

**SCHEDULE 3
CUSTODY AGREEMENT**

THIS AGREEMENT is made as of the 12th day of February, 2013

BETWEEN:

CITY OF OTTAWA

(the “**City**”)

AND

RIDEAU TRANSIT GROUP GENERAL PARTNERSHIP, a general partnership formed under the laws of the Province of Ontario

(“**Project Co**”)

AND

BNY TRUST COMPANY OF CANADA, in its capacity as custodian for and on behalf of the City and Project Co

(in such capacity, the “**Custodian**”)

AND

BNY TRUST COMPANY OF CANADA, in its capacity as collateral agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

WHEREAS:

- A. The City and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.

NOW THEREFORE in consideration of the mutual covenants and agreements of the PA Parties and the Custodian herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Custodian covenant and agree as follows:

1. DEFINITIONS

In this Custody Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Custody Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“City Signatory”** has the meaning given in Section 6(a)(i).
- (b) **“Custodian”** means BNY Trust Company of Canada, acting as custodian for and on behalf of the City and Project Co.
- (c) **“Lenders’ Agent”** means BNY Trust Company of Canada, acting as collateral agent for and on behalf of the Lenders.
- (d) **“Material”** means hard and electronic copies of the Financial Model.
- (e) **“PA Parties”** means both the City and Project Co, and **“PA Party”** means either the City or Project Co, as the context requires.
- (f) **“Party”** means the City, the Custodian, Project Co or the Lenders’ Agent, and **“Parties”** means the City, the Custodian, Project Co and the Lenders’ Agent.
- (g) **“Project Agreement”** means the project agreement made on or about the 12th day of February, 2013 between the City and Project Co.
- (h) **“Project Co”** means Rideau Transit Group General Partnership.
- (i) **“Project Co Signatory”** has the meaning given in Section 6(a)(ii).
- (j) **“Step-Out Date”** has the meaning given in Section 14(e).

2. INTERPRETATION

This Custody Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms “Section” and “Section” are used interchangeably and are synonymous.

- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Custody Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Custody Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Custody Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Custody Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Custody Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.

- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. PROJECT CO’S DUTIES AND WARRANTIES

- (a) The City will, together with Project Co, verify the identity and consistency of one copy of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to the City and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
 - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
 - (ii) the use of the Materials by the City under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
 - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

4. CUSTODIAN’S DUTIES

- (a) The Custodian shall:
 - (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
 - (ii) hold the Material in a safe and secure environment;
 - (iii) inform Project Co and the City of the receipt of any copy of the Material;
 - (iv) at all times retain a copy of the latest verified deposit of the Material; and

- (v) promptly notify Project Co and the City if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

5. PAYMENT

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co.

6. RELEASE EVENTS

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
 - (i) the City Representative, as defined in the Project Agreement (the "**City Signatory**"); and
 - (ii) the President & CEO and designated signing officers of Project Co or such other person nominated by it and notified to the Custodian and the City in writing (the "**Project Co Signatory**");

and shall, subject to Section 6(b), upon receiving signed joint instructions from the City Signatory and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the City Signatory and the Project Co Signatory.

- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.
- (c) The Custodian shall release the Material to a duly authorized representative of the City on any termination of the Project Agreement prior to the Expiry Date.

7. RECORDS

- (a) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

8. CONFIDENTIALITY

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to the City, the City shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, sub-contractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, the City shall:
 - (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of the City;
 - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of the City;
 - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
 - (iv) forthwith destroy the same should the City cease to be entitled to use the Financial Model.

9. INTELLECTUAL PROPERTY RIGHTS

- (a) The release of the Material to the City and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

10. INSPECTION

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.
- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.

- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for the City and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

11. CUSTODIAN'S LIABILITY AND INSURANCE

11.1 Custodian's Liability

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or the City either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors.
- (b) The Custodian shall in no circumstances be liable to Project Co or the City for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.

- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and the City, in writing, of such process and the Custodian's intended action in order to provide Project Co and the City a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (f) The Custodian may consult with legal counsel (at the expense of Project Co and the City, unless the matter relates to the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, where such consultation will be at the Custodian's sole cost) as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and the City in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and the City, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and the City of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or the City for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the

Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and the City.

- (k) Each of Project Co and the City shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11.1 shall survive the termination of this Custody Agreement.

11.2 Insurance

- (a) The Custodian must have in place at all times during the term of this Custody Agreement such insurance as is customarily maintained by a reputable Canadian financial institution performing services similar to those provided by the Custodian pursuant to this Custody Agreement.

12. INDEMNITY

- (a) Save for any claim falling within the provisions of Section 11.1(a), Project Co and the City, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of negligence or willful misconduct on its part).
- (b) The indemnity provided in this Section 12 shall not extend to:
 - (i) losses caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors;
 - (ii) any action taken by the Custodian outside the scope of authority set forth in this Custody Agreement, or any part or parts hereof; or

- (iii) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Custodian.
- (c) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement, shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

13. TERMINATION

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days prior written notice to Project Co and the City. In that event, Project Co and the City shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (d) The City may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of the City, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and the City.
- (f) This Custody Agreement shall terminate upon release of the Material to the City in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(a), 13(d) or 13(e), the Custodian will deliver one copy of the Material to Project Co and one copy of the Material to the City. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so, the Custodian will destroy the copy of the Material that would have otherwise delivered to Project Co.
- (h) **[Intentionally deleted]**
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the copy of the Material that it would have otherwise delivered to Project Co if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so. In such event of termination, a copy of the Material will be delivered to the City within 30 days of such termination.

- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify the City of Project Co's request and, failing receipt of any notice of objection from the City within 30 days of the receipt of the notice by the City, it shall release the Materials to Project Co.
- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

14. STEP-IN RIGHTS

- (a) The Custodian shall, from time to time:
 - (i) permit the City to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
 - (ii) permit Project Co to perform or discharge any obligation of the City under this Custody Agreement, where the City is in breach of the same, save and except for any obligation of the City to provide any consent or approval hereunder; and
 - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to the City), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by the City pursuant to Section 14(a)(i).
- (c) The City consents to the performance or discharge of its obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 14(a)(iii).

- (e) The City or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (the City or the Lenders' Agent at the same time shall provide a copy of any such notification to the other party) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent, as applicable, shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders' Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) of this Custody Agreement and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

15. ASSIGNMENT

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and the City and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement.
- (c) The City may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom the City assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders' Agent.

16. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Custody Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Custody Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to the City: City of Ottawa
Finance Department, Supply Branch
100 Constellation Crescent
4th Floor, West Tower
Ottawa, ON K2G 6J8

Fax No.: (613) 580-9688
Attn: Director, Rail Implementation Office

With a copy to: Ontario Infrastructure and Lands Corporation
777 Bay Street
6th Floor
Toronto, ON M5G 2C8

Fax No.: (416) 327-6387
Attn: Vice President, Civil Infrastructure

If to Project Co: Rideau Transit Group General Partnership
1 First Canadian Place, Suite 6000
PO Box 367, 100 King Street West
Toronto, Ontario M5X 1E2

Fax No.: (416) 365-7886
Attn: Eusebio Corregel

With a copy to: ACS RTG Partner Inc.
c/o ACS Infrastructure Canada Inc.
155 University Avenue, Suite 1800
Toronto, Ontario M5H 3B7

Fax No.: 1-786-272-7992
Attn: Nuria Haltiwanger

With a copy to: EllisDon RTG Partner Inc.
c/o 800-89 Queensway Avenue
Mississauga, Ontario L5B 2V2

Fax No.: (905) 803-3059
Attn: Jody K. Becker

With a copy to: SNC RTG Partner Inc.
c/o 455 René-Lévesque Blvd.
West Montreal, Quebec H2Z 1Z3

