



METROLINX

An agency of the Government of Ontario
Une agence du gouvernement de l'Ontario

June 8, 2012

Evergreen
Centre for Green Cities, Evergreen Brick Works
550 Bayview Avenue, Suite 300
Toronto, ON M4W 3X8

Attention: Geoff Cape, Executive Director
gcape@evergreen.ca

RE: Metrolinx Partnership Program

Metrolinx is pleased to advise you that Evergreen's (the "Recipient's") application to the Metrolinx Partnership Program for the MOVE: Transportation Expo (the "Project") has been approved, subject to the Recipient's acknowledgment and agreement with the following terms:

1. Duration of Agreement

- 1.1 This Agreement shall commence as of June 8, 2012 and shall terminate after the earlier of: (a) Metrolinx's satisfaction of all payment obligations under this Agreement; or (b) March 31, 2013 (the "Term").

2. Contribution Amount

- 2.1 During the Term and subject to the terms of this Agreement, Metrolinx agrees to pay a contribution to the Recipient of not more than \$100,000 in respect of the Project.

3. Payment of Contribution Amount

- 3.1 Subject to section 3.3 and the Recipient's compliance with this Agreement, the Contribution Amount will be paid to the Recipient in accordance with the following schedule and in the amounts set out therein:

Payment No.	Project Milestone	Percentage of Contribution Amount	Amount
1	Submission of event planning materials demonstrating adequate level of preparation to proceed with the project: budget including confirmation of secured funds/in-kind contributions, event program, site plan, draft content samples, marketing plan	50%	\$50,000
2	Submission of interim report by August 31, 2012, outlining mid-point outcomes/results of project, including: financial statement, audience reach of program including attendance figures at Expo, media coverage analysis, copy of all communications materials, and discussion of project results achieved to date	45%	\$45,000
3	Submission of final report outlining outcomes/results of project, including: summary of project, final financial statement, total audience reach of program including attendance figures at Expo, media coverage analysis, copy of all communications materials, and discussion of project results	5%	\$5,000
		TOTAL:	\$100,000

- 3.2 The Recipient acknowledges that any funds remaining after the completion of the Term shall remain the property of Metrolinx. Metrolinx shall not be obliged to make any payments after the completion of the Term.
- 3.3 Upon completion of the relevant Project milestone set out in section 3.1, the Recipient will submit to Metrolinx a certificate of compliance in the form set out in Schedule "C", completed in accordance with that schedule, and signed by an authorized representative of the Recipient.

4. Role of Metrolinx

- 4.1 Unless otherwise set out in the Project Application, the Parties acknowledge that Metrolinx's role in the Project is limited to making a financial contribution to the Project and that Metrolinx will have no involvement in the Project or its operation subsequent to the Term or other termination of this Agreement. Metrolinx is neither a decision maker nor an advisor to the Project.

5. Metrolinx Representative

- 5.1 For the purposes of this Agreement, the following individual shall be the Metrolinx Representative:

Andrea Gusen
Team Lead, Stakeholder Relations
Metrolinx
20 Bay Street, Suite 600
Toronto, Ontario M5J 2W3
Tel: (416) 869-3600 ext. 5322
Eml: andrea.gusen@metrolinx.com

6. Recipient Covenants, Representations and Warranties

- 6.1 The Recipient agrees to completely, diligently and in a timely manner, carry out the Project in accordance with the Project Application, including the budget, timelines, milestones, and Deliverables set out therein, and this Agreement. The Contribution Amount will be used only for the purposes of the Project, as set out in the Project Application. The Recipient will be responsible for all the costs of the Project, including any overruns.
- 6.2 The Recipient acknowledges and agrees that the Recipient Representative identified hereunder has the authority to legally bind the Recipient under this Agreement.
- 6.3 The Recipient shall comply with all applicable laws and regulations and all requirements of regulatory bodies having jurisdiction over the subject matter of this Project.

