayor

Per:

Kimberley Kitteringham
 Kimberley Kitteringham
 Clerk



The Regional Municipality of York

Per:

Bryan Tuckey
 Bryan Tuckey
 Commissioner of Planning and Development Services



YORK#536841