Fax No.: (514) 866-0795
Attn: Gerry Grigoropoulos

If to the Custodian: BNY Trust Company of Canada
11th Floor, 320 Bay Street
Toronto, ON M5H 4A6

Fax No.: (416) 360-1711
Attn: Vice President, Transaction Management
Group

If to the Lenders' Agent BNY Trust Company of Canada
11th Floor, 320 Bay Street
Toronto, ON M5H 4A6

Fax No.: (416) 360-1711
Attn: Vice President, Transaction Management
Group

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 16(e), 16(f) and 16(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 16.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

17. RIGHT TO DESIGNATE

- (a) At any time and from time to time, the City may designate any City Representative, as defined in the Project Agreement to carry out administrative responsibility for the rights and obligations of the City under this Custody Agreement and Project Co, the Custodian and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and are entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the City has notified Project Co, the Custodian and the Lenders' Agent in writing that such designated person is no longer the person designated by the City hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The City shall advise Project Co, the Custodian and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the Parties to this Custody Agreement shall be in no way affected by reason of any such designation. Project Co, the Custodian and the Lenders' Agent acknowledge the right of the City to delegate administrative responsibilities hereunder as set forth in this Section 17.

18. AMENDMENTS

- (a) This Custody Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Custody Agreement.

19. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Custody Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

20. RELATIONSHIP BETWEEN THE PARTIES

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, trustee and beneficiary, employer and employee, master and servant, or principal and agent.

21. ENTIRE AGREEMENT

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

22. SEVERABILITY

- (a) Each provision of this Custody Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Custody Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Custody Agreement. If any such provision of this Custody Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Custody Agreement as near as possible to its original intent and effect.

23. ENUREMENT

- (a) This Custody Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

24. GOVERNING LAW AND JURISDICTION

- (a) This Custody Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Custody Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

25. FURTHER ASSURANCE

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Custody Agreement.

26. LANGUAGE OF AGREEMENT

- (a) Each Party acknowledges having requested and being satisfied that this Custody Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en declare satisfaite.

27. PROOF OF AUTHORITY

- (a) The City reserves the right to require any person executing this Custody Agreement on behalf of Project Co or the Lenders' Agent to provide proof, in a form acceptable to the City, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Lenders' Agent, respectively.

28. COUNTERPARTS

- (a) This Custody Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Custody Agreement which was so faxed.

[This section intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Custody Agreement as of the date first above written.

CITY OF OTTAWA

Per: _____
Name: Kent Kirkpatrick
Title: City Manager

I have authority to bind the corporation.

RIDEAU TRANSIT GROUP GENERAL PARTNERSHIP, by its partners, ACS RTG PARTNER INC., SNC RTG PARTNER INC. and ELLISDON RTG PARTNER INC.

ACS RTG PARTNER INC.

Per: _____

Name:

Title:

I have authority to bind the corporation.

SNC RTG PARTNER INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

ELLISDON RTG PARTNER INC.

Per: _____

Name:

Title:

I have authority to bind the corporation.

BNY TRUST COMPANY OF CANADA, in its capacity as custodian for and on behalf of the City and Project Co

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

BNY TRUST COMPANY OF CANADA, in its capacity as collateral agent for and on behalf of the Lenders

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

APPENDIX A
CONDUCT OF CLAIMS

This Appendix A shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the City and Project Co are referred to, collectively, as the “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 12 of the Custody Agreement, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix A, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. In such case, the City may, but shall not be obligated to, assume (on prior written notice to Project Co) control of any such defence for and on behalf of itself and Project Co, and Project Co hereby consents to such assumption. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim at its own cost and expense.
- (3) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

- (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Custody Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section (2); or
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or the Indemnifier notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim.
- (5) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”), the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (7) Any person taking any of the steps contemplated by this Appendix A shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Custody Agreement.