- 6.4 The Recipient shall (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to Metrolinx without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by Metrolinx to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity and notwithstanding anything contained in this Agreement to the contrary, Metrolinx may immediately terminate this Agreement upon giving notice to the Recipient where (a) the Recipient fails to disclose an actual or potential Conflict of Interest; (b) the Recipient fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or (c) the Recipient's Conflict of Interest cannot be resolved.
- 6.5 The Recipient represents and warrants that it is a validly existing legal entity under the laws of its relevant jurisdiction, that it has taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Agreement and to perform its obligations hereunder, in compliance with this Agreement, and all federal, provincial or municipal laws or regulations. This Agreement is a legal, valid and binding obligation of the Recipient, enforceable against it in accordance with its terms.
- 6.6 The Recipient represents and warrants that its entering into this Agreement and performance of the terms hereof will not:
- (a) result in a breach of its constituting documents, by-laws, or any other agreements, ordinances, or laws to which it is subject or a party; and
 - (b) induce or result in an infringement or violation of the personal or proprietary rights of any third party.
- 6.7 The Recipient shall have no power or authority to bind Metrolinx or to assume or create any obligation or responsibility, express or implied, on behalf of Metrolinx. The Recipient shall not hold itself out as an agent, partner or employee of Metrolinx. Nothing in this Agreement shall have the effect of creating an employment, partnership or agency relationship between Metrolinx and the Recipient (or any of the Recipient's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).
- 7. Record Keeping and Audit**
- 7.1 For seven (7) years after the completion of the Term or any date of termination of this Agreement the Recipient shall maintain all necessary records to substantiate (a) all payments received under this Agreement; (b) all charges and payments made and funds received in respect of the Project; and (c) that the Project and all Deliverables were provided in accordance

with this Agreement and the Project Application. During the Term, and for seven (7) years after the Term or any date of termination of this Agreement, the Recipient shall permit and assist Metrolinx in conducting audits of the operations of the Recipient to verify (a), (b) and (c) above. Metrolinx shall provide the Recipient with at least ten (10) Business Days prior notice of its requirement for such audit.

- 7.2 During the Term and notwithstanding the completion or other termination of this Agreement, in the event that Metrolinx becomes aware of a misapplication or misuse of any or all of the Contribution Amounts previously paid to the Recipient, Metrolinx shall provide notice to the Recipient of such overpayment, misapplication or misuse of the Contribution Amount and the Recipient shall forthwith reimburse Metrolinx the full quantum of such overpayment, misapplication or misuse of Contribution Amount within ten (10) days of having been provided notice by Metrolinx hereunder. In the event that payment is not remitted to Metrolinx in accordance with the terms of such notice, Metrolinx reserves the right to demand interest on any overpayment, misapplication or misuse of Grant Funds owing by the Recipient under the terms of this Agreement at the rate established for the purposes of section 10 of the *Financial Administration Act* (Ontario), as amended. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by Metrolinx.

8. Default

- 8.1 The following constitute Events of Default under this Agreement:

- a) the Recipient has not completed the Project on the terms and conditions herein;
- b) the Recipient has submitted false or misleading information to Metrolinx or made a false or misleading representation in respect of the Project, except for an error in good faith, demonstration of which is incumbent on the Recipient, to Metrolinx's satisfaction;
- c) the Recipient has not complied with any condition, undertaking or term of this Agreement in respect of the Project;
- d) the Recipient becomes insolvent, commits an act of bankruptcy, takes the benefit of any statute relating to bankrupt and insolvent debtors, or goes into receivership or bankruptcy; or
- e) the Recipient is wound up or dissolved.

- 8.2 In the Event of Default under this Agreement, Metrolinx may exercise one or more of the following remedies:

- a) suspend any Metrolinx payment obligation, including any obligation to pay an amount owing prior to the date of such suspension;
- b) terminate any Metrolinx payment obligation, including any obligation to pay any amount owing prior to the date of such termination; or
- c) require the Recipient to reimburse Metrolinx all or part of the Contribution Amount paid by Metrolinx to the Recipient in respect of the Project;

and the above remedies are in addition to all other remedies available at law.

9. Intellectual Property and Licence

- 9.1 The Recipient agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by Metrolinx to the Recipient shall remain the sole property of Metrolinx at all times. The Recipient shall not use any insignia or logo of Metrolinx except where required to provide the Deliverables, and only if it has received the prior written permission of Metrolinx to do so. Where any Intellectual Property is intended for public dissemination or is available to the public Metrolinx shall have prior approval over the use, size and placement of its logo and/or word-mark and the content of any associated text identifying Metrolinx's role in the Project.
- 9.2 The Recipient hereby grants to Metrolinx a non-exclusive, irrevocable, worldwide, free and royalty-free licence in perpetuity to use, translate, modify, disclose, produce, reproduce, and to publish any Intellectual Property arising as a result of or through the Project or this Agreement, where that Intellectual Property is:
- a) wholly owned by the Recipient, or
 - b) jointly owned by the Recipient and one other party
- , for purposes consistent with Metrolinx's objects as set out in the *Metrolinx Act, 2006* (Ontario), and as amended from time to time. The licence provided herein shall include the right of Metrolinx to authorize others to do any of the former on behalf of Metrolinx.
- 9.3 The Recipient covenants, represents and warrants that it is the whole or part owner or duly authorized licensor, as the case may be, of any Intellectual Property that is the subject of section 9.2 above, and,, subject to clause 9.4, has the right to grant to Metrolinx the right and licence to hold and use the Intellectual Property in accordance with this Agreement free and clear of the rights of any third party or other person or entity, including without limitation the right to any fee or compensation

9.4 The Recipient shall seek the necessary authorizations, as needed, for the implementation of the Project, from third parties who may co-own the Intellectual Property rights or other rights in respect of any component of the Project or any Deliverable or other document or materials provided to Metrolinx hereunder, for the purposes of the Recipient's compliance with this Agreement and the implementation and completion of the Project, including without limitation giving proper effect to the licence set out in section 9.2 above. Metrolinx shall assume no liability in respect of claims from any third party in relation to such rights.

9.4 Metrolinx reserves the right to prescribe the specific manner in which the Recipient shall perform its obligations in relation to this Article 9.

10. Communication

10.1 The Recipient shall acknowledge Metrolinx's contribution to the Project in all sponsor signage, advertising and communications materials produced as part of the Project, including without limitation any public dissemination or availability of Project Deliverables, in a manner acceptable to Metrolinx. The Recipient shall not, among other things, at any time directly or indirectly communicate with the media in relation to this Agreement unless it has first obtained the express written authorization to do so by Metrolinx.

10.2 Metrolinx may, in its sole discretion, acknowledge the contribution provided by Metrolinx to the Recipient in any Metrolinx publicity or publication.

11. Indemnification

11.1 The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Recipient, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Project or this Agreement. The Recipient further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, Metrolinx, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of this Agreement.

12. General

- 12.1 The Recipient and Metrolinx acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. The Recipient agrees to provide Records to Metrolinx within seven (7) calendar days of being directed to do so by Metrolinx.
- 12.2 This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty express, implied or otherwise, is made by Metrolinx to the Recipient except as expressly set out in this Agreement.
- 12.3 If any term or condition of this Agreement, or the application thereof to the Parties or to any persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the parties, persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 12.4 Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the Metrolinx Representative and to the Recipient Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, email or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery, email or by facsimile. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.
- 12.5 The Parties' rights and obligations, which by their nature extend beyond the expiration or termination of this Agreement, will survive any expiration or termination of this Agreement.
- 12.6 In the event of a conflict or inconsistency between any provisions in the body and the schedules to this Agreement, the main body of this Agreement shall govern over the schedules to this Agreement.
- 12.7 The headings in this Agreement are for convenience of reference only and in no manner modify, interpret or construe this Agreement.
- 12.8 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 12.9 The Recipient shall not transfer or assign its rights or obligations under this Agreement without the prior written consent of Metrolinx. Any attempt by the Recipient to assign any of the rights, duties or obligations of this

Agreement without Metrolinx's express written consent shall be deemed invalid.

- 12.10 Any tolerance or indulgence demonstrated by a Party will not constitute a waiver. A Party may only waive its rights under this Agreement in writing.
- 12.11 This Agreement shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.
- 12.12 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 12.13 The Parties agree that this Agreement may be transmitted by telecopier, electronic mail or such similar device and that the reproduction of signatures by telecopier, electronic mail, or such similar device will be treated as binding as if originals, and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.
- 12.14 Capitalized terms not otherwise defined in this Agreement shall bear the meanings associated with such terms as set out in Schedule "A" (Defined Terms).

Kindly evidence your agreement to the foregoing terms by executing this letter where indicated below and returning to our office two (2) originals of same for our files.

Thank you in advance for your attention and assistance with this matter. We look forward to hearing from you.

Metrolinx

Signature:_____

Name:

Title:

Signature:_____

Name:

Title:

The signators above have authority to bind the corporation.

AGREED and ACCEPTED by:

Evergreen

For the purposes of this Agreement, the
Recipient Representative shall be:

Name: _____

Title: _____

Signature: _____

Address: _____

Name: Geoff Cape

Title: Executive Director

I have authority to bind the Recipient.

Tel: _____

Fax: _____

Eml: _____

Schedule "A"

Defined Terms

In this Agreement:

"Agreement" means this contribution agreement and all schedules, as may be amended from time to time.

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day, Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Province of Ontario has elected to be closed for business.

"Conflict of Interest" means a situation or potential situation in which private business or personal interests may affect, or may be perceived by others to affect, the Recipient, its agents, employees, officers or directors' judgment. It includes using that person's position, confidential information or corporate time, material or facilities for private gain or advancement or the expectation of private gain or advancement. A Conflict of Interest may also occur when a situation benefits any member of the Recipient's family, or the Recipient's friends or business associates.

"Contribution Amount" means the funds to be contributed by Metrolinx for the Project in accordance with this Agreement, as set out in section 3.1 of this Agreement.

"Deliverables" means everything developed or provided in the course of completing the Project or agreed to be provided under this Agreement, by the Recipient or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further described in the Project Application, including any goods or services or any and all Intellectual Property and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided.

"Event of Default" has the meaning set out in section 8.1 of this Agreement.

"FIPPA" means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended from time to time.

"Indemnified Parties" means Metrolinx and its directors, officers, agents, appointees, contractors and employees.

"Intellectual Property" means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity.

“Metrolinx Representative” means the individual appointed by Metrolinx to be the contact for this Agreement as set out in Article 5 of this Agreement.

“Parties” means the Recipient and Metrolinx, and **“Party”** means any one of them.

“Personal Information” means recorded information about an identifiable individual or that may identify an individual.

“Project” means the project described in the Project Application.

“Project Application” means the application submitted by the Recipient to Metrolinx which describes the Project to be completed by Recipient, and includes without limitation the Project budget, the Project plan, the Project Deliverables, timelines, milestones, and outcomes, a copy of which is attached to this Agreement as Schedule “B”.

“Recipient Representative” means the individual appointed by the Recipient to be the contact for this Agreement as set out on the signature page of this Agreement.

“Record”, for the purposes of this Agreement, means any recorded information, including any Personal Information, in any form: (a) provided by Metrolinx to the Recipient, or provided by the Recipient to Metrolinx, for the purposes of this Agreement; or (b) created by the Recipient in the performance of this Agreement; and shall include or exclude any information specifically described in the schedules attached to this Agreement.

“Term” has the meaning set out in section 1.1 of this Agreement.

Schedule "B"
Project Application

See attached